

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Application of BellSouth Corporation,) CC Docket No. 98-121
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc., for Provision)
of In-Region, InterLATA Services)
in Louisiana)

MEMORANDUM OPINION AND ORDER

Adopted: October 13, 1998

Released: October 13, 1998

By the Commission: Chairman Kennard and Commissioners Powell and Tristani issuing separate statements; Commissioner Ness concurring in part and issuing a statement; and Commissioner Furchtgott-Roth concurring and issuing a statement.

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I. INTRODUCTION

1. On July 9, 1998, BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed their second application for authorization under section 271 of the Communications Act of 1934, as amended,¹ to provide interLATA services in the State of Louisiana.² Because BellSouth fails to satisfy the statutory requirements established by Congress, we deny BellSouth's application. We are, however, encouraged that BellSouth demonstrates that it meets the requirements of six checklist items, and one subsection of a seventh checklist item. In those areas where BellSouth's application falls short, we provide guidance as to what BellSouth must do to comply with the market opening measures mandated by Congress.

2. Prior to the passage of the 1996 Act, the Modification of Final Judgment (MFJ) prohibited the Bell Operating Companies (BOCs) from entering certain lines of business, including interexchange service.³ This restriction was based upon the theory that, if the BOCs were allowed to enter the long distance market, they could use their bottleneck control in the local and

¹ 47 U.S.C. § 271. Section 271 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 151 *et seq.* We refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act." We refer to the Telecommunications Act of 1996 as "the 1996 Act."

² *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (filed July 9, 1998) (BellSouth Application). See *Comments Requested on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Public Notice, DA 98-1364 (rel. July 9, 1998); see *Revised Comment Cycle on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Public Notice DA 98-1480 (rel. July 23, 1998) (because several attachments to its application were incorrectly compiled and reproduced, BellSouth replaced the incorrect attachments and agreed to a revised schedule for the application). Unless an affidavit or appendix reference is included, all citations to the "BellSouth Application" refer to BellSouth's "Brief in Support of Application." References to all affidavits or other sources contained in the appendices submitted by BellSouth are initially cited to the Appendix, Volume, and Tab number indicating the location of the source in the record. Subsequent citation to affidavits are cited by the affiant's name, *e.g.*, "BellSouth Wright Aff." Comments on the current application are cited herein by party name, *e.g.*, "ACSI Comments." Documents, such as affidavits and declarations, submitted by commenters are cited by the affiant's name and the entity submitting the affidavit, *e.g.*, "AT&T Bradbury Aff.," "MCI King Decl." A list of parties that submitted comments or replies is set forth in the Appendix.

³ The Modification of Final Judgment arose from the settlement of the Department of Justice's antitrust suit against AT&T. *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.*, *Maryland v. United States*, 460 U.S. 1001 (1983) (MFJ or Consent Decree); see also *United States v. Western Elec. Co.*, Civil Action No. 82-0192 (D.D.C. Apr. 11, 1996) (vacating the MFJ).

exchange access markets to obtain an unfair advantage in the long distance market.⁴ In enacting the Telecommunications Act of 1996, Congress established a new statutory framework designed to benefit "all Americans by opening all telecommunications markets to competition."⁵

3. Central to the new statutory scheme of the 1996 Act are provisions designed to open the local services market to competition and ultimately to permit all carriers, including those that previously enjoyed a monopoly or competitive advantage in a particular market, to provide a variety of telecommunications offerings. Due to the continued and extensive market dominance of the BOCs in their regions, Congress chose to maintain certain of the MFJ's restrictions on the BOCs, until the BOCs open their local markets to competition as provided in section 271 of the Act.⁶ One such restriction is incorporated in section 271, which prohibits the BOCs from entering the in-region, interLATA market immediately.⁷ Congress recognized that, because it would not be in the BOCs' immediate self-interest to open their local markets, it would be highly unlikely that competition would develop expeditiously in the local exchange and exchange access markets. Thus, Congress used the promise of long distance entry as an incentive to prompt the BOCs to open their local markets to competition. Congress further recognized that, until the BOCs open their local markets, there is an unacceptable danger that they will use their market power to compete unfairly in the long distance market. Accordingly, section 271 allows a BOC to enter the in-region, interLATA market, and thereby offer a comprehensive package of telecommunications services, only after it demonstrates, among other things, compliance with the interconnection, unbundling, and resale obligations that are designed to facilitate competition in the local market.⁸ Congress has directed the Commission to determine whether the BOCs have met these criteria.⁹

4. In order to effectuate the will of Congress, we believe that it is vitally important to

⁴ *United States v. American Telephone and Telegraph Co.*, 552 F. Supp. at 165.

⁵ H.R. Conf. Report No 104-458 at 1. *See SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413 (D.C. Cir. 1998).

⁶ *See, e.g.*, 141 Cong. Rec. S8057 (1995) (statement of Sen. Dorgan):

The Bell operating companies are not now free to go out and compete with the long distance companies because they have a monopoly in most places in local service. It is not fair for the Bell operating companies to have a monopoly in local service, retain that monopoly and get involved in competitive circumstances in long distance service.

⁷ 47 U.S.C. § 271.

⁸ *Id.*

⁹ 47 U.S.C. § 271(d)(3).

make the section 271 application process as orderly and predictable as possible for all interested parties. We are encouraged that this application, the first since the Common Carrier Bureau commenced a dialogue concerning the requirements of section 271 with representatives of the telecommunications industry and other interested parties, demonstrates that significant progress has been made toward reaching the goals of the Act. We believe that the fruits of those discussions have been reflected in an improved application in which we, for the first time, find that an applicant satisfies multiple checklist items, and, but for deficiencies in its operations support systems, would meet the requirements of several others. We recognize the considerable steps that BellSouth has taken in many areas, and we urge BellSouth and the other parties to continue to resolve remaining disputes.

5. While we commend BellSouth for making significant improvements over the past eight months since we issued the *First BellSouth Louisiana Order*,¹⁰ BellSouth has filed a second application for Louisiana without fully addressing the problems we identified in previous BellSouth applications. This problem is particularly evident in BellSouth's provision of operations support systems. Because BellSouth does not satisfy the statutory requirements, we are compelled to deny its application for entry into the interLATA long distance market in Louisiana. In this regard, we caution that the Commission expects applicants to remedy deficiencies identified in prior orders before filing a new section 271 application, or face the possibility of summary denial.¹¹

II. OVERVIEW

6. In this Order we review all aspects of BellSouth's application. While BellSouth meets a number of the section 271 statutory requirements in this application, it fails to meet a number of others. In section V below, we discuss BellSouth's assertion that it satisfies the requirements of section 271(c)(1)(A) (commonly referred to as "Track A").¹² Specifically, we find that the studies that BellSouth relies upon to demonstrate that Personal Communications Services (PCS) providers compete with wireline telephone exchange service are inadequate. We also discuss whether BellSouth demonstrates that it satisfies the requirements of Track A based on its implemented agreements with wireline competitive local exchange carriers (LECs).

¹⁰ *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-region, InterLATA Services In Louisiana*, Memorandum Opinion and Order, 13 FCC Rcd 6245 (1998) (*First BellSouth Louisiana Order*).

¹¹ As we underscore below, however, we remain open to approving an application based on types of evidence other than those we have suggested in our prior orders if a BOC can persuade us that such evidence satisfies the statutory requirements. See *infra*. para. 37.

¹² 47 U.S.C. § 271(c)(1)(A).

7. In section VI, we address checklist compliance. BellSouth's compliance with various items in the 14-point checklist appears to fall into three categories: (1) BellSouth has met the statutory requirements of some checklist items; (2) BellSouth has made significant progress toward meeting the requirements of many other items; and (3) for one checklist item, major problems still remain.

8. With respect to the first category, we conclude that BellSouth successfully demonstrates in this application that it complies with the following aspects of the checklist: (1) poles, ducts, conduits, and rights-of-way; (2) 911 and E911 services;¹³ (3) white pages directory listings for competing LECs' customers; (4) telephone numbers for assignment to other carriers' customers; (5) databases and associated signaling necessary for call routing and completion; (6) services or information necessary to allow a requesting carrier to implement local dialing parity; and (7) reciprocal compensation arrangements.¹⁴ Thus, the next time BellSouth files for section 271 approval in Louisiana, BellSouth may incorporate by reference its prior showing for these checklist items.¹⁵ BellSouth must, however, certify in the application that its actions and performance at the time are consistent with the showing upon which we base our determination that the statutory requirements for these checklist items have been met. We will only consider arguments from commenters relating to new information that BellSouth fails to satisfy these checklist items.

9. With respect to the second category, BellSouth has made significant progress toward meeting the statutory requirements. If not for deficiencies in BellSouth's operations support systems (OSS),¹⁶ BellSouth would satisfy the requirements of the following two checklist

¹³ BellSouth has satisfied only one of the three requirements of checklist item (vii).

¹⁴ See 47 U.S.C. § 271(c)(2)(B) for these checklist items: (iii) poles, ducts, conduits, and rights of way; (vii)(I) 911 and E911 services; (viii) white pages directory listings for competing LECs' customers; (ix) telephone numbers for assignment to other carrier's customers; (x) databases and associated signaling necessary for call routing and completion; (xii) services or information necessary to allow a requesting carrier to implement local dialing parity; and (xiii) reciprocal compensation arrangements.

¹⁵ See *infra*. n.151.

¹⁶ Incumbent LECs, such as BellSouth, maintain a variety of computer databases and "back-office" systems that are used to provide service to customers. We collectively refer to these computer databases and systems as operations support systems, or OSS. These systems enable the employees of incumbent LECs to process customers' orders for telecommunications services, to provide the requested services to their customers, to maintain and repair network facilities, and to render bills. In order for competing carriers to provide these same services to their customers, the new entrants must have access to the incumbent LEC's systems. See section VI.C.2, *infra*.

items: (1) local transport; and (2) services available for resale.¹⁷ Previously, we have determined that OSS is a necessary component for providing access to network elements and resold services.¹⁸ We emphasize that nondiscriminatory access to a BOC's operations support systems is crucial and that, once the deficiencies in BellSouth's OSS are resolved, the requirements of these checklist items should be satisfied. In addition, for the following checklist items, we have identified other compliance problems: interconnection; local loop transmission; switching; directory assistance services; operator call completion services; and number portability.¹⁹

10. With respect to the third category, we have identified one remaining checklist item where major compliance problems still exist: checklist item (ii) -- nondiscriminatory access to network elements. These shortcomings include: (1) BellSouth's continued failure to provide competing carriers with nondiscriminatory access to its OSS functions, and (2) BellSouth's failure to demonstrate that it offers nondiscriminatory access to unbundled network elements in a manner that satisfies the statutory requirements. More specifically, we conclude that BellSouth's application is deficient with regard to nondiscriminatory access to unbundled network elements because BellSouth offers collocation as the only method for competitive LECs to combine unbundled network elements.

11. In section VII, we conclude that BellSouth does not demonstrate full compliance with the requirements of section 272. Finally, because BellSouth fails to meet a number of statutory requirements, we need not address the issue of whether BellSouth has demonstrated that the authorization it seeks is consistent with the public interest, convenience, and necessity. Nevertheless, in order to provide BellSouth and other interested parties with guidance concerning

¹⁷ See 47 U.S.C. § 271(c)(2)(B) for these checklist items: (v) local transport and (xiv) services available for resale.

¹⁸ See, e.g., *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539, 585-88 (1997) (*BellSouth South Carolina Order*); see also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15509 (1996) (*Local Competition First Report and Order*), aff'd in part and vacated in part sub nom. *Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), modified on reh'g, No. 96-3321 (Oct. 14, 1997) (*Rehearing Order*), petition for cert. granted, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively, *Iowa Utils. Bd. v. FCC*), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997) aff'd *Southwestern Bell Telephone v. FCC*, No. 97-3389, 1998 WL 459536 (8th Cir. Aug. 10, 1998), further recons. pending.

¹⁹ See 47 U.S.C. § 271(c)(2)(B) for these checklist items: (i) interconnection; (iv) local loop transmission; (vi) switching; (vii)(II) directory assistance services; (vii)(III) operator call completion services; and (xi) number portability.

the public interest standard we will apply in future applications, we set forth in section VIII our views on the general framework we will apply in conducting the public interest inquiry mandated by Congress.

III. EXECUTIVE SUMMARY

Department of Justice's Evaluation

- # The Department of Justice recommends that BellSouth's application for entry into the long distance market in Louisiana be denied. The Department of Justice concluded that, despite a number of encouraging improvements since its earlier applications in South Carolina and Louisiana, the Louisiana market is not fully and irreversibly open to competition, and that BellSouth has failed to demonstrate that it is offering access and interconnection that satisfy the requirements of the competitive checklist.

State Verification of Compliance with Section 271(c)

- # The Louisiana Commission voted to approve and support BellSouth's second application to enter the long distance market in Louisiana. Unlike the process it followed when BellSouth filed its first application, the Louisiana Commission did not compile an evidentiary record or conduct a formal proceeding to determine whether BellSouth's revised application complies with section 271 of the Act. Thus, there is no record evidence submitted by the state commission to show whether BellSouth has implemented changes in response to our previous Louisiana order.

Track A: Broadband PCS and Wireline

- # We conclude that the broadband PCS services at issue here satisfy the statutory definition of "telephone exchange service" for purposes of Track A, and therefore, may serve as the basis for a qualifying application under Track A. Based on the facts presented in this application, however, BellSouth has not shown that broadband PCS is a substitute for the wireline telephone service offered by BellSouth in Louisiana.
- # We also discuss whether BellSouth demonstrates that it satisfies the requirements of Track A based on its implemented agreements with wireline competitive LECs.

Checklist -- General

- # We conclude that, in any future application for section 271 approval in Louisiana, BellSouth may incorporate by reference its prior showing on checklist items we deem satisfied in this Order and, with respect to these items, commenters may only raise

arguments relating to new information. BellSouth must also certify that its actions and performance at the time of any future application are consistent with the showing it incorporates by reference. We hope this new certification option will enable BOCs to focus their energies on quickly satisfying the remaining statutory requirements and thereby expedite the local market-opening process by which BOCs may obtain approval to provide in-region long distance service. Taken together with the evidentiary standards described in this and prior orders, as well as our continued willingness to work with BellSouth to clarify further its statutory obligations, this certification option demonstrates our ongoing commitment to ensuring that BellSouth and other BOCs hold the keys of their success with respect to section 271 approval in their own hands.

Checklist Item 1 -- Interconnection

- # BellSouth does not satisfy the requirements of checklist item (i). Pursuant to this checklist item, BellSouth must allow other carriers to link their networks to its network for the mutual exchange of traffic. To do so, BellSouth must permit carriers to use any available method of interconnection at any available point in BellSouth's network. For the reasons stated in the *BellSouth South Carolina Order*, we find BellSouth's collocation offering insufficient. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between BellSouth and an affiliate, or between BellSouth and another carrier. BellSouth also does not show that it provides interconnection that meets this standard.

Checklist Item 2 -- Access to Unbundled Network Elements

- # BellSouth does not satisfy the requirements of checklist item (ii). The telephone network is comprised of individual network elements. In order to provide "access" to an unbundled network element, for purposes of the checklist, BellSouth must provide a connection to the network element at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory. To fulfill the nondiscrimination obligation under checklist item (ii), BellSouth must provide access to its operations support systems, meaning the information, systems, and personnel necessary to support the elements and services. This is important because access to BellSouth's operations support systems provides new entrants with the ability to order service for their customers and allows new entrants to communicate effectively with BellSouth regarding such basic activities as placing orders and providing repair and maintenance service for customers. BellSouth does not demonstrate that its operation support systems enable other carriers to connect electronically to its pre-ordering and ordering functions, thus placing those carriers at a competitive disadvantage relative to BellSouth's own retail operation. Although BellSouth has made some progress in addressing deficiencies in its operations support systems, it has failed to address successfully other problems that we

specifically identified in previous orders as critical for nondiscriminatory access.

- # In addition, BellSouth must provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Other carriers are entitled to request any "technically feasible" method for combining network elements. As we held in the *BellSouth South Carolina Order*, BellSouth has failed to demonstrate that it can provide nondiscriminatory access to unbundled network elements through the one method it identifies for such access, collocation.

Checklist Item 3 -- Access to Poles, Ducts, Conduits, and Rights-of-Way

- # BellSouth satisfies the requirements of checklist item (iii). Telephone company wires must be attached to, or pass through, poles, ducts, conduits, and rights-of-way. In order to fulfill the nondiscrimination obligation under checklist item (iii), BellSouth must show that other carriers can obtain access to its poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices. Failure by BellSouth to provide such access may prevent other carriers from serving certain customers. BellSouth demonstrates that it has established nondiscriminatory procedures for access to poles, ducts, conduits, and rights-of-way.

Checklist Item 4 -- Unbundled Local Loops

- # BellSouth does not satisfy the requirements of checklist item (iv). Local loops are the wires, poles, and conduits that connect the telephone company end office to the customer's home or business. To satisfy the nondiscrimination requirement under checklist item (iv), BellSouth must demonstrate that it can efficiently furnish unbundled loops to other carriers within a reasonable time frame, with a minimum level of service disruption, and at the same level of service quality it provides to its own customers. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business. BellSouth does not provide evidence, such as meaningful performance data, that it can efficiently furnish loops to other carriers in a nondiscriminatory manner.

Checklist Item 5 -- Unbundled Local Transport

- # But for deficiencies in its operations support systems, BellSouth would satisfy the requirements of checklist item (v). Transport facilities are the trunks that connect different switches within BellSouth's network or those switches with long distance carriers' facilities. This checklist item requires BellSouth to provide other carriers with

transmission links that are dedicated to the use of that carrier as well as links that are shared with other carriers, including BellSouth. Nondiscriminatory access to transport ensures that consumer calls travelling over other carriers' lines are completed properly. Although BellSouth demonstrates that it provides transport on terms and conditions consistent with our regulations, it does not provide evidence, such as meaningful performance data, that it provides nondiscriminatory access to operations support systems for the purpose of providing transport facilities.

Checklist Item 6 -- Unbundled Local Switching

- # BellSouth does not satisfy the requirements of checklist item (vi). A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that BellSouth does not satisfy the requirements of checklist item (vi), because BellSouth does not show that it provides all of the features, functions, and capabilities of the switch.

Checklist Item 7 -- 911 and E911 Services, Operator Services, and Directory Assistance

- # BellSouth satisfies the requirements of checklist item (vii)(I), regarding 911 and E911 services. 911 and E911 services transmit calls from end users to emergency personnel. It is critical that BellSouth provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. We previously concluded in the *BellSouth South Carolina Order* that BellSouth met the requirements of this checklist item. BellSouth demonstrates that it continues to meet the statutory requirements as described in the *BellSouth South Carolina Order*.
- # BellSouth does not satisfy the requirements of checklist item (vii)(II) and (vii)(III), regarding provision of nondiscriminatory access to directory assistance and operator services. Customers use directory assistance and operator services to obtain customer listing information and other call completion services. BellSouth does not demonstrate that it provides other carriers with the same access to these services that it provides to itself.

Checklist Item 8 -- White Pages Directory Listings

- # BellSouth satisfies the requirements of checklist item (viii). White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are comparable, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. BellSouth demonstrates that its provision of white page listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white page listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

Checklist Item 9 -- Numbering Administration

- # BellSouth satisfies the requirements of checklist item (ix). Telephone numbers are currently assigned to telecommunications carriers based on the first three digits of the local number known as "NXX" codes. To fulfill the nondiscrimination obligation in checklist item (ix), BellSouth must provide other carriers with the same access to new NXX codes within an area code that BellSouth enjoys. This checklist item ensures that other carriers have the same access to new telephone numbers as BellSouth. BellSouth demonstrates that, in acting as the code administrator, it has adhered to industry guidelines and the Commission's requirements under section 251(b)(3).

Checklist Item 10 -- Databases and Associated Signaling

- # BellSouth satisfies the requirements of checklist item (x). Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item (x), BellSouth must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete and bill for telephone calls as BellSouth. BellSouth demonstrates that it provides other carriers nondiscriminatory access to its: (1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems.

Checklist Item 11 -- Number Portability

- # BellSouth does not satisfy the requirements of checklist item (xi). Number portability enables consumers to take their phone number with them when they change local telephone companies. BellSouth does not sufficiently demonstrate that it provides number portability to competing carriers in a reasonable timeframe. A failure to provide timely number portability prevents a customer from receiving incoming calls for a period of time after switching from BellSouth to a competing carrier.

Checklist Item 12 -- Local Dialing Parity

- # BellSouth satisfies the requirements of checklist item (xii). Local dialing parity permits customers to make local calls in the same manner regardless of the identity of their carrier. To fulfill the nondiscrimination obligation in checklist item (xii), BellSouth must establish that customers of another carrier are able to dial the same number of digits to make a local telephone call. In addition, the dialing delay experienced by the customers of another carrier should not be greater than that experienced by customers of BellSouth. This checklist item ensures that consumers are not inconvenienced in how they make calls simply because they subscribe to a carrier other than BellSouth for local telephone service. BellSouth demonstrates that customers of other carriers are able to dial the same number of digits that BellSouth's customers dial to complete a local telephone call, and that these customers do not otherwise suffer inferior quality such as unreasonable dialing delays compared to BellSouth customers.

Checklist Item 13 -- Reciprocal Compensation

- # BellSouth satisfies the requirements of checklist item (xiii). Pursuant to this checklist item, BellSouth must compensate other carriers for the cost of transporting and terminating a local call from BellSouth. Alternatively, BellSouth and the other carrier may enter into an arrangement whereby neither of the two carriers charges the other for terminating local traffic that originates on the other carrier's network. This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. BellSouth demonstrates that it has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and that it is making all required payments in a timely fashion. Louisiana has not reached a final determination on the issue of a BOC's obligation to pay reciprocal compensation for traffic delivered to Internet service providers (ISPs). We do not, at this time, consider BellSouth's unwillingness to pay reciprocal compensation for traffic that is delivered to ISPs located within the same local calling area as the originating BellSouth end user in assessing whether BellSouth satisfies this checklist item. Any future grant of in-region interLATA authority under section 271 will be conditioned on compliance with decisions relating to Internet traffic in Louisiana.

Checklist Item 14 -- Resale

- # BellSouth does not satisfy the requirements of checklist item (xiv). This checklist item requires BellSouth to offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations such that other carriers may resell those services to an end user. This checklist item ensures a mode of entry into the local market for carriers that have not deployed their own facilities. BellSouth demonstrates that it offers all of its retail services for resale at wholesale rates without unreasonable or discriminatory conditions or limitations. BellSouth, however, does not show that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.

Section 272 Compliance

- # Although BellSouth has undertaken significant efforts to institute policies and procedures to ensure compliance with section 272, it does not meet all section 272 requirements. In particular, it does not disclose all transactions with its section 272 affiliate, which means its affiliate has superior access to information about these transactions than unaffiliated entities. In addition, it does not provide nondiscriminatory access to its operations support systems, and thereby discriminates in its provision of information to unaffiliated entities.

Public Interest Standard

- # We reaffirm the Commission's prior conclusion that it has broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest. We reaffirm the Commission's prior conclusion that we consider as part of our public interest inquiry whether approval of a section 271 application will foster competition in all relevant markets, including the local exchange market, not just the in-region, interLATA market.
- # In assessing whether the public interest will be served by granting a particular application, we will consider and balance a variety of factors in each case. For example, we would consider a BOC's agreement to submit to enforcement mechanisms in the event it falls out of compliance with agreed upon performance standards.

IV. BACKGROUND

A. Statutory Framework

12. In the 1996 Act, Congress conditioned BOC provision of in-region, interLATA service on compliance with certain provisions of section 271.²⁰ Pursuant to section 271, BOCs must apply to this Commission for authorization to provide interLATA services originating in any in-region state.²¹ Congress has directed the Commission to issue a written determination on each application no later than 90 days after the application is filed.²² In acting on a BOC's application for authority to provide in-region, interLATA services, the Commission must consult with the Attorney General and give "substantial weight," to the Attorney General's evaluation of the BOC's application.²³ In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a statement of generally available terms and conditions (SGAT), and that either the agreement(s) or general statement satisfy the "competitive checklist."²⁴

13. To obtain authorization to provide in-region, interLATA service under section 271, the BOC must show that: (1) it satisfies the requirements of either section 271(c)(1)(A), known as "Track A," or 271(c)(1)(B), known as "Track B;" (2) that it has "fully implemented the competitive checklist" or that the statements approved by the state under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B);²⁵ (3) the requested authorization will be carried out in accordance with the requirements of section 272;²⁶ and (4) the BOC's entry into the

²⁰ We note here that, for the provision of international services, a U.S. carrier must file with the Commission for a section 214 authorization. *See* 47 U.S.C. § 214; *see also Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), *recon. pending*. This requirement to file for a section 214 authorization will apply to a BOC even after it is authorized to provide in-region interLATA service.

²¹ *See* 47 U.S.C. § 271.

²² *Id.* § 271(d)(3).

²³ *Id.* § 271(d)(2)(A).

²⁴ *Id.* § 271(d)(2)(B).

²⁵ *Id.* § 271(d)(3)(A). The critical, market-opening provisions of section 251 are incorporated into the competitive checklist found in section 271. *See* 47 U.S.C. § 251; *see also Local Competition First Report and Order*, 11 FCC Rcd 15499.

²⁶ 47 U.S.C. § 271(d)(3)(B).

in-region, interLATA market is "consistent with the public interest, convenience, and necessity."²⁷ The statute directs that the Commission "shall not approve" the requested authorization unless it finds that the criteria specified in section 271(d)(3) are satisfied.²⁸

B. The Attorney General's Evaluation

14. Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate," and the Commission is required to "give substantial weight to the Attorney General's evaluation."²⁹ Section 271(d)(2)(A) specifically provides, however, that "such evaluation shall not have any preclusive effect on any Commission decision."³⁰ In the *Ameritech Michigan Order*, the Commission concluded it is required to give substantial weight not only to the Department of Justice's evaluation of the effect of BOC entry on long distance competition, but also to its evaluation of whether the BOC satisfies each of the criteria for BOC entry under section 271.³¹

15. The Department of Justice recommends that BellSouth's application for entry into the long distance market in Louisiana be denied.³² As summarized more fully below, the Department of Justice concludes that, despite a number of encouraging improvements since its earlier applications in South Carolina and Louisiana, the Louisiana market is not fully and irreversibly open to competition, and that BellSouth fails to demonstrate that it is offering access and interconnection that satisfy the requirements of the competitive checklist.

16. Evaluation of Openness of Market to Competition. The Department of Justice

²⁷ *Id.* § 271(d)(3)(C).

²⁸ *Id.* § 271(d)(3). See *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 413, 416 (D.C. Cir. 1998); *SBC Communications, Inc. v. FCC*, No. 98-10140, 1998 WL 568362 (5th Cir. Sept. 4, 1998).

²⁹ 47 U.S.C. § 271(d)(2)(A).

³⁰ *Id.*

³¹ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20563 (1997) (*Ameritech Michigan Order*), *writ of mandamus issued sub nom. Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998).

³² Department of Justice Evaluation at 42.

finds that the Louisiana local market is not "fully and irreversibly open to competition."³³ In evaluating whether competition in a local market satisfies this standard, the Department of Justice considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving construction of new networks, the use of unbundled network elements, and resale of the BOC's services -- are fully and irreversibly open to competition to serve both business and residential consumers. The Department of Justice examines the extent of actual local competition, whether significant barriers continue to impede the growth of competition, and whether benchmarks to prevent "backsliding" have been established. Applying these standards, the Department of Justice concludes that BellSouth still faces no significant competition in local exchange service in Louisiana. The Department of Justice notes, however, that in the nine months since the first Louisiana application was filed, BellSouth has taken significant steps to improve its wholesale support systems, and that there have been encouraging developments in competition by facilities-based entrants and resellers, though the market penetration of those competitors is still quite modest.³⁴ The Department of Justice further finds, as it did before in the first Louisiana application, that the Louisiana market is not sufficiently open to competition because BellSouth has not instituted performance measurements to ensure consistent wholesale performance, *i.e.*, to prevent "backsliding" once section 271 authority is granted.³⁵ In light of its conclusion that the Louisiana market is not "fully and irreversibly open to competition," the Department of Justice reaffirms its conclusion in its first Louisiana evaluation that the potential for competitive benefits in markets for interLATA services does not justify approving this application.³⁶

17. The Department of Justice also reaffirms the finding it made in its first Louisiana evaluation that there is still virtually no competition in Louisiana through the use of unbundled network elements (UNEs). In particular, the Department of Justice concludes that BellSouth has maintained policies of physically separating critical pre-existing combinations of UNEs, as well as policies which impose unnecessary costs and technical obstacles on competitors that seek to combine UNEs. The Department of Justice states that, "[c]ollectively, these policies seriously impair competition by firms that seek to offer services using combinations of unbundled network elements."³⁷ The Department of Justice finds that, "[a]lthough the [Louisiana Commission] has

³³ *Id.* at 4. The Department of Justice first advanced the "fully and irreversibly open to competition" standard in its evaluation of SBC's section 271 application for Oklahoma. *Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma*, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997) (*SBC Oklahoma Order*).

³⁴ Department of Justice Evaluation at 3.

³⁵ *Id.* at 38-40.

³⁶ *Id.* at 40-42.

³⁷ *Id.* at 4.

generally adopted a pricing methodology that may permit competition, BellSouth's prices do not consistently reflect the essential principles of that methodology, resulting in some prices for unbundled network elements that could prevent efficient competitors from entering the market and competing effectively.³⁸ The Department of Justice further finds that, "[d]espite a number of improvements, BellSouth has failed to demonstrate that it has adequate, nondiscriminatory wholesale support processes, including access to operations support systems, that would be critical to competitors' ability to obtain and use unbundled elements."³⁹ The Department of Justice concludes that, "taking BellSouth's current application as a whole, we find that there are still significant barriers to competitive entry in Louisiana, and we cannot yet conclude that local markets in Louisiana are fully and irreversibly open to competition."⁴⁰

C. State Verification of BOC Compliance with Section 271(c)

18. Under section 271(d)(2)(B), the Commission "shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of subsection (c)."⁴¹ In the *Ameritech Michigan Order*, the Commission determined that, because the Act does not prescribe any standard for Commission consideration of a state commission's verification under section 271(d)(2)(B), it has discretion in each section 271 proceeding to determine the amount of deference to accord to the state commission's verification.⁴² As the Court of Appeals for the D.C. Circuit held, "[a]lthough the Commission must consult with the state commissions, the statute does not require the FCC to give the State commissions' views any particular weight."⁴³ Although the Commission will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the Commission's role to determine whether the factual record supports a conclusion that particular requirements of section 271 have been met.⁴⁴

19. The Louisiana Commission's Recommendation. On September 5, 1997, by a vote

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 47 U.S.C. § 271(d)(2)(B). Subsection (c)(1) defines the requirements for Track A or Track B entry, and subsection (c)(2) contains the competitive checklist. See 47 U.S.C. § 271(c).

⁴² *Ameritech Michigan Order*, 12 FCC Rcd. at 20559-60.

⁴³ *SBC Communications v. FCC*, 138 F.3d at 416.

⁴⁴ *Ameritech Michigan Order*, 12 FCC Rcd. at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

of three-to-two, the Louisiana Commission approved BellSouth's SGAT, subject to modifications, and concluded that BellSouth's SGAT makes available to new entrants each of the items in the competitive checklist.⁴⁵ BellSouth subsequently modified its SGAT to comply with modifications ordered in the *Louisiana Commission 271 Compliance Order* and filed its revised SGAT on September 9, 1997. On April 30, 1998, BellSouth filed a second modification to its SGAT to correct deficiencies that we identified in our *First BellSouth Louisiana Order*. In that Order, we concluded that BellSouth's refusal to provide its contract service arrangements for resale at a wholesale discount is inconsistent with the requirements of the Act.⁴⁶ The Louisiana Commission had previously determined that these discounted offerings should be made available for resale, but with no additional wholesale discount as required by the Act and our rules. On July 1, 1998, the Louisiana Commission amended its order, in part, to adopt the revisions in BellSouth's second modification to its SGAT and to require a wholesale discount until such time as the Louisiana Commission could determine whether specific discounts are necessary.⁴⁷

20. On July 15, 1998, the Louisiana Commission voted, by a vote of four-to-one, to approve and support BellSouth's second application for Louisiana.⁴⁸ On July 28, 1998, the Louisiana Commission submitted its comments to this Commission concerning BellSouth's application. Unlike the process it followed in the case of BellSouth's first application, the Louisiana Commission did not compile an evidentiary record or conduct a formal proceeding to determine whether BellSouth's revised application complies with section 271 of the Act.⁴⁹ In its comments supporting BellSouth's application, the Louisiana Commission reiterated its view that

⁴⁵ *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Order U-22252-A (decided Aug. 20, 1997, issued Sept. 5, 1997) (*Louisiana Commission 271 Compliance Order*).

⁴⁶ *First BellSouth Louisiana Order*, 13 FCC Rcd at 6284-88. The Commission concluded that by not offering contract service arrangements at a wholesale discount, BellSouth was effectively creating an exemption from the Act's requirement that promotional or discounted offerings, including contract service arrangements, be made available at a wholesale discount. *Id.* at 6284 n. 228 (citing *Local Competition First Report and Order*, 11 FCC Rcd at 15970).

⁴⁷ See Louisiana Public Service Commission Comments at 4 (citing Ex. 3, Louisiana Commission Ex Parte Order No. U-22252-B).

⁴⁸ *In re: Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana*, (July 15, 1998) (*Louisiana Commission Special Order*).

⁴⁹ The *BellSouth Louisiana Order* included a discussion of the Louisiana Commission's proceeding, which we incorporate by reference in this Order. *First BellSouth Louisiana Order*, 13 FCC Rcd at 6251-53.

BellSouth should be granted interLATA authority, because it has satisfied the requirements of section 271. Indeed, the Louisiana Commission addresses only two checklist items in its comments and refers to its comments of November 24, 1997 in the first BellSouth Louisiana application for a discussion of the other twelve checklist items.⁵⁰

21. We fully acknowledge and are sensitive to limitations on state commissions' resources for purposes of developing their recommendation on a BOC's 271 application. We believe, however, that in making its recommendation on a BOC's section 271 application, a state commission may assist us greatly by providing factual information. When a BOC files a subsequent application in a state, it is important for the state commission to provide the factual information gathered and relied upon by the state commission concerning changes that have occurred since the previous application was filed. Thus, for subsequent applications, we encourage state commissions to submit factual records, in addition to their comments, demonstrating that: (1) the BOC has corrected the problems identified in previous applications; and (2) there are no new facts that suggest the BOC's actions and performance are no longer consistent with the showing upon which this Commission based any determination that the statutory requirements for certain checklist items have been met.

22. In other areas, we note that the Louisiana Commission is making important strides in promoting and advancing competition in the local exchange market. For example, the Louisiana Commission recently adopted service quality performance measurements, standards, and evaluation criteria concerning incumbent LECs' success in opening their local markets.⁵¹ We applaud such actions by state commissions to measure and evaluate performance data in order to ensure that BOCs are in fact complying with statutory requirements.

V. COMPLIANCE WITH SECTION 271(c)(1)(A)

A. Background

23. In order for the Commission to approve a BOC's application to provide in-region,

⁵⁰ Louisiana Commission Comments at 3. The Louisiana Commission did not review all the checklist items because it "presumes that the FCC concluded that BellSouth satisfied twelve of the fourteen points in the competitive checklist because the FCC [in the *BellSouth Louisiana Order*] only gave as its reasons for rejection of the first application . . . the failure of BellSouth to satisfy two of the points." The Louisiana Commission's presumption is at odds with our express statement in the *First BellSouth Louisiana Order* with respect to the requirements of the competitive checklist in section 271(c)(2)(B) that, "[e]xcept as otherwise provided herein, we make no findings with respect to BellSouth's compliance with other checklist items or other parts of section 271." *First BellSouth Louisiana Order*, 13 FCC Rcd at 6291.

⁵¹ See *BellSouth Telecommunications, Inc., Service Quality Performance Measurements*, Docket No. U-22252-Subocket C, Louisiana Public Service Commission, Staff Final Recommendation (rel. August 1998).

interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).⁵² In the case of Louisiana, BellSouth contends that it satisfies the requirements of Section 271(c)(1)(A)⁵³ which provides:

(A) PRESENCE OF A FACILITIES-BASED COMPETITOR -- A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service (as defined in section 3(47)(A), but excluding exchange access) to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.⁵⁴

B. Discussion

24. We conclude that BellSouth does not demonstrate that it satisfies the requirements of Track A based on its implemented interconnection agreements with PCS carriers in Louisiana. We do not conclude whether BellSouth demonstrates that it satisfies the requirements of Track A based on its implemented interconnection agreements with competitive wireline LECs because BellSouth fails to meet other requirements of section 271, *e.g.*, the competitive checklist and section 272.

1. Competition from PCS Carriers in Louisiana

25. BellSouth contends that it "is eligible for Track A relief based on the existence of

⁵² 47 U.S.C. § 271(d)(3)(A).

⁵³ BellSouth Application at 3. Section 271(c)(1)(B) of the Act allows a BOC to seek entry under Track B if "no such provider has requested the access and interconnection described in [section 271(c)(1)(A)]" and the BOC's statement of generally available terms and conditions has been approved or permitted to take effect by the applicable state regulatory commission. In this instance, BellSouth has not sought entry under Track B, claiming instead that competitors have requested the access and interconnection described in section 271(c)(1)(A). BellSouth Application at 3-4; *see also SBC Oklahoma Order*, 12 FCC Rcd at 8701-02 (concluding that if a BOC has received "a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A)," the BOC is barred from proceeding under Track B).

⁵⁴ 47 U.S.C. § 271(c)(1)(A).

PCS carriers in Louisiana", and its implemented interconnection agreements with these PCS carriers. BellSouth also argues that it satisfies Track A through interconnection agreements with wireline carriers.⁵⁵ In the *First BellSouth Louisiana Order*, the Commission concluded that section 271 "does not preclude the Commission from considering the presence of a PCS provider in a particular state as a 'facilities-based competitor.'⁵⁶ BOCs, in filing section 271 applications, can rely on the presence of broadband PCS providers to satisfy Track A. The Commission has emphasized, however, that a PCS provider on which the applicant seeks to rely for purposes of section 271(c)(1)(A) must offer "service that both satisfies the statutory definition of 'telephone exchange service' in section 3(47)(A) and competes with the telephone exchange service offered by the applicant in the relevant state."⁵⁷ We conclude that the broadband PCS service offered by the PCS providers at issue in this application, which provides two-way mobile voice service, qualifies as telephone exchange service for purposes of Track A. BellSouth has not shown, however, that this broadband PCS service currently competes with the wireline telephone exchange service offered by BellSouth in Louisiana. Accordingly, we conclude that BellSouth has not demonstrated that it satisfies the requirements of Track A based on the existence of these broadband PCS carriers in Louisiana.

a. Telephone Exchange Service

26. Background. In passing the 1996 Act, Congress provided alternative definitions for the term "telephone exchange service" in section 3(47) of the Communications Act. Section 271(c)(1)(A) incorporates the definition in section 3(47)(A) of the Act, which defines "telephone exchange service" as:

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.⁵⁸

27. Section 271(c)(1)(A) also specifically provides that the provision of "exchange access"⁵⁹ does not, by itself, qualify as the provision of telephone exchange service and establishes

⁵⁵ BellSouth Application at 9.

⁵⁶ *First BellSouth Louisiana Order*, 13 FCC Rcd at 6290.

⁵⁷ *Id.*

⁵⁸ 47 U.S.C. § 153(47)(A).

⁵⁹ See *id.* § 271(c)(1)(A). "Exchange access" refers to the provision of facilities or services that connect individual subscribers to the long-distance network. See *id.* § 153(16) ("The term 'exchange access' means the

that cellular telephone service may not be treated as telephone exchange service for purposes of Track A.⁶⁰ The statutory language, however, does not address whether broadband PCS constitutes "telephone exchange service."

28. Discussion. We conclude that the broadband PCS offerings at issue here satisfy the statutory definition of "telephone exchange service" in section 3(47)(A).⁶¹ The Act's definition of "telephone exchange service" is not clear as to whether it includes broadband PCS service.⁶² At the time the 1996 Act was enacted, however, the Commission had interpreted the definition of telephone exchange service to mean "the provision of two-way voice communications between individuals by means of a central switching complex which interconnects all subscribers within a geographic area,"⁶³ and Congress can be viewed as ratifying this pre-existing definition.⁶⁴ Telephone service offered by a broadband PCS provider comes within this description. Subscribers within a PCS provider's geographic service area (generally either a basic trading area (BTA) or a major trading area (MTA)) are interconnected to the public switched network by means of a central switching complex, and thus are able to place and receive calls both to other users of the PCS system and to users of other networks connected to the public switched network. While there are certain technical and functional differences between PCS and wireline local exchange service, based on the current record, we conclude that these differences are not sufficient to prevent PCS from fitting within the definition of telephone exchange service discussed above for purposes of section 271.

29. Moreover, in light of this unclear statutory definition and the evolving nature of the provision of services in the telecommunications market, we believe a practical approach to

offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.").

⁶⁰ *Id.* § 271(c)(1)(A) ("services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services"). The Conference Report confirms that the quoted language was intended to refer to cellular service. H.R. Conf. Rep. No. 104-458, at 147 (1996), reprinted in 1996 U.S.C.C.A.N. 124, 160 (*Conference Report*).

⁶¹ 47 U.S.C. § 153(47)(A).

⁶² *Id.*

⁶³ See Amendment of Parts 21 and 43 of the Commission's Rules and Regulations Relative to Various Procedural Requirements for the Domestic Public Radio Service, 76 FCC 2d 273 at 281 (1980).

⁶⁴ See *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.") (citation omitted); *Dutton v. Wolpoff & Abramson*, 5 F.3d 649, 655 (3d Cir. 1993) ("[W]hen Congress reenacts legislation, it incorporates existing administrative and judicial interpretations of the statute into its reenactment.").

applying this definition in the section 271 context is in order. In that vein, we agree with BellSouth that the typical broadband PCS offering satisfies the definition of section 3(47)(A) by offering "service over a radio-based equivalent to an ordinary wireline exchange," meaning the service is "of the character ordinarily furnished by a single exchange."⁶⁵ Because section 271 is intended to allow the BOCs into the long distance market only after they open the local market to competition, we believe that Congress intended for the Commission to consider as "telephone exchange service," for section 271 purposes, those services that permit customers to make local calls that are functionally equivalent to the calls that customers make through their wireline service. This is so even though there may not be complete identity in technical configuration, service characteristics, or charges for service between broadband PCS and traditional wireline service. Indeed, Congress' decision specifically to exclude cellular (but only cellular) from the category of telephone exchange services that may satisfy Track A suggests that other commercial mobile radio services (CMRS) offerings, such as broadband PCS, might qualify.⁶⁶ If Congress did not believe that cellular providers were providing "telephone exchange service" within the meaning of section 3(47)(A), the "carve out" of cellular providers would have been unnecessary.⁶⁷ Because broadband PCS uses technology that is similar to cellular for providing telephone service, it would appear that "carve out" language would also be necessary to exclude PCS from the definition of telephone exchange service.

30. We find that broadband PCS providers offer service "within a telephone exchange" or "a connected system of telephone exchanges within the same exchange area"⁶⁸ because section 3(47)(A) does not require a specific geographic boundary other than an area covered by an

⁶⁵ BellSouth Application at 10. Commenters disagree on whether PCS providers offer "telephone exchange service" within the meaning of section 271. *See Ameritech Comments* at 2-8 (arguing that PCS falls within the statutory definition of "telephone exchange service"); *but see MCI Comments* at 11 n.14 (arguing that PCS providers do not offer "telephone exchange service" within the meaning of section 271).

⁶⁶ *See* 47 U.S.C. § 271(c)(1)(A) ("For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations [cellular services] . . . shall not be considered to be telephone exchange services.")

⁶⁷ It is well recognized that "statutory exceptions exist only to exempt something which would otherwise be covered." 2A N. Singer, *Statutes and Statutory Construction*, § 47.11 at 166 (1992). Furthermore, statutes must not be interpreted in a manner that makes an exception mere surplusage. *See Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 562 (1990) (sub. hist. omitted); *Arkansas Best Corp. v. Commissioner of Internal Revenue*, 485 U.S. 212, 218 (1988).

⁶⁸ An "exchange area" is a geographic area in which telephone services and prices are the same. The concept of an exchange is based on geography and regulation, not equipment. An exchange might have one or several central offices. Anyone in that exchange area could get service from any one of those central offices. H. Newton, *Newton's Telecom Dictionary* (1998) at 277.

exchange service charge. We believe that traditional PCS home service areas (HSAs)⁶⁹ constitute local service areas for broadband PCS providers, and local broadband PCS providers generally apply rates to calls originating and terminating within HSAs in a manner similar to the BOCs' exchange service charge. Moreover, we cannot agree with parties' suggestions that usage-sensitive fees cannot be "exchange service charges." Many wireline carriers providing telephone exchange service charge message rates, which are usage-sensitive fees, or extended telephone area service charges. Thus, we find that broadband PCS service constitutes "telephone exchange service" for purposes of section 271(c)(1)(A).

b. Broadband PCS Carriers as Competing Providers

31. We believe that the BOC must show that broadband PCS is being used to replace wireline service, not as a supplement to wireline. In previous orders, the Commission has stated "that the use of the term 'competing provider' in section 271(c)(1)(A) suggests that there must be 'an actual commercial alternative to the BOC.'"⁷⁰ To the extent that consumers purchase PCS service as a supplement to their existing wireline service, the two services are not competing with each other.⁷¹ Evidence that broadband PCS service constitutes a competitive alternative could include studies, or other objective analyses, identifying customers that have replaced their wireline service with broadband PCS service, or would be willing to consider doing so based on price comparisons. Evidence of marketing efforts by broadband PCS providers designed to induce such replacement are also relevant.

32. The most persuasive evidence concerning competition between PCS and wireline local telephone service is evidence that customers are actually subscribing to PCS in lieu of wireline service at a particular price. Actual customer behavior is more persuasive than price comparison studies alone because of the advantages and disadvantages associated with PCS and wireline telephone service. For example, customers may be willing to pay a premium for PCS service in light of the benefits of mobility. At the same time, the willingness of customers to pay a

⁶⁹ HSAs are a geographical area defined by the PCS provider. The size of the HSA is a business decision of the PCS provider and frequently differs from one PCS provider to another. See *Cellular Telephone Industry Association Report on Wireless Number Portability* (Apr. 11, 1997) at 13. We recognize that new PCS offerings that essentially bundle toll and local service are also beginning to emerge.

⁷⁰ *First BellSouth Louisiana Order*, 13 FCC Rcd at 6290 (quoting *SBC Oklahoma Order*, 12 FCC Rcd at 8694-8695; *Ameritech Michigan Order*, 12 FCC Rcd at 20584).

⁷¹ Many business and residential customers subscribe to broadband PCS service without reducing the amount of wireline local telephone service to which they subscribe. We recognize, however, that it may be difficult to determine whether a customer is subscribing to PCS as a complement to wireline service or in place of a second line. It appears to be much more typical for a customer taking service from a competing wireline carrier to reduce the number of local exchange lines that it takes from the incumbent LEC as a consequence.

premium for PCS could potentially be affected by disadvantages such as the fact that wireline telephone numbers are not presently portable to wireless carriers. Thus, because the two services offer different advantages and disadvantages, a price comparison study by itself would tend to be less persuasive than a survey showing actual consumer behavior (*i.e.*, the substitution of service at a particular price). At the same time, we recognize that price information is valuable when presented in conjunction with information on consumer behavior. We emphasize, however, that the persuasive value of any study will depend in large part on the quality of the survey and statistical methodologies that are used.

33. In the *First BellSouth Louisiana Order*, we noted that, in other contexts, the Commission has "concluded that PCS providers appear to be positioning their service offerings to become competitive with wireline service, but they are still in the process of making the transition 'from a complementary telecommunications service to a competitive equivalent to wireline services."⁷² In the *Third Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, the Commission stated that, "[w]hile many analysts concur that a transfer of usage between wireline and wireless systems will occur, it is hard to say exactly how long it will take or how much substitution will occur."⁷³ The Commission stated that "one key variable is the sensitivities of consumer demand to the relative prices of wireless and wireline telephone service as the difference in prices narrows."⁷⁴

34. BellSouth argues that it "has demonstrated that Louisiana consumers are in fact substituting PCS for traditional wireline service. . ."⁷⁵ In support of its contention, BellSouth relies primarily upon a market research survey by M/A/R/C Research (M/A/R/C study),⁷⁶ an

⁷² *First BellSouth Louisiana Order*, 13 FCC Rcd at 6290 (quoting *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Second Report, 12 FCC Rcd 11266, 11326 (rel. Mar. 25, 1997), citing *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, FCC 97-286 (rel. Aug. 14, 1997) at para. 90 (stating that mobile telephone service providers, including PCS, "are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange")).

⁷³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Third Report, FCC 98-91 (rel. June 11, 1998) at 27.

⁷⁴ *Id.*

⁷⁵ BellSouth Application at 15.

⁷⁶ See Second BellSouth Louisiana Application, App. A, Vol. 1, Tab 6, Declaration of William C. Denk (BellSouth Denk Dec. or M/A/R/C Study). In a footnote, BellSouth also states that "substitution by Louisiana customers of PCS service for wireline service is further illustrated by a survey conducted by Southern Media &

economic study by the National Economic Research Associates (NERA study),⁷⁷ and the availability of AT&T's Digital One Rate Plan.

c. BellSouth's PCS Evidence

i. The M/A/R/C Study

35. We conclude that the M/A/R/C study is fundamentally flawed and that it cannot be relied upon to demonstrate that broadband voice PCS is a substitute for traditional wireline service. In particular, we conclude that the M/A/R/C study contains the following significant methodological deficiencies: (1) the sample group was not randomly selected;⁷⁸ (2) the study is not based on statistical analysis; and (3) the study disguises the complementary nature of the services.⁷⁹

36. BellSouth cites the M/A/R/C study in claiming that approximately 2,100 Louisiana end users subscribed to PCS instead of wireline as their only service, and that another approximately 1,750 end users eliminated wireline service and replaced it with PCS. Although BellSouth does not state so explicitly, it appears BellSouth reaches this conclusion by extrapolating the results of the M/A/R/C study and applying them to its estimated universe of 35,000 subscribers for all five PCS carriers in the state of Louisiana. In April 1998, M/A/R/C Research interviewed a total of 202 subscribers using the PCS services of PrimeCo and Sprint PCS⁸⁰ "in the New Orleans, Louisiana metro area to determine the extent to which customers view PCS and wireline service as substitutes and, ultimately, competitive alternatives."⁸¹ In order to contact PCS subscribers, M/A/R/C ran advertisements in two newspapers in New Orleans inviting PrimeCo and Sprint PCS subscribers to participate in a survey. BellSouth contends that

Opinion Research, Inc." BellSouth Application at 12, n.13. We note, however, that BellSouth provides no analysis or discussion of this survey in its brief. It is unclear from the report whether the customers surveyed are only PCS customers or whether digital cellular customers were also included. This is vitally important because the Commission has previously determined that the Act excludes cellular carriers from being considered facilities-based competitors for purposes of Track A. *See First BellSouth Louisiana Order*, 13 FCC Rcd at 6289-6290.

⁷⁷ See Second BellSouth Louisiana Application, App. A, Vol. 1, Tab 1, Affidavit of Aniruddha Banerjee (BellSouth Banerjee Aff. or NERA Study).

⁷⁸ See CPI Comments at 19; Consumer Federation of America Reply at 2; KMC Comments at 6; MCI Comments at 11 n.13; Sprint Comments at 22; WorldCom Comments at 10.

⁷⁹ Sprint Comments at 24.

⁸⁰ M/A/R/C Study at 2.

⁸¹ *Id.* at 1.

the M/A/R/C study "shows that 26 percent of PCS subscribers (43 percent of business [PCS] users and 10 percent of residential [PCS] users) currently rely on PCS as their primary telephone service."⁸² BellSouth further contends that a significant number of the PCS users subscribed to their wireless service as a direct substitute for BellSouth's wireline service. According to BellSouth, the M/A/R/C study shows that, "6 percent . . . of PCS customers in Louisiana subscribed to their PCS service instead of a wireline offering when initiating service."⁸³ BellSouth contends that the M/A/R/C study further shows that "[f]ive percent more of PCS customers eliminated wireline service and replaced it with PCS"⁸⁴ and that "[f]ive percent of the PCS subscribers (approximately another 1,750 customers) added PCS instead of a second wireline."⁸⁵

37. The first methodological problem is that the sample group was not randomly selected. Rather than use a random selection process,⁸⁶ M/A/R/C placed advertisements in the regional daily newspaper, *The Times-Picayune*, and a weekly entertainment publication, *The Gambit*, inviting PrimeCo and Sprint PCS customers to call an 800 number to participate in the survey. Because the survey respondents were self-selected, rather than randomly selected, there can be no assurance that the respondents or their responses to the survey questions are generally representative of PCS customers in New Orleans.⁸⁷ Indeed, when MCI deposed William Denk, author of the M/A/R/C study, on August 13, 1998, to question him about a parallel survey that M/A/R/C conducted in Kentucky using the same methodology as the Louisiana survey, Mr. Denk conceded that the survey sample was not necessarily representative of the universe of PCS users.⁸⁸ Further, there is no evidence that the New Orleans respondents are similar to the state-wide PCS user population.⁸⁹ These potential differences could make extrapolations from the self-selected

⁸² BellSouth Application at 12 (citing M/A/R/C Study at Table 7).

⁸³ *Id.* at 12-13 (citing M/A/R/C Study at Table 4).

⁸⁴ *Id.* (citing M/A/R/C Study at Table 3).

⁸⁵ *Id.* (citing M/A/R/C Study at Table 5).

⁸⁶ An example of a random selection process would be the use of a random number table to choose respondents from a list of all PCS subscribers in the area. *See* Jessen, Statistical Survey Techniques (1978) at 42-43. We recognize that any telephone survey of customer behavior will be affected to some extent by the unwillingness of some parties to participate.

⁸⁷ *See* AT&T Reply at 38; KMC Comments at 6; MCI Reply at 16-17.

⁸⁸ *See* MCI Reply at 16-17 (citing MCI Reply, Exhibit E, Denk Deposition, at pp. 12, 51, 52 and 54).

⁸⁹ CPI Comments at 18. For example, the New Orleans respondents may be more or less inclined than other PCS subscribers in the state to substitute PCS for wireline service, may be wealthier or poorer than other PCS subscribers in the state, may travel more or less than other subscribers, may use the telephone more or less than

New Orleans interviews unreliable. In order to be considered persuasive, future studies of this type should use a random sample or explain why the study results are meaningful without a random sample. In addition, BellSouth provides no information to verify that 35,000 is a reasonable estimate of the number of PCS users served by the five PCS carriers BellSouth relies upon in Louisiana.

38. Second, BellSouth fails to provide a statistical analysis of the M/A/R/C study data. In particular, BellSouth fails to provide confidence intervals or other statistical measures designed to allow statistical inferences concerning the statewide PCS user population. We believe that this type of statistical analysis is critical to demonstrating the statistical significance of data such as that in the M/A/R/C study.

39. Third, the study's questions do not appear to be designed to distinguish clearly between the substitution of PCS for wireline service and the use of PCS as a complement to wireline service. Sprint contends that the category of customers labeled "Subscribed to PCS for Initial Service Instead of Wireline" appears to be broad enough to include users who merely placed their PCS order shortly before they subscribed to BellSouth's wireline service.⁹⁰ For example, Table 4a of the M/A/R/C study shows the length of time PCS users who subscribed to PCS for initial service instead of wireline have maintained their PCS service and states "most have had PCS for over three months, so it appears they have no intention of getting wireline service."⁹¹ We agree with Sprint that keeping PCS service by itself simply does not reveal whether the PCS user also subscribes to wireline service.⁹² In order to be persuasive, a survey such as this should also include a question asking whether the respondent subscribes to wireline local exchange service or otherwise verify that the subscriber does not have wireline local exchange service.⁹³

ii. The NERA Study

others, may be more or less dependent on wireless telephones for their livelihood, and may be more or less likely to have a family. *Id.*

⁹⁰ See Sprint Comments at 23. For example, the M/A/R/C study asks "how long have you been a customer with [a PCS carrier]," but does not ask whether the respondent also subscribes to BellSouth's wireline service. M/A/R/C study questionnaire, question 5.

⁹¹ Sprint Comments at 24 (quoting M/A/R/C Study at 8).

⁹² Sprint Comments at 24 ((citing Declaration of Carl Shapiro and John Hayes on Behalf of Sprint, Appendix B (Shapiro and Hayes Decl.) at 10-11). Shapiro and Hayes explain that the use of PCS as a supplement to wireline service may generate additional minutes and thus actually increase the dependence on the wireline network. Shapiro and Hayes Decl. at 6.

⁹³ Sprint Comments at 24.

40. Based on the evidence submitted by BellSouth, we cannot conclude that any significant number of wireline exchange customers is likely to consider switching to PCS service based on price.⁹⁴ Relying upon a recent economic competitive analysis by Dr. Aniruddha Banerjee for the National Economic Research Associates (NERA study), BellSouth contends that "[a]t today's current prices . . . as many as 7 to 15 percent of BellSouth's local residential customers in New Orleans could consider switching to PCS PrimeCo on price grounds alone."⁹⁵ The NERA study purports to show, based on usage patterns, that PCS monthly charges are equivalent to or lower than wireline charges for 7 to 15 percent of residential consumers in the New Orleans area. BellSouth states that the NERA study does not include business customers and contends that, because business wireline rates are on average higher than residential wireline rates, the NERA study's "numbers most likely underestimate the number of customers who could reasonably substitute PCS for wireline service."⁹⁶ BellSouth states that the NERA study does not consider the added one-stop-shopping convenience and mobility of PCS.⁹⁷

41. We conclude that the NERA study does not provide persuasive evidence that 7 to 15 percent of BellSouth's local residential customers in New Orleans would consider switching to broadband PCS on the basis of price differences alone.⁹⁸ The NERA study claims that residential customers with low to moderate local and toll usage of their telephones should find PCS to be a reasonable substitute for BellSouth's wireline service based on the alleged minimal differences in price. We reject that claim, because the NERA study overstates the prices paid to BellSouth by this group of customers for wireline service.⁹⁹ Because some PCS plans include five vertical features within the regular monthly charge, the study added the BellSouth retail price for each of these vertical features to the price of BellSouth's basic local service when comparing the charges for PrimeCo's PCS and BellSouth's wireline services.¹⁰⁰ This results in an increase of more than \$13.00 in the monthly price of BellSouth monthly service used in the comparison with PCS

⁹⁴ This is not, in any way, intended to suggest the use of a market share test for entry under Track A.

⁹⁵ BellSouth Application at 14 (citing BellSouth Banerjee Aff. at 24). BellSouth states that at the time of BellSouth's prior application, economist Aniruddha Banerjee determined that "between 1.4 and 4.0 percent of BellSouth's local customers in the New Orleans area could consider switching to a PCS provider in their area based only on price." BellSouth Application at 13-14.

⁹⁶ *Id.* at 14.

⁹⁷ *Id.*

⁹⁸ See Excel Comments at 3-5; MCI Comments at 8-9; Sprint Comments at 18-19; Consumer Federation of America Reply at 2-4.

⁹⁹ See Consumer Federation of America Reply at 2-3; MCI Comments at 8-9.

¹⁰⁰ See BellSouth Banerjee Aff. at 4, 6-7.

prices.¹⁰¹ Thus, for purposes of determining whether consumers might substitute PCS for BellSouth's wireline service, the NERA study uses a price for BellSouth's service that is more than double the actual price of BellSouth's basic local service (1FR with Touchtone) of \$12.64 per month.¹⁰² Statistics cited in the NERA study, however, show that residential customers with low to moderate local and toll telephone usage -- precisely those customers that BellSouth claims could pay less with PCS -- are likely to use no more than one vertical feature.¹⁰³

42. Sprint's economists demonstrate that the NERA study shows that BellSouth wireline service is materially less expensive than any PCS plan offered by Sprint PCS or PrimeCo for any residential customer with more than 170 minutes per month (outgoing and incoming) in combined local and intraLATA toll usage.¹⁰⁴ For example, PrimeCo offers a "Digital Choice 100" plan which bundles five vertical features with 100 minutes of outgoing and incoming airtime for \$24.99. Additional minutes are charged at \$0.35 per minute. At 170 minutes of airtime, the PrimeCo package costs \$49.99, just under the price of any other package available from either Sprint PCS or PrimeCo.¹⁰⁵ In fact, Sprint's economists conclude that "fewer than one-half of 1 percent of BellSouth's wireline customers in New Orleans currently have a calling pattern and use of vertical services that could be purchased more cheaply from a PCS provider."¹⁰⁶ Accordingly, we conclude that the NERA study compares PCS and wireline prices based on the faulty assumption that all wireline customers would buy a package of BellSouth's vertical services.¹⁰⁷ In addition, the NERA study fails to account for the cost of PCS equipment.¹⁰⁸ The NERA study notes that Sprint PCS has advertised its Samsung PCS phone at \$99 after rebates and PrimeCo has offered its dual mode PCS-and-cellular phones for \$149 after rebates.¹⁰⁹ It is unlikely that

¹⁰¹ MCI Comments at 9; Sprint Comments, Appendix B, Shapiro and Hayes Decl. at 16-17.

¹⁰² See BellSouth Banerjee Aff. at 6, Table 3.

¹⁰³ MCI Comments at 9 (citing BellSouth Banerjee Aff. at 21 ("BST customers with relatively 'low' to 'medium' usage of local and intraLATA toll services would be the most likely to switch to PCS offerings if minimum cost were the sole criterion for doing so.")).

¹⁰⁴ Sprint Shapiro and Hayes Decl. at 19.

¹⁰⁵ *Id.* at 19-20 (citing BellSouth Banerjee Aff., Tables 1 and 2, p. 5).

¹⁰⁶ Sprint Shapiro and Hayes Decl. at p. 22.

¹⁰⁷ *Id.* at 21.

¹⁰⁸ Excel Comments at 3; Sprint Shapiro and Hayes Decl. at 23; WorldCom Comments at 8-9.

¹⁰⁹ See NERA Study at 24 n.29 (citing *New Orleans Times-Picayune* newspaper, April 8, 1998). We note that offers of discounted wireless equipment from PCS providers usually are conditioned upon a long-term service

consumers with low to moderate local and toll telephone usage -- those BellSouth claims would consider switching to PCS based on price -- would be indifferent to the high initial cost of PCS equipment.¹¹⁰ Thus, the NERA study does not demonstrate that PCS is a substitute for wireline local telephone service.¹¹¹

iii. AT&T's Digital One Rate Plan

43. BellSouth contends that AT&T's new Digital One Rate Plan will accelerate substitution of PCS for wireline local telephone service.¹¹² While AT&T's advertising attempts to persuade customers to substitute AT&T's PCS service for wireline service, we conclude that there is not sufficient evidence at this time to show that AT&T's Digital One Rate Plan will have any significant effect in this regard.¹¹³ BellSouth has not submitted evidence that its local customers are likely to discontinue wireline service and substitute this broadband PCS plan.¹¹⁴ Directed at high-volume toll customers, this plan represents a package of local and toll calling at rates ranging from approximately 11 to 15 cents per minute for all PCS voice communications up to prescribed calling volume limits.¹¹⁵ The plan also eliminates roaming charges when users are out of AT&T's service areas.¹¹⁶ Unlike BellSouth's wireline residential service, which offers unlimited local calling for a flat rate of \$12.64 per month (1FR with touchtone), AT&T's Digital One Rate Plan offers a specified number of toll or local calling minutes for a flat monthly fee which is significantly higher than BellSouth's wireline local service, with additional charges for each minute

agreement, typically for a period of 12 months. *See* Sprint Shapiro and Hayes Decl. at p. 8 nn.8 & 10.

¹¹⁰ Excel Comments at 3; WorldCom Comments at 9.

¹¹¹ We also note that the study uses calling data from Birmingham, Alabama rather than the New Orleans metropolitan area. There is no explanation for the lack of New Orleans specific data, although BellSouth attempts to demonstrate that the demographic characteristics of the two cities are comparable in important respects. *See* BellSouth Banerjee Aff. at 13. We urge the BOCs to use data from the relevant geographical area in future applications whenever available.

¹¹² BellSouth Application at 14.

¹¹³ *Id.*

¹¹⁴ *See* MCI Comments at 9.

¹¹⁵ We believe that this plan has been launched primarily to compete effectively with other mobile telephone providers for the business of lucrative, high-volume customers that demand mobile communications. Competition in the upper tier of these markets is presently very intense.

¹¹⁶ BellSouth Application at 14 (citing *AT&T Wireless Joins Sprint PCS in Single-Rate Offer, But Adds Contracts*, Communications Daily, May 8, 1998, at 7-8 (Appendix D, Tab 16)).

that exceeds the allotted number.¹¹⁷ Specifically, the AT&T Digital One Rate Plan offers three options: 1400 minutes for \$149.99 per month; 1000 minutes for \$119.99 per month; and 600 minutes for \$89.99 per month, with each option charging an additional 25 cents for every minute in excess of the allotted number.¹¹⁸ In addition, subscribers to AT&T's Digital One Rate Plan must enter into an annual contract (with a cancellation fee of \$10 per month remaining on the contract) and purchase a digital multi-network phone from AT&T. We recognize that PCS service offer capabilities and features beyond those associated with basic wireline service, most notably mobility, and that PCS pricing may not need to fall to wireline levels for substitution to occur.¹¹⁹ BellSouth, however, has not shown that its wireline customers, particularly residential customers, are at all likely to switch to this service given the rate structure involved.

2. Competition from Facilities-Based Wireline Carriers

a. Background

44. In order to qualify for Track A, the BOC must have interconnection agreements with competing providers of "telephone exchange service . . . to residential and business subscribers."¹²⁰ The Act states that "such telephone exchange service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."¹²¹

45. BellSouth contends that "at least six wireline [competitive LECs] currently provide facilities-based local telephone service in Louisiana."¹²² BellSouth states that it has

¹¹⁷ MCI Comments at 9.

¹¹⁸ *Id.* at 9-10.

¹¹⁹ We also recognize that PCS has certain drawbacks when compared to wireline service such as the fact that wireline telephone numbers are not presently portable to wireless carriers. This factor could also affect the price at which customers would substitute PCS for wireline service.

¹²⁰ 47 U.S.C. § 271(c)(1)(A).

¹²¹ *Id.*

¹²² BellSouth Application at 4. The six competitive LECs BellSouth relies upon are American Communications Services, Inc. (ACSI, d/b/a e.spire Communications), American MetroComm (AMC), Entergy Hyperion Telecommunications (Hyperion), KMC Telecom, Inc. (KMC), Shell Offshore Services Company (Shell) and AT&T. BellSouth contends that according to the best information available to it, "the six facilities-based wireline carriers in Louisiana together serve 4282 local lines, including a small number of residential lines, over their own networks." BellSouth Application at 6 (citing Second BellSouth Louisiana Application App. A, Vol. 7,

interconnection agreements with these six competitive LECs that have been approved by the Louisiana Commission, and "believes it is eligible for interLATA relief under Track A on the strength of these carriers alone."¹²³ Of these six competitive LECs, BellSouth identifies only one -- KMC -- that allegedly provides facilities-based service to residential customers.¹²⁴ KMC claims that "[it] does *not* provide facilities-based service to any residential customers in Louisiana."¹²⁵

b. Discussion

46. The language of section 271(c)(1)(A) is ambiguous on its face. It is not entirely clear whether the statutory language requires that the competitor or competitors offer predominantly facilities-based service to each category of subscribers -- business and residential -- independently or to the two classes taken together.¹²⁶ In view of this, we look to the legislative history for guidance. The legislative history indicates that Congress believed facilities-based competition was possible even in the residential market,¹²⁷ and expected such facilities-based competitive services to be offered to residential subscribers.¹²⁸ The Conference Report expressly notes with approval that the House Report "pointed out that meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United

Tab 28, Public Affidavit of Gary M. Wright (BellSouth Wright Public Aff.) at para. 132.

¹²³ BellSouth Application at 6.

¹²⁴ *But see* KMC Comments at 3; *see also* Sprint Comments at 9 (noting that Wright's public affidavit states that less than 10 residential lines are served on a facilities-basis, and that KMC is the only wireline carrier serving residential customers on a facilities-basis) (citing BellSouth Wright Public Aff. at paras. 66, 88).

¹²⁵ KMC Comments at 3.

¹²⁶ The Commission concluded in the *Ameritech Michigan Order* that, when a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each such carrier need not provide service to both residential and business customers. The requirements of section 271(c)(1)(A) are met if multiple carriers collectively serve residential and business customers. *Ameritech Michigan Order*, 12 FCC Rcd at 20587-88.

¹²⁷ *Conference Report* at 148; *House Report* at 77.

¹²⁸ *See* H.R. Rep. No. 104-204, at 77, reprinted in 1996 U.S.C.C.A.N. 10, 43 (*House Report*); *see also* WorldCom Comments at 5-6; Tim Sloan, *Creating Better Incentives Through Regulation: Section 271 of the Communications Act of 1934 and the Promotion of Local Exchange Competition*, 50 Federal Communications L.J. 309, 354 (1998) (stating that the legislative history is bereft of statements about business competition, probably because Congress had assumed that competitors would move fairly quickly to serve business customers, but that Congress repeatedly displayed its interest in stimulating facilities-based competition for residential customers) (citing *House Report* at 77).

States homes.¹²⁹ The Conference Report adds that "[s]ome of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated."¹³⁰ Although this language is illustrative of the type of competition Congress thought possible, the language of section 271(c)(1)(A) appears to stop short of mandating actual provisioning of competitive facilities-based telephone exchange services independently to both business and residential subscribers.

47. As noted, section 271(c)(1)(A) can be read as requiring the BOC to demonstrate that it has entered into interconnection agreements with one or more competing providers of telephone exchange service that are providing predominantly or exclusively facilities-based service to both categories of customers, considered independently.¹³¹ Under this reading of the statutory language, BellSouth does not meet the requirements of Track A, because BellSouth has not demonstrated by a preponderance of the evidence that KMC provides any facilities-based service to residential subscribers. KMC states that "it does not yet serve any residential customers on a facilities basis" and that it "serves all of its residential customers using BellSouth's resold local exchange service."¹³² In addition, KMC states that "it currently provides service to less than 30 customers using its own network facilities in Baton Rouge and Shreveport combined" and that "[a]ll of these customers are businesses."¹³³ In its Reply, BellSouth seeks to rebut KMC's representation by stating that KMC "claims that it does not have residential 'customers,' without saying whether it serves residential lines."¹³⁴ BellSouth adds that it cannot determine how KMC is

¹²⁹ *Conference Report* at 148 (citing *House Report* at Part I).

¹³⁰ *Id.*

¹³¹ See ALTS Comments at 3-5 (contending that the statute makes clear that Congress placed residential customers on an equal footing with business customers in Track A and that BOC in-region entry should await the BOC's compliance with Track A as to both categories of customers -- business and residential); accord AT&T Comments at 73-76; AT&T Reply at 35; CompTel Comments at 24-27; CompTel Reply at 8-9; e.spire Comments at 8-9; Intermedia Comments at 4-5; Intermedia Reply at 2; KMC Comments at 2-4; MCI Comments at 2-5; Sprint Comments at 6-12; TRA Comments at 12-16; TRA Reply at 6-8; WorldCom Comments at 5-6; WorldCom Reply at 4-5; but see U S WEST Comments at 3-5 (agreeing with BellSouth's argument that where a competitive LEC or combination of competitive LECs provides service to both residential and business subscribers, Track A does not require that both classes of subscribers be served on a facilities basis as long as the competitor's local exchange services as a whole are provided predominantly over its own facilities); Bell Atlantic Reply at 3 (arguing that so long as a competing provider is predominantly facilities-based, as a whole, Track A is satisfied even if the competitor serves residential customers exclusively through resale).

¹³² KMC Exhibit 1, Affidavit of Wendell Register (KMC Register Aff.) at para. 3.

¹³³ *Id.* at para. 4.

¹³⁴ BellSouth Reply at 9 n.5.

using the residential lines that KMC has ordered, whether KMC is billing residential end users, or how KMC defines "customers." Finally, BellSouth states that directory listings and ported numbers indicate that KMC has activated residential lines in Louisiana.¹³⁵ BellSouth's rebuttal is not persuasive because KMC has clearly stated that it does not provide facilities-based service to any residential customers.¹³⁶ We find that the evidence submitted by KMC on the actual number of residential customers it serves on a facilities basis is more reliable than the conclusory statements made by BellSouth because KMC is in a better position to know what customers it serves than BellSouth.¹³⁷ BellSouth effectively concedes that it cannot determine conclusively how KMC is using these lines, and we note that KMC could be using them for testing.

48. We note, however, that reading the statutory language to require that there must be facilities-based service to both classes of subscribers to meet Track A could produce anomalous results, and there appear to be overriding policy considerations that lead to a contrary construction of the statutory language. In particular, if all other requirements of section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale. In light of our conclusion below that BellSouth has not satisfied the requirements of the competitive checklist and section 272, however, that is not the case presented by this application. Thus, we do not conclude whether BellSouth has satisfied the requirements of Track A based on its implemented interconnection agreements with competitive wireline LECs.

VI. CHECKLIST COMPLIANCE

49. We next consider whether BellSouth has fully satisfied the competitive checklist in section 271(c)(2)(B). In the sections below, we provide a detailed analysis of BellSouth's application with respect to each checklist item.

50. As discussed above, we recognize that BellSouth has made considerable progress

¹³⁵ *Id.*

¹³⁶ KMC further states that "the number of customers BellSouth attributes to KMC is also greatly exaggerated." KMC Comments at 4. KMC asserts that BellSouth "erroneously contends that KMC provides facilities-based service to hundreds of business customers and a small number of residential customers' and 'serves thousands of residential and business customers via resale service.'" *Id.* KMC states that, in reality, it "provides facilities-based service to less than 30 business customers and *no residential* customers in Louisiana." *Id.* Moreover, KMC states that it "resells BellSouth's local exchange service to less than 200 customers, the vast majority of whom are business customers." *Id.* (citing KMC Register Aff. at para. 4).

¹³⁷ The Commission used this approach in the context of a similar dispute in the *Ameritech Michigan Order*, 12 FCC Rcd at 20579 n.135.

in many areas to comply with the checklist requirements. We urge BellSouth to continue this work. There are important areas, however, where BellSouth fails to satisfy the requirements stated in the Commission's previous section 271 orders, including the *BellSouth South Carolina Order*. Each of our findings that BellSouth has not satisfied an individual item of the competitive checklist constitutes independent grounds for denying this application.

A. Analytical Framework

51. The analytical framework we use to assess the application is consistent with the approach established in the Commission's previous orders. As a general matter, we re-emphasize the Commission's conclusion in the *Ameritech Michigan Order* that the BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party comments on a particular checklist item.¹³⁸

52. With respect to each checklist item, we first determine whether BellSouth has made a *prima facie* case that it meets the requirements of the particular checklist item.¹³⁹ A BOC must plead, with appropriate supporting evidence, facts which, if true, are sufficient to establish that the requirements of section 271 have been met.¹⁴⁰ Once the applicant has made such a showing, opponents must produce evidence and arguments to show that the application does not satisfy the requirements of section 271 or risk a ruling in the BOC's favor.¹⁴¹ Because the Commission must accord substantial weight to the Department of Justice's evaluation of a section 271 application, if the Department of Justice concludes that a BOC has not satisfied the requirements of sections 271 and 272, the BOC must submit more convincing evidence than that proffered by the Department of Justice in order to satisfy its burden of proof.¹⁴² We note that we will look to the state to resolve factual disputes wherever possible.¹⁴³ When resolving factual

¹³⁸ *Ameritech Michigan*, 12 FCC Rcd at 20568.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 20569. As the Commission has stated previously, a BOC's section 271 application must be complete on the day it is filed, and therefore, in assessing whether BellSouth has made a *prima facie* case, we limit our analysis to factual evidence proffered by BellSouth on the date of its application and evidence in its replies that is directly responsive to arguments raised by parties commenting on its application. *Id.* at 20570-75. *But see infra* paras. 367-68 (denial of AT&T Motion to Strike).

¹⁴¹ *Id.* at 20569.

¹⁴² *Id.*

¹⁴³ With respect to the present application, however, the state of Louisiana did not engage in a fact finding investigation.

disputes, we use the "preponderance of the evidence" standard.¹⁴⁴

53. We stress that, as an initial matter, we base our determination of whether a BOC has satisfied a checklist item on the BOC's evidence supporting its *prima facie* case, and not on the absence of comments opposing the BOC's showing on a particular issue. Where a BOC provides sufficient evidence to establish a *prima facie* case, however, commenters opposing the application must provide evidence of their own to shift the burden of production back to the BOC.

54. To make a *prima facie* case that it is meeting the requirements of a particular checklist item under Track A, a BOC must demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item.¹⁴⁵ The Commission has previously concluded that, to establish that it is "providing" a checklist item, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality.¹⁴⁶

55. As indicated above, BellSouth bases its application on the presence of a Track A competitor. In our assessment of each checklist item, therefore, we first examine whether BellSouth identifies an interconnection agreement with a competing provider of telephone exchange service described in section 271(c)(1)(A) under which it has a legal obligation to furnish that checklist item. BellSouth states that it is legally obligated to provide all 14 checklist items through both its state-approved interconnection agreements and its SGAT.¹⁴⁷

56. We next consider, in our examination of each checklist item, whether BellSouth has provided sufficient evidence to demonstrate that it is furnishing, or ready to furnish, each checklist item as a practical matter. The evidence necessary to demonstrate compliance will vary depending on the individual checklist item. In certain circumstances, the BOC's assertion in its brief, supported by testimony from an officer of the company will suffice, whereas in other cases,

¹⁴⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20568.

¹⁴⁵ 47 U.S.C. § 271(c)(2)(B).

¹⁴⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20601-02.

¹⁴⁷ See BellSouth Application at 32.

we examine actual commercial usage and relevant performance data.¹⁴⁸ In situations where no actual commercial usage exists, we consider any carrier-to-carrier testing, independent third-party testing, and internal testing.¹⁴⁹ In situations where BellSouth provides access to a particular checklist item through a region-wide process, such as its OSS, we will consider both region-wide and state specific evidence in our evaluation of that checklist item.¹⁵⁰ Although there is often more than one type of evidence that an applicant can use to meet its burden of proof, we hope that this order will assist future applicants by identifying particular types of evidence we find persuasive in assessing whether the BOC has complied with the checklist.

57. When considering commenters' filings in opposition to the BOC's application, we look for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported allegations in opposition will not suffice. Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for a commenter to overcome a BOC's *prima facie* case. Moreover, a BOC may overcome such evidence by providing, *inter alia*, objective performance data demonstrating that it satisfies the statutory nondiscrimination requirement. We will also look favorably on BOC measures designed to correct problems promptly and to prevent similar problems in the future. While we will not hold the BOCs to a standard of perfection, we require that the BOCs establish methods to respond effectively to problems as they occur and to prevent similar failures in the future.

58. In this order, we conclude that BellSouth satisfies six checklist items and one subsection of a seventh checklist item. We conclude that BellSouth may incorporate by reference its showing on these checklist items in any future application for section 271 approval in Louisiana. BellSouth must, however, certify in the application that its actions and performance at the time are consistent with the showing upon which we base our determination that the statutory requirements for these checklist items have been met.¹⁵¹ We expect that commenters will direct

¹⁴⁸ We stress that a BOC submitting factual evidence in support of its application bears the burden of ensuring that the significance of the evidence is readily apparent. *Ameritech Michigan*, 12 FCC Rcd at 20577. We further note that promises of future performance have no probative value in demonstrating present compliance with the requirements of section 271. *Id.* at 20573-74.

¹⁴⁹ *Id.* at 20618.

¹⁵⁰ See *BellSouth South Carolina Order*, 13 FCC Rcd at 593.

¹⁵¹ Our conclusion that BellSouth may incorporate by reference its previous showing applies only to checklist items that we conclude BellSouth fully satisfies. For purposes of this determination, BellSouth may treat Section 271 (c)(2)(B)(vii), which has three subsections, as three individual checklist items. Accordingly, in any future application in Louisiana, BellSouth may incorporate by reference its showing in this proceeding for checklist item (vii)(I) 911 and E911 services. BellSouth may also incorporate by reference its showing in this proceeding for the

their arguments to any new information that BellSouth fails to satisfy these checklist items.

59. We emphasize that the evidentiary standards governing our review of section 271 applications are intended to balance our need for reliable evidence against our recognition that no finder of fact can expect proof to an absolute certainty. While we continue to demand that BOCs demonstrate as thoroughly as possible that they satisfy each checklist item, the public interest and other statutory requirements, we reiterate that BOCs need only prove each element by a preponderance of the evidence, which generally means the "greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition to it."¹⁵² Moreover, we emphasize that we are more concerned with the quality of information presented in an application than the quantity of information that is filed. While this and prior orders identify certain types of information we would find helpful in our review of section 271 applications, we reiterate that we remain open to approving an application based on other types of evidence if a BOC can persuade us that such evidence demonstrates nondiscriminatory treatment and other aspects of the statutory requirements. In addition, we underscore that we remain committed to working with the industry to clarify further the guidance we have given regarding how the BOCs may obtain section 271 approval. It is our firm belief that, by helping the industry understand what the BOCs must do to satisfy section 271, we will achieve most efficiently Congress' goal of simultaneously opening the BOCs' local exchange markets to competition while promoting long distance competition through BOC entry into that market.

B. Examination of Pricing

60. We note that the Department of Justice, as well as other commenters, make a number of arguments concerning whether the prices in BellSouth's SGAT and interconnection agreements comport with the statutory standards in section 252(d) of the Act.¹⁵³ In its January 22, 1998 Mandamus Order, the United States Court of Appeals for the Eighth Circuit ordered the Commission "to confine its pricing role under section 271(d)(3)(A) to determining whether applicant BOCs have complied with the pricing methodology and rules adopted by the state commissions and in effect in the respective states in which such BOCs seek to provide in-region,

following checklist items: (iii) poles, ducts, conduits, and rights of way; (viii) white pages directory listings for competing LECs' customers; (ix) telephone numbers for assignment to other carrier's customers; (x) databases and associated signaling necessary for call routing and completion; (xii) services or information necessary to allow a requesting carrier to implement local dialing parity; and (xiii) reciprocal compensation arrangements. BellSouth, however, must file a complete showing for every other checklist item.

¹⁵² *Ameritech Michigan Order*, 12 FCC Rcd at 20568-69.

¹⁵³ See, e.g., Department of Justice Evaluation at 18-22, 24-26; e.spire Comments at 13-21; MCI Comments at 74-84; Sprint Comments at 43; AT&T Reply at 28-32; e.spire Reply at 3-8.

InterLATA services.¹⁵⁴ The court suggested that the Commission could discharge this role by "asking the state commission whether the applicant BOC has complied with the individual state commission's pricing scheme applicable to it and in effect at the time of the application."¹⁵⁵ In this case, the Louisiana Commission advises us that BellSouth's prices conform with its rules.¹⁵⁶ Thus, consistent with the Eighth Circuit's order, with respect to pricing issues, our inquiry is complete.

C. Checklist Items

1. Checklist Item 1 -- Interconnection

a. Background

61. Section 271(c)(2)(B)(i) of the Act, item (i) of the competitive checklist, requires a section 271 applicant to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."¹⁵⁷ Section 251(c)(2) imposes upon incumbent LECs "[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."¹⁵⁸ Such interconnection must be: (1) provided "at any technically feasible point within the carrier's network;"¹⁵⁹ (2) "at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the carrier

¹⁵⁴ *Iowa Utils. Bd. v. FCC*, 135 F.3d 535, 543 (8th Cir. 1998), *petition for cert. filed* (U.S. March 13, 1998) (No. 97-1519).

¹⁵⁵ 135 F.3d at 540. *But see SBC Communications, Inc. v. FCC*, 138 F.3d 410 at 416-417 (in assessing checklist compliance, FCC is not required to give "any particular weight" to state commission determinations). As indicated, *supra*, the government has sought Supreme Court review of the Eighth Circuit's Mandamus Order.

¹⁵⁶ Louisiana Commission Comments at 9. *See also Review and consideration of BellSouth's TSLRIC and LRIC cost studies submitted per Sections 901.C and 1001.E of the LPSC Local Competition Regulations in order to determine the cost of interconnection services and unbundled network elements to establish reasonable, non-discriminatory, cost-based tariffed rates*, Docket U-22022, Order (adopted October 22, 1997) at 5; *Louisiana Commission Special Order* at 1; BellSouth Varner Aff. paras. 30, 205.

¹⁵⁷ 47 U.S.C. § 271(c)(2)(B)(i).

¹⁵⁸ 47 U.S.C. § 251(c)(2)(A).

¹⁵⁹ 47 U.S.C. § 251(c)(2)(B). The Commission, in the *Local Competition First Report and Order*, identified a minimum set of technically feasible points of interconnection. *See Local Competition First Report and Order*, 11 FCC Rcd at 15607-09.

provides interconnection;"¹⁶⁰ and (3) provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252."¹⁶¹

62. The Commission concluded in the *Local Competition Order* that competing carriers have the right to deliver their terminating traffic at any technically feasible point on the incumbent LEC network.¹⁶² The Commission further stated that, under section 251(c)(2), a competing carrier may choose any method of technically feasible interconnection at a particular point.¹⁶³ Technically feasible methods of interconnection include, but are not limited to, physical collocation and virtual collocation at the premises of an incumbent LEC¹⁶⁴ and meet point interconnection arrangements.¹⁶⁵ In the *BellSouth South Carolina Order*, the Commission concluded that the provision of collocation is an essential prerequisite to checklist compliance for certain checklist items.¹⁶⁶ A BOC must demonstrate that it can furnish collocation in order to show compliance with checklist item (i). In order to comply with its collocation obligations, a BOC must have processes and procedures in place to ensure that physical and virtual collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6) and our rules implementing that section.¹⁶⁷ Knowing the length of time required for an applicant to provision both physical and

¹⁶⁰ 47 U.S.C. § 251(c)(2)(C).

¹⁶¹ 47 U.S.C. § 251(c)(2)(D).

¹⁶² *Local Competition First Report and Order*, 11 FCC Rcd at 15608 (implementing 47 U.S.C. § 251(c)(2)); *see also* 47 C.F.R. § 51.305(a)(2).

¹⁶³ *Local Competition First Report and Order*, 11 FCC Rcd at 15779.

¹⁶⁴ Under a physical collocation arrangement, an interconnecting carrier has physical access to space in the LEC central office to install, maintain, and repair its transmission equipment. Under a virtual collocation arrangement, interconnectors are allowed to designate central office transmission equipment dedicated to their use, as well as to monitor and control their circuits terminating in the LEC central office. Interconnectors, however, do not pay for the incumbent's floor space under virtual collocation arrangements and have no right to enter the LEC central office. *Local Competition First Report and Order*, 11 FCC Rcd at 15784 and n.1361.

¹⁶⁵ 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15780-81.

¹⁶⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 649-50.

¹⁶⁷ 47 U.S.C. § 251(c)(6). Section 251(c)(6) requires incumbent LECs to provide physical collocation of equipment necessary for interconnection unless the LEC can demonstrate that physical collocation is not practical for technical reasons or because of space limitations. In that event, the incumbent LEC is still obligated to provide virtual collocation of interconnection equipment. *Id.*; *see also* 47 C.F.R. §§ 51.321-23 (implementing 47 U.S.C. § 251(c)(6)).

virtual collocation in response to requests by competing telecommunications carriers is useful in determining compliance with a BOC's collocation obligations.¹⁶⁸

63. In the *Local Competition First Report and Order*, the Commission concluded that an incumbent LEC must design its "interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used [for the interoffice trunks] within [the BOC's own network]."¹⁶⁹ Moreover, the Commission concluded that the equal in quality obligation is not limited to consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier.¹⁷⁰

64. The Commission held in the *Local Competition First Report and Order* that the requirement that interconnection be provided on terms and conditions that are "just, reasonable, and nondiscriminatory" means that the incumbent LEC must provide interconnection to a competitor in a manner that is no less efficient than the way in which the incumbent LEC provides the comparable function to itself.¹⁷¹ For example, the Commission concluded that to satisfy the requirement that interconnection be provided on terms and conditions that are "just, reasonable, and nondiscriminatory" an incumbent LEC must accommodate a competitor's request for two-way trunking where technically feasible.¹⁷²

b. Discussion

65. Based on our review of the record, we conclude that BellSouth does not demonstrate that, as a legal and practical matter, it provides interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1), as incorporated in section 271.¹⁷³

¹⁶⁸ Cf. *BellSouth South Carolina Order*, 13 FCC Rcd at 649-51 (concluding BellSouth failed to demonstrate it can provision collocation in a timely manner).

¹⁶⁹ *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15; see also 47 C.F.R. § 51.305(a)(3); *Ameritech Michigan Order*, 12 FCC Rcd 20678-79.

¹⁷⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15; see also 47 C.F.R. § 51.305(a)(3). The Commission reiterated in the *Ameritech Michigan Order* that the relevant question is whether the BOC is providing interconnection equivalent to the interconnection it provides itself, not whether a competing LEC continues to acquire customers or whether a customer notices the difference in quality in terms of service received from a competing LEC. *Ameritech Michigan Order*, 12 FCC Rcd at 20673.

¹⁷¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15612.

¹⁷² *Id.* at 15612-13; see also 47 C.F.R. § 51.305(f).

¹⁷³ See *supra* para. 61.

Specifically, BellSouth fails to make a *prima facie* showing that it can provide collocation on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6).¹⁷⁴ BellSouth's collocation offerings in Louisiana contain the same defects as the collocation arrangements that the Commission found deficient in the *BellSouth South Carolina Order*.¹⁷⁵ Furthermore, BellSouth fails to make a *prima facie* case that it provisions interconnection trunks in a manner that is equal in quality to the way in which it provisions trunks for its own services.

66. Collocation. We conclude that BellSouth fails to make a *prima facie* showing that its collocation offering satisfies the requirements of sections 271 and 251 of the Act. Specifically, we find that BellSouth's SGAT fails to provide new entrants with sufficiently definite terms and conditions for collocation.¹⁷⁶ Since BellSouth fails to include specific provisions regarding the terms and conditions for certain aspects of collocation in a legally binding document, it cannot demonstrate that it provides interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Because collocation is an essential means of allowing competitive LECs to interconnect with BellSouth's network, we find that BellSouth's application fails to satisfy the requirements of section 251(c)(2) as incorporated in section 271(c)(2)(B)(i).¹⁷⁷

67. The terms and conditions of BellSouth's collocation offerings are contained in section II.B.6. of the SGAT. This section states in full:

Collocation. Collocation allows CLECs to place equipment in BellSouth facilities. Physical and virtual collocation are available for interconnection and access to unbundled network element [sic]. BellSouth will provide physical collocation for CLEC equipment unless BellSouth demonstrates to the [state] Commission that physical collocation is not practical for technical reasons or space limitations. Detailed guidelines for collocation are contained in BellSouth's Handbook for

¹⁷⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 649-50 (the provision of collocation is an essential prerequisite to compliance with checklist item (i)). In the *BellSouth South Carolina Order*, we addressed collocation in the context of checklist item (ii), access to unbundled network elements. *Id.* at 646-56. Our reasoning in that context is equally applicable to collocation in the context of interconnection.

¹⁷⁵ See *BellSouth South Carolina Order*, 13 FCC Rcd. at 649-51.

¹⁷⁶ Cf. *id.* at 648 (finding BellSouth's SGAT deficient in its application for South Carolina because it failed to include definite terms and conditions for collocation, which BellSouth identified as the sole means by which new entrants can combine network elements).

¹⁷⁷ We conclude in our discussion of checklist item (ii) that BellSouth has also failed to demonstrate that it can provide nondiscriminatory access to unbundled network elements through collocation. See *infra* Section VI.C.2.

Collocation.¹⁷⁸

68. The collocation offerings on which BellSouth bases its second section 271 application for Louisiana are virtually identical in all substantive respects to the collocation offerings that the Commission found defective in the *BellSouth South Carolina Order*, and they do not pass muster now. As was true in the *BellSouth South Carolina* proceeding, the SGAT lacks binding terms and conditions for collocation. The SGAT refers to BellSouth's "Handbook for Collocation," which BellSouth also refers to as the "Negotiations Handbook for Collocation."¹⁷⁹ This handbook provides general explanatory information regarding the terms and conditions, ordering process, provisioning and maintenance of BellSouth's collocation offerings,¹⁸⁰ and expressly states that it "does not represent a binding agreement in whole or in part between BellSouth and subscribers of BellSouth's Collocation services."¹⁸¹ Rather than establishing legally binding terms and conditions, the Collocation Handbook is an explanatory manual to be used by the parties in negotiating an actual collocation agreement. The Collocation Handbook refers to a Standard Physical Collocation Agreement (Standard Agreement) for the "actual Terms and Conditions for BellSouth's Physical Collocation offering."¹⁸² This Standard Agreement is a model for new entrants to use in crafting an actual collocation agreement with BellSouth and does not legally bind BellSouth to specific terms and conditions unless negotiated and adopted by both BellSouth and the new entrant. While BellSouth has provided information regarding terms and

¹⁷⁸ SGAT § II.B.6.

¹⁷⁹ BellSouth Tipton Reply Aff. ¶ 7.

¹⁸⁰ BellSouth's Collocation Handbook explicitly states:

By design, this document does not contain detailed descriptions of interdepartmental procedures, network interface qualities, network capabilities, local interconnection or product service offerings. This document does not contain all provisions stated in BellSouth's tariff or standard agreement and does not represent a binding agreement in whole or in part between BellSouth and subscribers of BellSouth's Collocation services. For actual Terms and Conditions for BellSouth's Physical Collocation offering, please refer to BellSouth's Standard Physical Collocation Agreement.

For actual Terms and Conditions of BellSouth's Virtual Collocation offering, please reference BellSouth's FCC #1 Tariff, section 20 or BellSouth's Florida Access Tariff (E20). BellSouth Tipton Aff., Ex. PAT-2 (Collocation Handbook) at 4.

¹⁸¹ *Id.*

¹⁸² *Id.*

conditions of its collocation offerings, it has not done so in a legally binding document.¹⁸³

69. As was the case in the *BellSouth South Carolina Order*, the omission from the SGAT of any terms and conditions governing collocation prevents BellSouth from making a *prima facie* case that it meets the requirements of this checklist item. The SGAT's lack of binding provisions regarding the terms and conditions for collocation deprives us of any basis for finding that BellSouth is offering collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" in accordance with the requirements of section 251(c)(2).¹⁸⁴ The SGAT provides nothing more than a starting point from which new entrants are expected to negotiate many of the terms for collocation. Additional details provided by BellSouth's Collocation Handbook, Standard Agreement, and affidavits are not binding on BellSouth and therefore cannot fill the crucial gaps in the SGAT's terms.¹⁸⁵

70. In the *BellSouth South Carolina Order*, we specifically identified BellSouth's failure to include in its SGAT binding installation intervals for collocation.¹⁸⁶ We found that BellSouth's failure to include in its SGAT a commitment to installation intervals for collocation, coupled with the evidence in the record concerning delays in installing physical collocation, created concern that delays in the provisioning of collocation would impede competitive entry.¹⁸⁷ Because BellSouth fails to include any collocation intervals in its SGAT and instead relies on its Collocation Handbook, it has not corrected a deficiency identified in the *BellSouth South Carolina Order*.

71. In addition to the fact that BellSouth has not committed to provisioning intervals for collocation in a legally binding document, we find that BellSouth has not demonstrated that the intervals outlined in the Collocation Handbook are "just, reasonable, and nondiscriminatory."

¹⁸³ BellSouth's Collocation Handbook and Master Agreements are included in its application as attachments to affidavits and are not attached to the SGAT.

¹⁸⁴ The non-binding nature of the Collocation Handbook and the Standard Agreement is illustrated by the fact that they have inconsistencies. For example, in describing the "extraordinary conditions" which would cause the installation interval for collocation space preparation to extend to 180 days, the Collocation Handbook includes "multiple orders in excess of four (4) from one customer per area/state," *id.* at § 3.5, while the Standard Agreement defines it to include "multiple orders in excess of five (5) from one customer per area/state" BellSouth Tipton Aff. Ex. PAT-1 (Standard Agreement) § 4.3.

¹⁸⁵ See *BellSouth South Carolina Order*, 13 FCC Rcd at 645-648. See also Department of Justice Evaluation at 11, n.19.

¹⁸⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 650.

¹⁸⁷ *Id.*

BellSouth's Collocation Handbook provides a 30 business day interval for response to an accurate and complete application for physical collocation, and 20 business days for virtual collocation.¹⁸⁸ The Handbook also states, however, that "[r]esponse intervals for multiple applications submitted by a single customer within a 15 business day window must be negotiated."¹⁸⁹ The Collocation Handbook states that BellSouth will complete construction of the physical collocation space within 120 days of receipt of a complete and accurate Bona Fide Firm Order under "ordinary conditions," or within 180 days under "extraordinary conditions."¹⁹⁰ BellSouth's definition of "ordinary conditions" is limited to situations where the "space [is] available with only minor changes to network or building infrastructure."¹⁹¹ By contrast, its broad definition of "extraordinary conditions" "include[s] but [is] not limited to . . . multiple orders in excess of four (4) from one customer per area/state."¹⁹² Moreover, these intervals expressly "[e]xclud[e] the time interval required to secure the appropriate government licenses and permits."¹⁹³ In addition, although BellSouth's Collocation Handbook provides intervals for responding to virtual and physical collocation requests and for constructing physical collocation space, it does not provide intervals for installation of virtual collocation.¹⁹⁴

72. In its reply, BellSouth argues that it has demonstrated its ability to provide collocation in a timely fashion because it has accepted all collocation requests, its provisioning intervals are "comparable to those available elsewhere in the industry," and its average interval of 117 days for construction of physical collocation space in Louisiana is within the time frame to which it has committed.¹⁹⁵ We disagree with BellSouth that the appropriate standard for

¹⁸⁸ Collocation Handbook at § 3.3.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* § 3.5.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* § 3.5.

¹⁹⁴ *Id.* at §§ 3.3, 3.5.

¹⁹⁵ BellSouth Reply Comments at 48. BellSouth's average installation interval of 117 days in Louisiana is calculated from the date of receipt of a Bona Fide Firm Order and excludes the time intervals required to respond to an application for collocation, secure government licenses and permits, and complete equipment installation and testing. BellSouth Tipton Aff. at para. 27; BellSouth Milner Aff. Ex. WKM-2. BellSouth states that it has completed only two physical collocation arrangements in Louisiana, and, as AT&T notes, BellSouth's exhibit indicates that space construction for one of these arrangements took nearly six months. BellSouth Milner Aff. at para. 27; AT&T Comments at 29 (citing BellSouth Milner Aff. Ex. WKM-2); *see also infra.* n.199.

evaluating its provisioning of collocation arrangements is other incumbent LECs' provisioning intervals.¹⁹⁶ The Commission has previously stated that in determining whether a BOC is providing an efficient competitor with a "meaningful opportunity to compete," we will consider whether appropriate standards for measuring a BOC's performance have been adopted by the relevant state commission or agreed upon by the parties in an interconnection agreement.¹⁹⁷ In this application, BellSouth has taken significant steps towards developing performance measurements for provisioning its collocation arrangements, and we commend BellSouth for its efforts. BellSouth's performance measurement report is still under development however.¹⁹⁸ Moreover, the record lacks evidence that BellSouth's performance time intervals for providing collocation arrangements have been adopted by the Louisiana Commission or that provisioning intervals have been agreed upon by the parties in an interconnection agreement. The only piece of data provided by BellSouth is an average that was calculated using the actual provisioning times of three completed physical collocation agreements.¹⁹⁹ The provisioning intervals for these three collocation arrangements range from 69 days to 178 days.²⁰⁰ Given the large interval range (from just over two months to almost six months), BellSouth has not demonstrated that 117-day average is representative of its commercial usage. Nor has BellSouth provided an explanation as to why either its 117-day actual average interval or its 7-month target interval is reasonable.²⁰¹

¹⁹⁶ BellSouth quotes WorldCom for the contention that "a period of three or four months required to implement a collocation agreement is not necessarily disruptive." BellSouth Reply at 48 (quoting WorldCom Porter Aff. at para. 11). Aside from the fact that, pursuant to BellSouth's stated intervals, BellSouth's total time period for completion of a collocation arrangement would far exceed three or four months, WorldCom actually states that a period of three or four months is not necessarily disruptive at present because collocation is used only at a few central offices to connect the incumbent LEC's network with a facilities-based competitor's network. WorldCom Porter Aff. at para. 11.

¹⁹⁷ See, e.g., *Ameritech Michigan Order*, 12 FCC Rcd at 20619-20.

¹⁹⁸ BellSouth provides provisioning interval data for three completed physical collocation arrangements BellSouth Milner Aff. Ex. WKM-2. BellSouth states that its report for its collocation performance measurements is still under development. BellSouth Stacy Performance Measurements Aff. Ex. WNS-3.

¹⁹⁹ We note that BellSouth states that it has completed only two physical collocation arrangements in Louisiana. BellSouth Milner Aff. at para. 27. However, supporting documentation shows that BellSouth has completed three physical collocation arrangements in New Orleans. (BellSouth Milner Aff. Ex. WKM-2). The average provisioning intervals for these three arrangements is 117 days. *Id.*

²⁰⁰ BellSouth Milner Aff. Ex. WKM-2.

²⁰¹ We note that in our *BellSouth South Carolina Order*, we found that BellSouth had failed to demonstrate that it was in fact offering collocation in a timely manner given that the Florida Commission and some of BellSouth's own interconnection agreements require a three month time frame for implementing its collocation agreements. *BellSouth South Carolina Order*, 13 FCC Rcd at 651.

MCI, for example, contends that the 7-month interval is inadequate.²⁰² We therefore have no basis on which to conclude that BellSouth's proposed provisioning intervals for collocation meet the nondiscriminatory requirements of section 251(c)(3).

73. Several commenters also argue that BellSouth's SGAT is deficient because it does not quantify collocation space preparation fees, but rather leaves these fees open to negotiation on an individual case basis.²⁰³ For the reasons discussed above, we have determined that BellSouth fails to satisfy item (i) of the competitive checklist because it does not demonstrate that it offers collocation on rates, terms, and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(2).²⁰⁴ Accordingly, we do not rest our decision to deny BellSouth's Louisiana application on its failure to include a rate for collocation space preparation.²⁰⁵

74. Nondiscriminatory Access to Interconnection Trunks. BellSouth demonstrates that it has a legal obligation to provide interconnection arrangements in accordance with our rules. BellSouth fails, however, to make a *prima facie* showing that it is providing interconnection equivalent to the interconnection it provides itself.²⁰⁶

75. BellSouth's interconnection agreements make available interconnection for the exchange of local traffic between BellSouth and competitive LECs, as does BellSouth's SGAT.²⁰⁷

²⁰² MCI Comments at 21. *See also* Department of Justice Evaluation at 16 (finding, in the context of using collocation to combine UNEs, that BellSouth has not shown it can provide collocation arrangements in a timely manner); Intermedia Comments at 19.

²⁰³ *See, e.g.*, Department of Justice Evaluation at 22-24 (stating that BellSouth's failure to provide concrete prices may deter or delay entry); AT&T Comments at 29-30; Intermedia Reply at 10-11; MCI Comments at 20.

²⁰⁴ 47 U.S.C. § 251(c)(2)(D).

²⁰⁵ We note, however, that the Commission addressed this issue in a prior order. In the *BellSouth South Carolina Order*, we held that BellSouth had failed to demonstrate that it provided nondiscriminatory access to unbundled network elements in accordance with checklist item (ii) in part because it failed to include a space preparation fee in its SGAT. *BellSouth South Carolina Order*, 13 FCC Rcd at 651-53. BellSouth has asserted before the D.C. Circuit that our reference to the SGAT's failure to include any rates for the space preparation fee converts the Commission's entire discussion into one about pricing. We do not agree that the failure to delineate any price is itself a "pricing" determination, and have so informed the D.C. Circuit. *BellSouth Corp. v. FCC*, No. 98-1019 (D.C. Cir. filed Jan. 13, 1998). The issue has been briefed and is pending before the court. *BellSouth Corp. v. FCC*, No. 98-1019 (D.C. Cir. argued Sept. 25, 1998).

²⁰⁶ *See Ameritech Michigan Order*, 12 FCC Rcd at 20673.

²⁰⁷ BellSouth Varner Aff. at para. 45; SGAT at § 1.A.

As of June 1, 1998, BellSouth had provisioned 5324 trunks interconnecting its network with the networks of competitive LECs in Louisiana.²⁰⁸ BellSouth asserts that it makes available trunk termination points, trunk directionality, multiple trunk termination methods, and interconnection billing on nondiscriminatory terms. BellSouth also states that it has procedures in place for ordering, provisioning, and maintenance of interconnection services. BellSouth states that it allows interconnection at the line-side or trunk-side of the local switch, as well as at trunk interconnection points for tandem switches, central office cross-connect points, and out-of-band signal transfer points. BellSouth asserts that, through the bona fide request²⁰⁹ (BFR) process, it will provide local interconnection at any other technically feasible point, including meet-point arrangements. BellSouth also states that it offers, as a standard arrangement, local tandem interconnection for carrying traffic destined for BellSouth end offices that subtend a local tandem. BellSouth offers routing of local and intraLATA traffic over a single trunk group. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, is routed via a separate trunk group. BellSouth states that competitive LECs may order two-way trunks for the exchange of combined local and intraLATA toll traffic at BellSouth end offices or access tandems.²¹⁰ BellSouth, therefore, establishes that it has a legal obligation to provide interconnection consistent with our rules.

76. BellSouth asserts that it provides competitive LECs with nondiscriminatory trunk installation, and follows the same installation process for competitive LEC trunks that are used for its own trunks.²¹¹ BellSouth also asserts that trunk blockage²¹² data reflect that the service it provides to competitive LECs meets or exceeds the service BellSouth provides its own retail customers.²¹³ BellSouth also alleges that the speed of installation, due dates missed, and trunk blockage are more favorable for competitive LEC trunk groups than for BellSouth trunk groups.²¹⁴ Indeed, BellSouth has submitted performance data that indicate that BellSouth

²⁰⁸ BellSouth Application at 33.

²⁰⁹ Bona Fide Request is a process that BellSouth makes available to interested competitive LECs that addresses additional request for services, features, capabilities, or functions that are not contained in the negotiated contract (interconnection agreement). BellSouth Application at 32-33.

²¹⁰ BellSouth Varner Aff. at paras. 45-48.

²¹¹ BellSouth Application at 36-37.

²¹² BellSouth Stacy Performance Aff., Exhibit WNS-1 at 34. BellSouth describes trunk blockage as a measurement of the percentage of calls blocked greater than three percent, or two percent depending upon the trunk group type, during the busy hour relative to the total number of calls attempted during the busy hour. *Id.*

²¹³ BellSouth Application at 36-37.

²¹⁴ *Id.*

generally provides trunks to competitive LECs in about the same timeframe as it provides trunks to itself.²¹⁵

77. BellSouth's performance data do not demonstrate that the service BellSouth provides to competitive LECs is equal in quality to the service BellSouth provides to itself. For the months of March, April, and May, 1998, BellSouth's performance measurements seem to indicate that trunk blockage on trunks provisioned to competitive LECs was worse than for BellSouth's retail trunks.²¹⁶ A review of BellSouth's performance measurements for trunk blockage during busy hours reveals a difference of 0.7 percentage points for May, 1.8 percentage points for April, and 1.8 percentage points for March in favor of BellSouth.²¹⁷ Although the differences in the percentage of trunk blockage appear relatively small, a more detailed examination of the data indicates that competitive LECs experienced approximately twice as many incidents of trunk blockage as BellSouth's retail customers.²¹⁸ Based on this, we conclude that

²¹⁵ BellSouth Stacy Performance Aff. at Ex. WNS-3, Report: Order Completion Interval Distribution & Average Interval (No Dispatch) (BellSouth's average order completion interval for local interconnection trunks was 22 days for competitive LECs compared to 45 days for BellSouth in May, 1998, and was 30 days for competitive LECs compared to 23 days for BellSouth in March, 1998). BellSouth's data on trunk provisioning intervals, however, do not appear to include pre-order negotiation periods and, therefore, may not fully reflect the entire period of time required for a competitive LEC to obtain trunks -- the interval from when a competitive LEC initiates discussions with BellSouth until the competitive LEC actually obtains the trunks.

²¹⁶ BellSouth submitted a written *ex parte* attempting to demonstrate how its performance data indicate that trunk blockage rates are lower for competitive LECs than for BellSouth. See Letter from Kathleen B. Levitz, Vice President - Federal Regulatory, BellSouth, to Carol Mattey, Chief, Policy and Program Planning Division, FCC (Sep. 11, 1998) (BellSouth Sep. 11 *Ex Parte*). BellSouth's explanation, however, relies on unfurnished reports. Furthermore, the formula used in the BellSouth Sep. 11 *Ex Parte* to calculate trunk blockage rates was not furnished with BellSouth's application, denying commenters an opportunity to comment on the validity of BellSouth's formula for calculating trunk blockage rates. We would expect BellSouth in future applications to explain how it derived its formula for calculating trunk blockage rates and to include the relevant input data for the formula.

²¹⁷ BellSouth Stacy Performance Aff. Ex. WNS-3, Report: Comparative Trunk Group Service Summary. The percentage difference is calculated by subtracting the percentage of CLEC aggregate Trunk Groups Blocked from BellSouth's percentage of BST Local Trunk Groups Block. Thus, for example, of BellSouth's local trunks, 116 of 4,429 trunk groups (2.6 %) exceeded the three percentage threshold whereas 26 out of 591 (4.4 %) competitive LEC trunk groups experienced blockage in excess of three percent, resulting in a difference of 1.8 percentage points.

²¹⁸ The calculation that competitive LECs' experienced trunk blockage 54.5 % for March, 69.2 % for April, and 38.8 % for May greater than BellSouth's retail customers is derived by dividing the percentage of competitive LEC trunk groups blocked by the percentage of BellSouth retail trunk groups blocked. Thus for example, in the period from March 23, 1998, to April 24, 1998, competitive LECs' trunk groups experienced blockage of 4.4 % whereas, BellSouth's trunk groups experienced blockage of 2.6 %. The competitive LECs' trunk blockage percentage was 69.2 % greater than BellSouth's retail trunk groups.

BellSouth does not show that it is providing interconnection "equal in quality" to what it provides itself.²¹⁹ In order to demonstrate that it is providing interconnection that is equal in quality, BellSouth could, for example, perform statistical analyses of its trunk blockage data to show whether the disparity in trunk blockage is a result of random variations as opposed to other underlying differences.²²⁰ In future applications, we expect BellSouth to explain how it derives and calculates its performance data, including trunk blockage data, and to demonstrate that it meets the equal in quality and nondiscrimination requirements.

78. A number of parties raise additional issues with respect to BellSouth's provisioning of interconnection trunks. We disagree with commenters that isolated problems are sufficient to demonstrate that BellSouth fails to meet the statutory requirements. AT&T claims that BellSouth has delayed providing interconnection trunks, has "shut down" AT&T trunks, and has failed to route properly AT&T calls.²²¹ BellSouth acknowledges that some trunks had inadvertently been removed from service, but states that service from these trunks was restored later in the day.²²² Sprint likewise asserts that its customers have experienced call-routing problems "on numerous occasions,"²²³ although Sprint acknowledges that BellSouth has quickly corrected these problems.²²⁴ We conclude that AT&T's and Sprint's evidence is insufficient to demonstrate systemic problems with BellSouth's provisioning of interconnection trunks. Rather, this evidence suggests that the inevitable startup problems are being resolved quickly for BellSouth's competitive LEC customers.

79. Finally, we disagree with Sprint that, because BellSouth does not exchange different kinds of traffic (local and intraLATA toll) over the same interconnection trunks groups, it fails to provide interconnection in a nondiscriminatory manner. We note that the Louisiana PSC ruled in the Sprint/BellSouth Arbitration that it is not technically feasible today to mix different

²¹⁹ The "equal in quality" standard requires "an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party." Furthermore, the equal in quality standard "is not limited to the quality perceived by end users." *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15.

²²⁰ For a discussion of statistical analysis, see Section (VI)(C)(2)(a)(2), *infra*.

²²¹ AT&T Comments at 60.

²²² BellSouth Reply at 19; BellSouth Milner Reply Aff. at paras. 5-6.

²²³ Sprint Closz Aff. at paras. 63-65.

²²⁴ *Id.*

classes of traffic on the same interconnection trunks groups.²²⁵ In the absence of compelling evidence on the current technical feasibility of combining different classes of traffic on the same interconnection trunks groups, we find no reason to disagree with the Louisiana PSC's finding at this time.

2. Checklist Item 2 -- Unbundled Network Elements

80. The nondiscriminatory provision of operations support systems (OSS) is an integral part of the BOC's obligation to provide access to unbundled network elements as provided in this section of the checklist. The systems, information, and personnel encompassed by OSS are vital to the use of unbundled network elements and the provision of resold services by competitive LECs. A competing carrier that lacks access to OSS that is equivalent to the OSS the incumbent LEC provides to itself "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.²²⁶ The ability of competing carriers to combine unbundled network elements is also a critical aspect of access to these elements.

81. This section addresses the operations support systems that are necessary to provide access to all network elements as well as resold services since individual network elements are addressed in other checklist items. Previously, the Commission has discussed OSS as a separate section. In this order, however, we address OSS in two parts. Under checklist item (ii), we analyze the OSS interfaces, including the functionalities, BellSouth is relying on to meet the requirement that it provide access to unbundled network elements and resale on a nondiscriminatory basis. Those functionalities include, for example, pre-ordering, ordering, and maintenance and repair. OSS issues related to specific checklist items are addressed in the individual checklist items themselves. This section also addresses the provision of network elements in a manner that allows competing carriers to combine such elements.

a. Operations Support Systems

(1) Background

82. Section 271(c)(2)(B)(ii) of Act requires BellSouth to provide "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and

²²⁵ BellSouth Varner Reply Aff at paras. 3-4. The Louisiana PSC also stated that it will permit Sprint to mix different classes of traffic over the same interconnection trunks when Sprint can demonstrate that it is technical feasibility. *Id.*

²²⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

252(d)(1)."²²⁷ Section 251(c)(3) in turn requires the incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory . . ."²²⁸

83. In the *Local Competition First Report and Order*, the Commission identified the following network elements, which must be provided on a nondiscriminatory basis pursuant to section 251(c)(3): (1) local loops; (2) network interface devices; (3) local switching; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operations support systems;²²⁹ and (7) operator services and directory assistance.²³⁰ The Commission also required that incumbent LECs provide competing carriers with nondiscriminatory access to OSS²³¹ -- the systems, information, and personnel that support network elements or services offered for resale.²³² The Commission consistently has found that nondiscriminatory access to these systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC.²³³ New entrants must be able to provide service to their customers at a quality level that matches the service provided by the incumbent LEC to compete effectively in the local exchange market.²³⁴ For instance, if new entrants are unable to process orders as quickly and accurately as the incumbent LEC, they may

²²⁷ 47 U.S.C. § 271(c)(2)(B)(ii).

²²⁸ 47 U.S.C. § 251(c)(3).

²²⁹ See *Ameritech Michigan Order*, 12 FCC Rcd at 20613-14; *BellSouth South Carolina Order*, 13 FCC Rcd at 585. The United States Court of Appeals for the Eighth Circuit affirmed the Commission's determination that operations support systems qualify as network elements that are subject to the unbundling requirements of section 251(c)(3) of the Act. See *Iowa Utils. Bd.*, 120 F.3d at 808-09. As noted in previous orders, we believe that the terms "operations support systems," as used by the Commission, and "wholesale support processes," as used by the Department of Justice, are equivalent. See *Ameritech Michigan Order*, 12 FCC Rcd at 20613 n.315; *BellSouth South Carolina Order*, 13 FCC Rcd at 585 n.234; Department of Justice Evaluation at 26-40.

²³⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15683.

²³¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15767; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

²³² *Ameritech Michigan Order*, 12 FCC Rcd at 20613; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

²³³ See *BellSouth South Carolina Order*, 13 FCC Rcd at 585; *Ameritech Michigan Order*, 12 FCC Rcd at 20613-14; see also *Local Competition First Report and Order*, 11 FCC Rcd at 15763.

²³⁴ See *BellSouth South Carolina Order*, 13 FCC Rcd at 588.

have difficulty marketing their services to end users.²³⁵

84. In the *Local Competition First Report and Order*, the Commission concluded that the provision of access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.²³⁶ In addition, the Commission determined that "operations support systems and the information they contain fall squarely within the definition of 'network element' and must be unbundled upon request under section 251(c)(3)."²³⁷ Thus, an examination of a BOC's OSS performance is necessary to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).²³⁸ The duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.²³⁹

85. In previous orders, the Commission has addressed the legal standard by which it will evaluate whether a BOC's deployment of OSS is sufficient to satisfy this checklist item.²⁴⁰ The *Ameritech Michigan Order* provides that the Commission first is to determine "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."²⁴¹ The

²³⁵ See *BellSouth South Carolina Order*, 13 FCC Rcd at 588.

²³⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15660-61, 15763; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742.

²³⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15763. The Eighth Circuit affirmed the Commission's determination that operations support systems are a network element that must be provided pursuant to section 251(c)(3) of the Act. *Iowa Utils. Bd.*, 120 F.3d at 808-09.

²³⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20614. Section 271(c)(2)(B)(xiv) requires section 271 applicants to demonstrate that "[t]elecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." 47 U.S.C. § 271(c)(2)(B)(xiv).

²³⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20614.

²⁴⁰ See *Ameritech Michigan Order*, 12 FCC Rcd at 20615-20; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-95; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6257-58.

²⁴¹ *Ameritech Michigan Order*, 12 FCC Rcd at 20616. In making this determination, we "consider all of the automated and manual processes a BOC has undertaken to provide access to OSS functions to determine whether the BOC is meeting its duty to provide nondiscriminatory access to competing carriers." *Id.* at 20615. We also consider all of the components of a BOC's provision of access to OSS functions, including the "point of interface (or 'gateway') for the competing carrier's own internal operations support systems to interconnect with the BOC;

Commission next determines "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."²⁴² Under the second part of the inquiry, the Commission examines performance measurements and other evidence of commercial readiness.²⁴³

86. The most probative evidence that OSS functions are operationally ready is actual commercial usage.²⁴⁴ As in the *BellSouth South Carolina Order* and *First BellSouth Louisiana Order*, we review the commercial usage of BellSouth's OSS in other states because BellSouth's OSS are essentially the same throughout its region.²⁴⁵ The *Ameritech Michigan Order* also provides that the Commission will consider carrier-to-carrier testing, independent third-party testing, and internal testing, in the absence of commercial usage, to demonstrate commercial readiness.²⁴⁶

87. The *Ameritech Michigan Order* specifies that a BOC must offer access to competing carriers that is equivalent to the access the BOC provides itself in the case of OSS functions that are analogous to OSS functions that a BOC provides to itself.²⁴⁷ Access to OSS functions must be offered such that competing carriers are able to perform OSS functions in "substantially the same time and manner" as the BOC.²⁴⁸ For those OSS functions that have no retail analogue (such as ordering and provisioning of unbundled network elements), a BOC must

any electronic or manual processing link between that interface and the BOC's internal operations support systems (including all necessary back office systems and personnel); and all of the internal operations support systems (or 'legacy systems') that a BOC uses in providing network elements and resale services to a competing carrier." *Id.* (footnote omitted).

²⁴² *Ameritech Michigan Order*, 12 FCC Rcd at 20616.

²⁴³ *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93; *Ameritech Michigan Order*, 12 FCC Rcd at 20618.

²⁴⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 593; *Ameritech Michigan Order*, 12 FCC Rcd at 20601-02, 20618.

²⁴⁵ *BellSouth South Carolina Order*, 13 FCC Rcd at 593; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6258.

²⁴⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20618; *BellSouth South Carolina Order*, 13 FCC Rcd at 593; but see Sprint Comments at 27-29 (contending that compliance with the nondiscriminatory requirements is unlikely until OSS interfaces "comply with national standards and have been stress-tested in the market.") (emphasis in original); Sprint Closz Aff. at para. 5.

²⁴⁷ *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

²⁴⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64.

offer access sufficient to allow an efficient competitor a meaningful opportunity to compete.²⁴⁹

88. As previously mentioned, BellSouth deploys the same operations support systems throughout its nine-state region.²⁵⁰ The *BellSouth South Carolina Order* includes a description of BellSouth's operations support systems, which we incorporate by reference in this order.²⁵¹ Below we describe some of the many modifications and enhancements BellSouth has made to its operations support systems since adoption of the *BellSouth South Carolina Order*.

89. In addition to the Local Exchange Navigation System (LENS) interface described in the *BellSouth South Carolina Order*, BellSouth has made available two pre-ordering interfaces, the Common Gateway Interface to LENS (CGI-LENS) and EC-Lite.²⁵² CGI-LENS is a customized form of LENS and contains the same functionalities as LENS.²⁵³ EC-Lite is a machine-to-machine interface that BellSouth initially developed for AT&T and made available to other requesting carriers in January 1998.²⁵⁴

90. BellSouth provides an electronic interface utilizing the Electronic Data Interchange (EDI) protocol to meet its obligation to provide nondiscriminatory access to competing carriers for ordering and provisioning OSS functions.²⁵⁵ BellSouth implemented version 7.0 of the EDI interface in March 1998.²⁵⁶ EDI version 7.0 supports electronic ordering of 34 resale services and four unbundled network elements.²⁵⁷ In addition, version 7.0 of EDI, unlike the EDI version in

²⁴⁹ See *Ameritech Michigan Order*, 12 FCC Rcd at 20619; *Local Competition First Report and Order*, 11 FCC Rcd at 15660; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742.

²⁵⁰ See Second BellSouth Louisiana Application App. A, Vol. 5, Tab 22, Affidavit of William N. Stacy (BellSouth Stacy OSS Aff.) at para. 7; *see supra* para 86.

²⁵¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 588-92.

²⁵² BellSouth Application at 21; BellSouth Stacy OSS Aff. at para. 8; BellSouth Reply at 22.

²⁵³ BellSouth Stacy OSS Aff. at para. 8.

²⁵⁴ Second BellSouth Louisiana Application App. A, Vol. 4, Tab 15, Affidavit of John W. Putnam (BellSouth Putnam Aff.), Ex. JWP-1 at 19 (Overview of OSS Apps.); BellSouth Stacy OSS Aff. at para. 25 (claiming that EC-Lite has been available to competing carriers since Dec. 30, 1997); BellSouth Reply at 23.

²⁵⁵ BellSouth Stacy OSS Aff. at paras. 81-83, 99; *BellSouth South Carolina Order*, 13 FCC Rcd at 590; *see* BellSouth Application at 25-26; BellSouth Reply at 29.

²⁵⁶ BellSouth Stacy OSS Aff. at para. 93; BellSouth Reply at 29.

²⁵⁷ BellSouth Application at 25; BellSouth Stacy OSS Aff. at para. 86.

use when the *BellSouth South Carolina* application was being considered, complies with industry standards for electronic ordering of unbundled network elements.²⁵⁸ BellSouth also provides electronic error notices for a group of over 300 types of order errors through version 7.0 of EDI.²⁵⁹ When BellSouth's order processing systems encounter an order containing one of these types of errors, version 7.0 is designed to return an electronic rejection notice to the competing carrier containing an error code and an explanation of the error.²⁶⁰ The competing carrier may then correct the error and submit a supplemental order.²⁶¹ BellSouth's systems continue to process other types of order errors as described in the *BellSouth South Carolina Order*.²⁶² Orders containing such errors are sent to BellSouth's local carrier service center (LCSC) for manual processing, where the error either will be corrected and the order resubmitted for completion, or an error notice manually returned to the ordering carrier.²⁶³

(2) Discussion

91. We agree with the Department of Justice that BellSouth has made a number of improvements to address the problems that we identified in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order*.²⁶⁴ We conclude nonetheless that BellSouth does not make a *prima facie* case that it satisfies the requirements of checklist item (ii). As the preceding review indicates, the Commission, through a series of orders beginning with the *Local Competition First Report and Order* in August 1996, has provided clear guidance on the standards and legal obligations for the provision of OSS. We do not believe there is serious dispute about most of these standards. The issue in this proceeding is whether BellSouth is, in fact, meeting these requirements. We believe that the many enhancements and modifications to

²⁵⁸ BellSouth Application at 25; BellSouth Reply at 29. EDI version 7.0 has been adopted by the Ordering and Billing Forum (OBF) of the Alliance for Telecommunications Industry Solutions (ATIS) as the industry standard for the ordering and provisioning of unbundled network elements. BellSouth's previous EDI interface, version 6.2, complied with version 6.0 of the OBF standard, and included additional functionalities, such as UNE ordering capability, that were later adopted as the industry standard in version 7.0.

²⁵⁹ BellSouth Stacy OSS Aff. at paras. 125-28.

²⁶⁰ *Id.*; BellSouth Reply at 29.

²⁶¹ BellSouth Stacy OSS Aff. at para. 125.

²⁶² *BellSouth South Carolina Order*, 13 FCC Rcd at 591.

²⁶³ *BellSouth South Carolina Order*, 13 FCC Rcd at 591; AT&T Bradbury Aff. at para. 188.

²⁶⁴ Department of Justice Evaluation at 26; *see* BellSouth Application at 17-20; BellSouth Reply at 19-20; CompTel Comments at 7; e.spire Comments at 29; MCI Comments at 42; AT&T Reply at 16-17; ALTS Reply at 4.

BellSouth's OSS represent important progress toward meeting the statutory nondiscrimination requirements. At the same time, there are major deficiencies that BellSouth has not corrected.²⁶⁵ In particular, we find that BellSouth fails to demonstrate that it is providing nondiscriminatory access to the pre-ordering function of OSS. Furthermore, the performance measurements, for example, flow-through rates, indicate that there are serious problems with BellSouth's OSS ordering interface. BellSouth must correct these problems in future applications.

92. In this Order, we focus our discussion of BellSouth's OSS on the major deficiencies that we identified in the *BellSouth South Carolina Order* and *First BellSouth Louisiana Order* where BellSouth still does not provide nondiscriminatory access.²⁶⁶ These issues form the basis of our conclusion that BellSouth does not demonstrate that it provides nondiscriminatory access to its OSS. In prior orders we have provided guidance on specific performance measurements to determine if a BOC is meeting the requirements for OSS.²⁶⁷ The most critical aspect of evaluating a BOC's OSS is the actual performance results of commercial usage or, in the absence of commercial usage, testing results.²⁶⁸ In response, BellSouth provides a number of performance measurements that can be used to evaluate its OSS²⁶⁹ and we applaud these efforts. We conclude that these measurements, for the most part, are calculated in an appropriate and useful manner. We note, however, that in the case of certain measurements, BellSouth's failure to provide a sufficient level of disaggregation undermines the usefulness of BellSouth's performance data.²⁷⁰ We also recognize that BellSouth is developing further measurements. In addition, we note that there are no data for certain measurements. It is unclear if the lack of performance data reflects a lack of commercial usage or if BellSouth fails to include

²⁶⁵ See, e.g., Department of Justice Evaluation at 26, 27 n.51; AT&T Comments at 32-34; CompTel Comments at 7-8; Cox Comments at 2; e.spire Comments at 29; MCI Comments at 42; ALTS Reply at 4; AT&T Reply at 16, 19; e.spire Reply at 12.

²⁶⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 592-638; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6257-81.

²⁶⁷ See, e.g., *Ameritech Michigan Order*, 12 FCC Rcd at 20627-52; *BellSouth South Carolina Order*, 13 FCC Rcd at 597-634; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6259-81; see generally *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, Notice of Proposed Rulemaking, 13 FCC Rcd 12817 (1998) (*Performance Measurements NPRM*).

²⁶⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20618; see Department of Justice Evaluation at 26.

²⁶⁹ Second BellSouth Louisiana Application App. A, Vol. 6, Tab 23, Affidavit of William N. Stacy (BellSouth Stacy Perf. Meas. Aff.).

²⁷⁰ See *Ameritech Michigan Order*, 12 FCC Rcd at 20657; *BellSouth South Carolina Order*, 13 FCC Rcd at 595-96 n.306.

the appropriate results. In future applications, we expect BellSouth to resolve these deficiencies in order to demonstrate that it is providing nondiscriminatory access to its OSS.

93. BellSouth's performance data on several critical OSS functions show a significant disparity between BellSouth's performance in providing those functions for its retail customers as opposed to its performance for competing carriers.²⁷¹ We share the Department of Justice's concern that BellSouth fails to provide any explanation or analysis to demonstrate that its provision of these functions is nondiscriminatory, despite the differences in measured performance.²⁷² In a future application, BellSouth could, for example, seek to demonstrate statistically that the differences in measured performance are the result of random variations in the data, as opposed to underlying differences in behavior.²⁷³ We encourage BellSouth, in the future, to submit performance data in a way that permits statistical analysis,²⁷⁴ or otherwise explain how its performance data demonstrate compliance with the statutory nondiscrimination mandate.²⁷⁵ In this regard, we note that the Louisiana Commission recently ordered BellSouth to perform specific statistical analysis to compare its performance for competing carriers and for itself, using several different statistical techniques.²⁷⁶ Additionally, the Louisiana Commission directed BellSouth to develop performance standards that it must meet when it is providing functions to

²⁷¹ For example, see our discussion of performance data on installation intervals, paras. 84-85, and on flow-through, para. 73.

²⁷² Department of Justice Evaluation at 35; *see BellSouth South Carolina Order*, 13 FCC Rcd at 599-600; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64.

²⁷³ See Department of Justice Evaluation at 35-36 n.70. The Commission noted in the *Performance Measurements NPRM* that "[s]tatistical analysis can help reveal the likelihood that reported differences in a LEC's performance towards its retail customers and competitive carriers are due to underlying differences in behavior rather than random chance." *Performance Measurements NPRM*, 13 FCC Rcd at 12896.

²⁷⁴ Such statistical analysis could include z-tests or t-tests on the data, as has been proposed by some commenters in response to the *Performance Measurements NPRM*. See Letter from Richard L. Fruchterman, III, Director of Government Affairs, WorldCom, to Jake Jennings, FCC (filed Mar. 5, 1998); AT&T Comments, filed June 1, 1998, in CC Docket No. 98-56 at 45-59. The data needed to perform such tests include counts, means, proportions, and standard deviations of measurements of performance to BOC customers and to competitive LEC customers.

²⁷⁵ See Department of Justice Evaluation at 35-36 n.70; *see also BellSouth South Carolina Order*, 13 FCC Rcd at 599-600; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64.

²⁷⁶ *BellSouth Telecommunications, Inc. Service Quality Performance Measurements*, Docket No. U-22252 (Subocket-C), General Order (adopted Aug. 31, 1998) (*Louisiana Commission Performance Measurements Order*) at 3.

competing carriers that it does not provide to its retail customers.²⁷⁷ We applaud the Louisiana Commission for taking these steps, and we look forward to reviewing the results of this analysis in BellSouth's next application for Louisiana.

(a) Pre-Ordering Functions

94. Based on our review of the record, we conclude that BellSouth fails to make a *prima facie* showing that it provides nondiscriminatory access to OSS pre-ordering functions. The Commission's rules define pre-ordering and ordering collectively as "the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof."²⁷⁸ Pre-ordering generally includes the activities that a carrier undertakes with a customer to gather and verify the information necessary to formulate an accurate order for that customer.²⁷⁹ Pre-ordering includes the following functions: (1) street address validation; (2) telephone number information; (3) services and features information; (4) due date information; and (5) customer service record (CSR) information.²⁸⁰ Competing carriers need access to this information to place orders for the products or services their customers want.²⁸¹

95. In previous applications, BellSouth only offered access to pre-ordering functions through its LENS interface.²⁸² BellSouth now makes available to competing carriers its CGI-LENS and EC-Lite interfaces, in addition to LENS.²⁸³ BellSouth states that its LENS, CGI-LENS, and EC-Lite interfaces each provide competing carriers with access to pre-ordering functions in substantially the same time and manner as BellSouth's own retail sales representatives.²⁸⁴ BellSouth also states that it plans to deploy its Application Program Interface

²⁷⁷ *Louisiana Commission Performance Measurements Order* at 3.

²⁷⁸ 47 C.F.R. § 51.5.

²⁷⁹ *BellSouth South Carolina Order*, 13 FCC Rcd at 619.

²⁸⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 619; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6274; BellSouth Stacy OSS Aff. at para. 11.

²⁸¹ *Id.*

²⁸² See *supra* para. 89; *BellSouth South Carolina Order*, 13 FCC Rcd at 589; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6274.

²⁸³ See *supra* para. 89.

²⁸⁴ BellSouth Stacy OSS Aff. at para. 14.

(API) in the near future.²⁸⁵ The Georgia Commission ordered BellSouth to do so by December 31, 1998.²⁸⁶ BellSouth's proposed API Gateway will provide a pre-ordering interface and an ordering interface, both of which will operate on a machine-to-machine basis, use a common protocol, and therefore be more easily integrated with a competing carrier's own operations support systems.²⁸⁷

(i) Lack of Equivalent Access in General

96. BellSouth fails to demonstrate that its CGI-LENS and LENS interfaces provide nondiscriminatory access to OSS pre-ordering functions. In the *BellSouth South Carolina Order*, we concluded that BellSouth "impeded competing carriers' efforts to connect LENS electronically to their operations support systems and to the EDI ordering interface by not providing competing carriers with the necessary technical specifications and by modifying the types of data provided through the LENS interface."²⁸⁸ As a result, "unlike BellSouth's retail operation which uses an integrated pre-ordering/ordering interface, competing carriers [could not] readily connect electronically the LENS interface to either their operations support systems or to BellSouth's EDI interface for ordering, notwithstanding their desire to do so."²⁸⁹ Instead, competing carriers copied information from the LENS screen and reentered it manually into their own operations support systems and into the EDI ordering interface.²⁹⁰ In prior orders, we found that the additional costs, delays, and human errors likely to result from this lack of parity "ha[ve] a significant impact on a new entrant's ability to compete effectively in the local exchange market and to serve its customers in a timely and efficient manner."²⁹¹ As a result of the failure to provide

²⁸⁵ BellSouth Stacy OSS Reply Aff. at para. 8.

²⁸⁶ See MCI Green Aff., Att. 4 at 10.

²⁸⁷ MCI Green Aff., Att. 4 at 8-9; see e.spire Comments at 31.

²⁸⁸ *BellSouth South Carolina Order*, 13 FCC Rcd at 623; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6278-79.

²⁸⁹ *BellSouth South Carolina Order*, 13 FCC Rcd at 623; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6275-76. We analyze the use of CGI-LENS to integrate LENS pre-ordering and EDI ordering functions because BellSouth acknowledges that LENS' ordering functionality is limited and relies on its EDI interface to demonstrate that it meets the nondiscrimination requirements. BellSouth Stacy OSS Aff. at paras. 98-99; see also *BellSouth South Carolina Order*, 13 FCC Rcd at 623 n.453; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6260 n.79.

²⁹⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 621; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6276-77.

²⁹¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 623; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6277-78. We also found that the lack of a machine-to-machine interface prevents a competing carrier from

nondiscriminatory access to OSS pre-ordering functions, we concluded in the *BellSouth South Carolina Order* that BellSouth had failed to satisfy checklist item (ii). BellSouth made a similar showing in the first BellSouth Louisiana application and we reached the same result.

97. In making our previous determinations, we considered BellSouth's three proposals for overcoming the problem of transferring data from LENS to competing carriers' operations support systems and the EDI ordering interface: (1) Computer Gateway Interface (CGI); (2) development of a software program to extract the data underlying each LENS screen, a process referred to as "hypertext markup language (HTML) parsing;" and (3) "cut and paste."²⁹² In our previous orders, we concluded that BellSouth did not meet its obligation to provide updated and complete specifications for CGI to competing carriers.²⁹³ We found that this impeded the ability of competing carriers to modify their systems to permit integration.²⁹⁴ We also rejected the HTML parsing and "cut and paste" methods because each failed to provide equivalent access.²⁹⁵

98. We cannot agree with BellSouth's argument that it addresses the issues raised in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order* by making the CGI-LENS specifications available so that a competing carrier may integrate pre-ordering and

developing its own customized interface that its staff could use nationwide, and requires such a carrier to train its staff on BellSouth's proprietary system as well as systems used in other regions of the country. *BellSouth South Carolina Order*, 13 FCC Rcd at 624-25; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6277.

²⁹² *BellSouth South Carolina Order*, 13 FCC Rcd at 625-29; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6277-79.

²⁹³ *BellSouth South Carolina Order*, 13 FCC Rcd at 625-26; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6278-79.

²⁹⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 625-26; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6278-79. In the *Ameritech Michigan Order*, the Commission stated that a BOC "is obligated to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with the BOC's legacy systems and any interfaces utilized by the BOC for such access." *Ameritech Michigan Order*, 12 FCC Rcd at 20616-17; see *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742.

²⁹⁵ We found that a competing carrier using HTML parsing "would only be able to download information from LENS one screen at a time, thereby resulting in a slower, less efficient process . . . than would be available through either CGI or a machine-to-machine interface." *BellSouth South Carolina Order*, 13 FCC Rcd at 626-27. We also found that cut-and-paste "leads to increased delays and the risk of human error in transferring the data" from LENS to BellSouth's EDI ordering interface or to a competing carrier's operations support systems. *Id.* at para. 165; see *BellSouth South Carolina Order* at paras. 152-66; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6277-78.

ordering functions.²⁹⁶ At the outset, BellSouth's current CGI-LENS offering, unlike its prior version of CGI, is essentially similar to the HTML parsing that we rejected in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order*.²⁹⁷ BellSouth states that, like HTML parsing, the current CGI-LENS would require a competing carrier to deploy software that will extract the desired pre-ordering data from the HTML presentation data stream underlying each LENS screen.²⁹⁸ As a result, competing carriers using CGI-LENS must "proceed through each of the LENS presentation screens, just as a person using the [LENS] system would."²⁹⁹ By contrast, BellSouth's retail operation does not face this limitation because its pre-ordering and ordering are already fully integrated.³⁰⁰ In prior orders, we found with respect to HTML parsing that "[t]his slower, less efficient process puts new entrants at a competitive disadvantage, because it can lead

²⁹⁶ *BellSouth Stacy OSS Aff.* at para. 108; *see BellSouth Application* at 18, 22; *BellSouth Reply* at 23; *e.spire Comments* at 31-32; *Intermedia Comments* at 11; *MCI Comments* at 56-60; *MCI Green Aff.* at paras. 43-53; *Sprint Comments* at 30; *AT&T Reply* at 20. BellSouth also states that a competing carrier may use CGI-LENS for both pre-ordering and ordering. We do not consider this option because BellSouth relies only on EDI, and not CGI-LENS, for nondiscriminatory access to ordering. *See supra* para. 111; *BellSouth Stacy OSS Aff.* at paras. 8, 98-99; *Sprint Comments* at 30-31; *BellSouth South Carolina Order*, 13 FCC Rcd at 623 n.453; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6260 n.79.

²⁹⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 626-28; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6277-78; *see MCI Comments* at 56-57; *MCI Green Aff.* at paras. 44-45. BellSouth's current CGI-LENS offering is different from the version of CGI that BellSouth proposed in its previous applications. Evidence in the record of this proceeding contains BellSouth testimony that it began developing CGI in conjunction with AT&T in late 1996. *MCI Green Aff.*, Att. 3 at 94. BellSouth also states that this original version of CGI did not rely on the HTML language, and used data "independently of BellSouth [LENS pre-ordering] screens." *MCI Green Aff.*, Att. 3 at 95. Further, BellSouth acknowledges that the version of CGI that we discussed in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order*, is the original version of CGI that BellSouth declined to develop. *MCI Green Aff.*, Att. 3 at 95. Even though BellSouth relied on the original version of CGI in its previous applications, BellSouth's testimony indicates that it abandoned development of its original CGI specifications before mid-1997, and therefore before BellSouth filed its South Carolina and Louisiana applications in September 1997 and November 1997, respectively. *See MCI Green Aff.*, Att. 3 at 95. This was not made clear in the record accompanying BellSouth's previous applications. Finally, as discussed in more detail below, BellSouth acknowledges that the CGI-LENS specification discussed in their current application uses the HTML language and "is closer to HTML parsing than the CGI discussed in the [*BellSouth South Carolina Order*]."*MCI Green Aff.*, Att. 3 at 96.

²⁹⁸ *See MCI Comments* at 56-57; *MCI Green Aff.* at paras. 44-45, Att. 3 at 91-97; *AT&T Comments* at 41; *AT&T Bradbury Aff.* at para. 159; *e.spire Comments* at 31-32.

²⁹⁹ *BellSouth South Carolina Order*, 13 FCC Rcd at 626-27; *see First BellSouth Louisiana Order*, 13 FCC Rcd at 6277-78; *MCI Green Aff.*, Att. 3 at 91-97; *AT&T Comments* at 41-42; *AT&T Bradbury Aff.* at para. 159; *MCI Comments* at 56-57; *MCI Green Aff.* at paras. 43-45.

³⁰⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 626-27; *see First BellSouth Louisiana Order*, 13 FCC Rcd at 6275-76.

to delays while the customer is on the line and may limit a new entrant's ability to process a high volume of orders.³⁰¹

99. BellSouth does not dispute that CGI-LENS uses the HTML that we have previously found discriminatory; instead, BellSouth claims that our prior concerns with the use of HTML are unfounded.³⁰² BellSouth states that its current CGI-LENS specification, even though it relies on an underlying HTML data stream, provides competing carriers with nondiscriminatory access to pre-ordering.³⁰³ To support its claim, BellSouth asserts that a competing carrier, OmniCall, has deployed CGI-LENS to obtain access to customer service record (CSR) information.³⁰⁴ BellSouth also submits a report by Albion International, a firm hired by BellSouth to construct a prototype using CGI-LENS, to demonstrate that competing carriers can integrate LENS pre-ordering functions with EDI ordering using information that has been made available by BellSouth.³⁰⁵ BellSouth asserts that the Albion project shows that a competing carrier "has sufficient information to build a Common Gateway Interface to BellSouth's pre-ordering systems," and that such a pre-ordering interface could: (1) retrieve a CSR and parse elements of that data; (2) validate a service address and retrieve that data in fully parsed form; (3) obtain and reserve telephone numbers; (4) obtain and utilize interexchange carrier availability data for a particular central office; (5) obtain and utilize features and services data for a particular central office; (6) obtain the next available dispatch date from BellSouth's dispatch appointment scheduling system; and (7) integrate all of these elements with other items input by a competing carrier's service representative to build an EDI order.³⁰⁶ BellSouth also submits a report by Ernst & Young attesting to BellSouth's assertions concerning, among other things, the Albion

³⁰¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 626-27; *see First BellSouth Louisiana Order*, 13 FCC Rcd at 6277-78; MCI Green Aff., Att. 3 at 91-97; AT&T Comments at 41-42; AT&T Bradbury Aff. at para. 159; MCI Comments at 56-57; MCI Green Aff. at paras. 43-45. We also pointed out that because a program using HTML parsing relies on data underlying each LENS presentation screen, a competing carrier using HTML parsing "would have to expend additional resources each time BellSouth makes a significant change in [the LENS presentation screens] in order to . . . accommodate those changes." *BellSouth South Carolina Order*, 13 FCC Rcd at 627-28. By contrast, such changes "would not have such a significant impact on the use of CGI, because CGI allows a competing carrier to use the data 'independently of the LENS presentation screens.'" *BellSouth South Carolina Order*, 13 FCC Rcd at 627-28.

³⁰² Second BellSouth Louisiana Application App., Tab 11, Reply Affidavit of William N. Stacy (BellSouth Stacy OSS Reply Aff.) at para. 15.

³⁰³ *See* BellSouth Stacy OSS Reply Aff. at para. 15.

³⁰⁴ BellSouth Stacy OSS Aff. at para. 113.

³⁰⁵ BellSouth Stacy OSS Aff. at para. 110, Ex. WNS-19; BellSouth Reply at 25.

³⁰⁶ BellSouth Stacy OSS Reply Aff. at para. 12; *see* BellSouth Reply at 25.

project.³⁰⁷

100. In light of the deficiencies in using HTML parsing that we previously identified, BellSouth must demonstrate that these deficiencies do not, in practice, "[put] new entrants at a competitive disadvantage."³⁰⁸ We agree with the Department of Justice that BellSouth fails to do this.³⁰⁹ In particular, BellSouth's evidence does not demonstrate that CGI-LENS is "operationally ready, as a practical matter."³¹⁰ To evaluate operational readiness, we look to evidence of actual commercial usage of an interface and, in its absence, evidence of carrier-to-carrier testing, independent third-party testing, and internal testing.³¹¹ With respect to actual commercial usage, BellSouth provides no evidence that CGI-LENS has been commercially developed and used by any competing carrier for a purpose other than the limited one of ordering CSR information. Although OmniCall and MCI have attempted to use CGI-LENS to obtain CSR information,³¹² it is unclear whether this usage constitutes carrier-to-carrier testing or commercial usage.³¹³ Whether viewed as testing or commercial usage, the record is clear that MCI and OmniCall's limited use of CGI-LENS to obtain CSR information was not fully successful.³¹⁴ Attempts by competing

³⁰⁷ BellSouth Reply at 25; BellSouth Stacy OSS Aff. at para. 111, Ex. WNS-19; BellSouth Putnam Aff. at para. 8.

³⁰⁸ *BellSouth South Carolina Order*, 13 FCC Rcd at 626-27; *see First BellSouth Louisiana Order*, 13 FCC Rcd at 6275-76.

³⁰⁹ *See* BellSouth Stacy OSS Reply Aff., Ex. WNS OSS Reply - 2 at 87; AT&T Comments at 41; AT&T Bradbury Aff. at paras. 157-66; e.spire Comments at 31-32; MCI Comments at 56-57; MCI Green Aff. at paras. 44-52.

³¹⁰ *See* AT&T Comments at 45-48; AT&T Reply at 22.

³¹¹ *See Ameritech Michigan Order*, 12 FCC Rcd at 20618.

³¹² *See* BellSouth Stacy OSS Aff. at para. 113; MCI Comments at 57; MCI Green Aff. at paras. 49-50; OmniCall Comments at 1-2; AT&T Reply at 20 n.25.

³¹³ BellSouth states that OmniCall "has made over 17,000 queries for customer service records." BellSouth Stacy OSS Aff. at para. 113. OmniCall states, however, that its LENS-CGI queries were made in development of the interface, rather than its actual usage. OmniCall Comments at 1-2; *see* AT&T Reply at 20 n.25; Sprint Reply at 7. Moreover, OmniCall asserts that its CSR queries numbered only about 13,000, not over 17,000, and "have not yielded useable data." OmniCall Comments at 1-2; *see* Sprint Reply at 7. BellSouth does not discuss MCI's experiences with CGI-LENS, and MCI's own discussion does not address whether its experiences constitute actual commercial usage or carrier-to-carrier testing. *See* MCI Comments at 57; MCI Green Aff. at paras. 49-53.

³¹⁴ *See* MCI Comments at 56-57; MCI Green Aff. at paras. 49-53; Omnicall Comments at 1-2; AT&T Reply at 20 n.25.

carriers to use CGI-LENS for the limited purposes of obtaining CSR information³¹⁵ to populate individual fields of an order and to load this information into their own operations support systems databases have not been successful, because the competing carriers have had to re-key information manually.³¹⁶ Moreover, no carrier has sought to integrate all five pre-ordering functions with ordering using CGI-LENS.

101. We are not persuaded that CGI-LENS is operationally ready based on the Albion report and the Ernst & Young report, which BellSouth submits in addition to evidence of OmniCall's usage.³¹⁷ Neither report addresses the actual performance of the Albion prototype.³¹⁸ There is no evidence in these reports that would enable us to determine, for instance, whether a competing carrier is able to build an integrated interface using CGI-LENS, that is capable of negotiating a service order in substantially the same amount of time as BellSouth's own integrated systems. Nor is there any evidence of volume testing of CGI-LENS. In contrast to this, BellSouth's detailed assertions concerning its operations support systems did address the operational readiness of its LENS, EDI, and EC-Lite interfaces.³¹⁹ Evidence concerning the performance of CGI-LENS is necessary to allow us to determine whether CGI-LENS enables new entrants to negotiate a service order while a customer is on line, on the same competitive footing as BellSouth's retail operations.

102. Moreover, the limited scope of the Albion prototype diminishes its potential weight as third-party evidence that CGI-LENS provides nondiscriminatory access to pre-ordering functions.³²⁰ BellSouth contends that the Albion test shows that CGI-LENS provides competing carriers a reasonably affordable option for integrating pre-ordering and ordering functions, stating

³¹⁵ As noted above in para. 94 *supra*, obtaining CSR information is one of the five OSS pre-ordering subfunctions of OSS.

³¹⁶ See AT&T Comments at 42; MCI Green Aff. at para. 49; AT&T Reply at 20 n.25.

³¹⁷ BellSouth Stacy OSS Aff. at para. 111, Ex. WNS-19; BellSouth Putnam Aff.; see Department of Justice Evaluation at 36-37. As noted above, BellSouth hired Albion to construct a prototype using CGI-LENS in order to show that competing carriers can integrate LENS pre-ordering functions with EDI ordering using the information supplied by BellSouth.

³¹⁸ BellSouth Stacy OSS Reply Aff., Ex. WNS OSS Reply - 2 at 94; AT&T Bradbury Aff. at para. 162 n.78; see Department of Justice Evaluation at 36-37.

³¹⁹ See BellSouth Putnam Aff., Ex. JWP-1, App. A at 11-14.

³²⁰ See Department of Justice Evaluation at 36-37.

that Albion completed its project in eight weeks at a total cost of approximately \$120,000.³²¹ The Albion prototype, however, purports to integrate pre-ordering information with ordering functions only for a single category of service order -- new, resale, residential service -- but does not demonstrate how a similar prototype could be developed for other resale services or unbundled network elements. MCI asserts that a considerable amount of additional work would be needed to develop CGI-LENS capabilities for all pre-ordering and ordering activities for residential and business services.³²² Although BellSouth asserts in its reply that the Albion prototype "could be easily and quickly adapted for other types of orders,"³²³ BellSouth provides no support for its statement. We therefore do not consider the Albion report as showing that competing carriers can integrate pre-ordering and ordering functions for other types of orders, for example, those involving unbundled network elements.

103. We also reject BellSouth's reliance on the EC-Lite pre-ordering interface. BellSouth developed EC-Lite at the request of AT&T and made it available to other competing carriers in December 1997.³²⁴ We agree with the Department of Justice that "BellSouth does not report at all on the performance of its EC-Lite system . . . and thus we cannot evaluate whether that interface is performing adequately."³²⁵

(ii) Lack of Equivalent Access to Due Dates

104. We find that BellSouth still fails to offer nondiscriminatory access to due dates, for the reasons set forth in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order*. In those orders, we found that BellSouth did not offer nondiscriminatory access to competing carriers because competitors, unlike BellSouth's retail operations, cannot be confident that the due date promised to their customers based on information obtained from LENS will be the actual due date that BellSouth assigns to the order when it is processed.³²⁶ We found that competing carriers and BellSouth's retail operations obtained the actual due date at the same point

³²¹ See BellSouth Stacy OSS Aff. at paras. 110-12, Ex. WNS-19 at 1; BellSouth Reply at 25; but see Sprint Comments at 30; Sprint Closz Aff. at paras. 19-20.

³²² MCI Green Aff. at para. 46.

³²³ BellSouth Stacy Reply OSS Aff. at para. 11; see BellSouth Reply at 25.

³²⁴ BellSouth Stacy OSS Aff. at para. 25.

³²⁵ Department of Justice Evaluation at 30. AT&T Bradbury Aff. at 123.

³²⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 629-30; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6280-81.

in the process -- after an order is processed in the Service Order Control System (SOCS).³²⁷ This fact did not lead to parity in access to due dates because of significant delays in processing competing carriers' orders which were not experienced by BellSouth's retail operations.³²⁸ BellSouth's reliance on manual processing of orders³²⁹ and manual return of order error and rejection notices³³⁰ led to delays in the delivery of firm order confirmation (FOC) notices to competing carriers.³³¹ FOC notices, among other things, confirm the actual due date for installation of service.³³² Although BellSouth did not provide data on the timeliness of its delivery of FOC notices to competing carriers in its previous applications, evidence submitted by competing carriers indicated that BellSouth's FOC performance was deficient.³³³ For instance, AT&T submitted data showing that, for 38 percent of the orders AT&T submitted in August 1997, BellSouth took longer than 24 hours to return a FOC notice.³³⁴ As a result of such delays, by the time competing carriers' orders are processed, the initial due date determined using LENS may have passed or the relevant central office or work center may no longer be accepting orders

³²⁷ See *BellSouth South Carolina Order*, 13 FCC Rcd at 630; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6280.

³²⁸ See *BellSouth South Carolina Order*, 13 FCC Rcd at 630; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6280.

³²⁹ See *BellSouth South Carolina Order*, 13 FCC Rcd at 597-603; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6259-64.

³³⁰ See *BellSouth South Carolina Order*, 13 FCC Rcd at 604-06; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6265-67.

³³¹ See *BellSouth South Carolina Order*, 13 FCC Rcd at 606-10; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6267-69.

³³² See *BellSouth South Carolina Order*, 13 FCC Rcd at 606-07; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6267.

³³³ See *BellSouth South Carolina Order*, 13 FCC Rcd at 608; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6268-69.

³³⁴ See *BellSouth South Carolina Order*, 13 FCC Rcd at 608; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6268-69. LCI stated that it received only ten percent of its FOC notices from BellSouth within 24 hours of submitting an order, and that on average it took seven days from submission of an order to receive a FOC notice. *BellSouth South Carolina Order*, 13 FCC Rcd at 608; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6268-69 n.134. Intermedia stated that it never received a FOC notice for 37 percent of the orders it submitted between August 9 and October 7, 1997, and that BellSouth consistently missed its commitment to provide a FOC notice within 48 hours of order submission. *BellSouth South Carolina Order*, 13 FCC Rcd at 608.

for that date.³³⁵ In the *BellSouth South Carolina Order*, we also expressed concern about claims that the method of calculating initial due dates in LENS, whether used in the inquiry or firm order mode, is discriminatory, although we did not base our decision on this issue.³³⁶

105. As described in previous orders, BellSouth's systems do not provide competing carriers using LENS, CGI-LENS, or EC-Lite, or BellSouth's retail operations, with actual due dates until orders are processed in SOCS and a FOC notice is generated.³³⁷ This fact does not lead to parity of access because competing carriers still are experiencing significant delays in receiving FOC notices.³³⁸ As a result, just as stated in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order*, new entrants "cannot be confident that the due date actually provided after the order is processed will be the same date that the new entrants promised their customers at the pre-ordering stage."³³⁹ By contrast, "BellSouth's retail service representatives can be confident of the due dates they quote customers at the pre-ordering stage, because BellSouth does not experience the same delays in processing orders."³⁴⁰ As we explained in the *BellSouth South Carolina Order*, "[t]o the customer, the new entrant may appear to be a less efficient and responsive service provider than its competitor, BellSouth" as a result of this disparity in access to due dates.³⁴¹

106. As for the method by which due dates are calculated in LENS, CGI-LENS, and EC-Lite, we acknowledge and commend the progress BellSouth has made in response to our

³³⁵ *BellSouth South Carolina Order*, 13 FCC Rcd at 630-31; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6280-81.

³³⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 629-30.

³³⁷ See BellSouth Stacy OSS Aff. at paras. 50-59, 129; AT&T Reply at 19-20; see also AT&T Comments at 40; MCI Comments at 42.

³³⁸ See *infra* paras. 120-122; AT&T Comments at 40; CompTel Comments at 7, 9; e.spire Comments at 30; MCI Comments at 47; AT&T Reply at 20.

³³⁹ *BellSouth South Carolina Order*, 13 FCC Rcd at 630; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6280; see AT&T Comments at 40; CompTel Comments at 7, 9; MCI Comments at 47; AT&T Reply at 20.

³⁴⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 630; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6280-81.

³⁴¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 631; see AT&T Comments at 41; AT&T Bradbury Aff. at para. 119.

views in the *BellSouth South Carolina Order*.³⁴² First, BellSouth states that competing carriers using LENS, CGI-LENS, or EC-Lite now may view the "Quickservice" and "Connect Through" indicators and determine whether a technician must be dispatched to activate a customer's service and, if not, whether the customer's service may be activated in a reduced interval.³⁴³ Previously, competing carriers were required to make this determination manually because the projected service intervals provided to competing carriers using LENS assumed that a technician needed to visit the premises to perform service installation.³⁴⁴ We also note that, pursuant to an order by the Georgia Commission, BellSouth will add an automatic due date calculation capability to LENS and CGI-LENS beginning in November 1998.³⁴⁵ Until then, LENS requires competing carriers to calculate due dates manually.³⁴⁶ Although we must confine our analysis in this order to BellSouth's operations support systems at the time of the application, we will closely examine BellSouth's automatic due date calculation capability in any future application.³⁴⁷

(b) Ordering and Provisioning Functions

(i) Order Flow-Through

107. BellSouth fails to make a *prima facie* showing that it provides nondiscriminatory access to OSS ordering and provisioning functions. As in its previous applications, BellSouth fails to demonstrate that it has achieved parity in order flow-through. In the *BellSouth South Carolina* and *First BellSouth Louisiana Order*, we determined that the "substantial disparity between the flow-through rates of BellSouth's orders and those of competing carriers, on its face, demonstrates a lack of parity."³⁴⁸ A competing carrier's orders "flow through" if they are transmitted electronically through the gateway and accepted into BellSouth's back office ordering

³⁴² See *BellSouth South Carolina Order*, 13 FCC Rcd at 631-34; but see MCI Comments at 58; MCI Green Aff. at paras. 77-81.

³⁴³ BellSouth Stacy OSS Aff. at para. 57.

³⁴⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 631-32.

³⁴⁵ MCI Green Aff., Att. 4, App. A at 4; BellSouth Stacy OSS Aff. at para. 62.

³⁴⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 631-32; MCI Comments at 58; MCI Green Aff. at para. 78; Sprint Comments at 32-33.

³⁴⁷ See *Ameritech Michigan Order*, 12 FCC Rcd at 20573-74.

³⁴⁸ *BellSouth South Carolina Order*, 13 FCC Rcd at 599; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263.

systems without manual intervention.³⁴⁹ Although the Commission has not required a demonstration of order flow-through in its previous decisions under section 271, the Commission has found a direct correlation between the evidence of order flow-through and the BOC's ability to provide competing carriers with nondiscriminatory access to the BOC's OSS functions.³⁵⁰

108. We give substantial consideration to order flow-through rates because we believe that they demonstrate whether a BOC is able to process competing carriers' orders, at reasonably foreseeable commercial volumes, in a nondiscriminatory manner.³⁵¹ Evidence of flow-through also serves as a clear and effective indicator of other significant problems that underlie a determination of whether a BOC is providing nondiscriminatory access to its operations support systems. Our operations support systems analyses in the *BellSouth South Carolina Order* and *First BellSouth Louisiana Order* linked order flow-through with a variety of other deficiencies in a BOC's operations support systems, including: (1) failure to provision orders in a timely manner;³⁵² (2) failure to provide order status notices electronically;³⁵³ (3) failure to provide competing carriers with complete, up-to-date, business rules and ordering codes,³⁵⁴ and (4) lack of integration between pre-ordering and ordering functions.³⁵⁵

109. Although we recognize and commend BellSouth's efforts to address the deficiencies linked to its flow-through in previous Commission orders, we agree with the Department of Justice that the substantial disparity between the flow-through rates for BellSouth's

³⁴⁹ See *Performance Measurements NPRM*, 13 FCC Rcd at 12849-50; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6260 n.78.

³⁵⁰ See *Performance Measurements NPRM*, 13 FCC Rcd at 12850 at para. 73 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20634-49; *BellSouth South Carolina Order*, 13 FCC Rcd at 599); *First BellSouth Louisiana Order*, 13 FCC Rcd at 6259-64.

³⁵¹ See Sprint Closz Aff. at paras. 6-8; but see Bell Atlantic Reply at 23-25 (arguing that the amount of flow-through provided by a BOC is "a red herring.").

³⁵² *BellSouth South Carolina Order*, 13 FCC Rcd at 597-603; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6259-64.

³⁵³ *BellSouth South Carolina Order*, 13 FCC Rcd at 603-11; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6264-70.

³⁵⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 601-02; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64.

³⁵⁵ *BellSouth South Carolina Order*, 13 FCC Rcd at 602; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6277.

orders and those of competing carriers, on its face, continues to demonstrate a lack of parity.³⁵⁶ BellSouth's data show that over 96 percent of BellSouth's residential orders and over 82 percent of its business orders electronically flow through BellSouth's ordering systems and databases.³⁵⁷ By contrast, in May 1998, only 34 percent of competing carriers' orders submitted through EDI flowed through BellSouth's system.³⁵⁸ In April 1998, the EDI flow-through rate was 35 percent, and in March 1998, it was 31 percent.

110. BellSouth's EDI flow-through performance has deteriorated since BellSouth filed its previous Louisiana application.³⁵⁹ The 1998 EDI flow-through figures listed above are lower than the EDI flow-through figures for two of the three months cited in previous orders -- 54 percent for September 1997, 40 percent for August 1997, and 25 percent for July 1997.³⁶⁰ The deterioration in BellSouth's EDI flow-through performance is especially troubling because, as in previous orders, these flow-through rates are primarily orders for resale of plain old telephone services (POTS), "which should be among the easiest orders to submit and process."³⁶¹ Given

³⁵⁶ Department of Justice Evaluation at 27 n.51, 30-31; *see* ALTS Comments at 14-16; CompTel Comments at 8; e.spire Comments at 29-30; MCI Comments at 48-49; ALTS Reply at 4-5; AT&T Reply at 20-21; *see also* e.spire Reply at 12 n.45; Intermedia Reply at 6; *but see* Bell Atlantic Reply at 23-25.

³⁵⁷ BellSouth Stacy Performance Measurements Aff. at Ex. WNS-3 (Report: Percent Flow-Through Service Requests (Summary)).

³⁵⁸ AT&T Pfau-Dailey Aff. at para. 75; AT&T Bradbury Aff. at para. 196.

³⁵⁹ *See* AT&T Comments at 42; AT&T Bradbury Aff. at paras. 196, 242-48; AT&T Pfau-Dailey Aff. at para. 75; e.spire Reply at 11-12.

³⁶⁰ *First BellSouth Louisiana Order*, 13 FCC Rcd at 6260; *BellSouth South Carolina Order*, 13 FCC Rcd at 598. We note that BellSouth now calculates order flow-through according to a methodology that, all other things being equal, should yield higher flow-through rates. BellSouth currently uses a flow-through methodology similar to that which we proposed in the *Performance Measurements NPRM*, *see* 13 FCC Rcd at 12842, and which, unlike the methodology that BellSouth used in the *BellSouth South Carolina Order* and the *First BellSouth Louisiana Order*, excludes the number of rejected orders from the total number of orders from which flow-through percentage is calculated. *See First BellSouth Louisiana Order*, 13 FCC Rcd at 6260. The methodology used by BellSouth in its prior applications calculates the percentage of order flow-through from the total number of electronic orders received by BellSouth's systems, including rejected orders, whereas the methodology we proposed in the *Performance Measurements NPRM*, and used by BellSouth in this application, calculates the percentage of order flow-through from the total number of electronic orders received by BellSouth's systems, excluding rejected orders, and thus would yield a higher percentage of order flow-through, all other things being equal. *See First BellSouth Louisiana Order*, 13 FCC Rcd at 6260; *Performance Measurements NPRM*, 13 FCC Rcd at 12842 n.76. For purposes of comparison, using the flow-through methodology used in previous BellSouth orders, BellSouth's EDI flow-through figures are 33 percent for May 1998, 34 percent for April 1998, and 31 percent for March 1998.

³⁶¹ *See BellSouth South Carolina Order*, 13 FCC Rcd at 597, 598; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6261; MCI Comments at 48; AT&T Reply at 20-21 n.26.

that these data represent the EDI flow-through performance for a relatively low number of orders, we also believe that the problems BellSouth is experiencing will worsen as order volumes, and the number of complex orders for services other than POTS, increase.³⁶² Although we noted in previous orders that there may be limited instances in which manual processing is appropriate, we also found that excessive reliance on manual processing, especially for routine transactions, impedes the BOC's ability to provide equivalent access.³⁶³

111. Moreover, BellSouth does not respond in this application to certain flow-through issues raised in previous orders.³⁶⁴ BellSouth again presents aggregate flow-through data for both EDI and LENS orders, even though, as in previous applications, BellSouth relies only on its EDI interface to demonstrate that it provides nondiscriminatory access to ordering and provisioning.³⁶⁵ On reply, however, BellSouth provides disaggregated flow-through data for LENS and EDI. Although interested parties did not have an opportunity to comment, it appears that this data may not represent a sound comparison of competing carriers' flow-through relative to BellSouth's retail flow-through.³⁶⁶ In the *BellSouth South Carolina Order*, we "urge[d] BellSouth . . . in future applications, to sufficiently disaggregate its data to permit analysis of the performance of those interfaces upon which it is expressly relying on in its application."³⁶⁷ In addition, BellSouth adjusts its flow-through data upward to account for competing carriers' errors based on its own analysis of the error type and party at fault but provides no evidentiary support for its conclusion.³⁶⁸ BellSouth provides further data on carrier errors on reply. Given the complexity of

³⁶² See *BellSouth South Carolina Order*, 13 FCC Rcd at 597; *Ameritech Michigan Order*, 12 FCC Rcd at 20634-35; AT&T Comments at 42; MCI Comments at 48, 53; AT&T Reply at 20-21 n.26.

³⁶³ First *BellSouth Louisiana Order*, 13 FCC Rcd at 6261; *BellSouth South Carolina Order*, 13 FCC Rcd at 599; *Ameritech Michigan Order*, 12 FCC Rcd at 20637-38; see e.spire Comments at 29-30; MCI Comments at 49; ALTS Reply at 4.

³⁶⁴ See Department of Justice Evaluation at 27 n.51; CompTel Comments at 7-9; e.spire Comments at 29; ALTS Reply at 4.

³⁶⁵ See AT&T Comments at 42; BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow Through Service Requests (Detail)).

³⁶⁶ For example, BellSouth adjusts its calculation of flow-through for competing carriers by excluding: (1) complex orders; and (2) competing carriers' errors without sufficient timely explanation. BellSouth Stacy OSS Reply Aff. at paras. 62-64; BellSouth Stacy Perf. Meas. Reply Aff. at para. 21, Exs. WNSPM Reply - 5a, -5b.

³⁶⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 595-96 n.306; see Department of Justice Evaluation at 31.

³⁶⁸ BellSouth Stacy OSS Aff. at para. 121; see AT&T Comments at 43; AT&T Bradbury Aff. at paras. 245-48; MCI Comments at 48-49; MCI Green Aff. at paras. 158-59.

this data and the fact that interested parties have not had an opportunity to address it, we exercise our discretion to accord the information minimal weight.³⁶⁹ We do not hold a BOC accountable for flow-through problems that are attributable to competing carriers' errors.³⁷⁰ In the *BellSouth South Carolina Order*, however, we rejected BellSouth's assertion that competing carriers' errors are the cause of its low EDI flow-through rates because BellSouth "d[id] not provide credible evidence or explanation" to support its assertion.³⁷¹ In this application, BellSouth again fails to provide supporting data or documentation to substantiate its conclusions until the reply round, despite our directions in the *BellSouth South Carolina Order* that BellSouth provide such information.³⁷² Moreover, the data previously filed in this proceeding show that all carriers using the EDI interface are experiencing low flow-through rates.³⁷³ As in previous orders, we are unable to accept BellSouth's claims regarding competing carriers' errors in the absence of persuasive evidence to support such claims.³⁷⁴

112. BellSouth's own data indicate that in a significant number of cases, the failure of orders to flow through BellSouth's order processing systems cannot be attributed solely to the errors of competing carriers.³⁷⁵ Even if we accept BellSouth's analysis of competing carriers' errors, the data show that a significant number of EDI orders drop out for manual processing due to other reasons.³⁷⁶ We describe the flow-through data for one competing carrier, identified as

³⁶⁹ BellSouth Stacy Perf. Meas. Reply Aff., Exs. WNSPM Reply - 5a, -5b.

³⁷⁰ See *BellSouth South Carolina Order*, 13 FCC Rcd at 603; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64.

³⁷¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 603; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64.

³⁷² *BellSouth South Carolina Order*, 13 FCC Rcd at 599-600; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64; see AT&T Comments at 43; AT&T Bradbury Aff. at paras. 245-48; CompTel Comments at 8; e.spire Comments at 30; KMC Comments at 15; MCI Comments at 48-49; MCI Green Aff. at paras. 158-59; see also Sprint Closz Aff. at paras. 47-48 (arguing that order errors "may not be entirely due to human error," but may instead reflect BellSouth legacy system edits "which have not been properly documented or communicated to [competing carriers]").

³⁷³ BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow Through Service Requests (Detail)).

³⁷⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 599-600; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64.

³⁷⁵ See AT&T Comments at 43; AT&T Bradbury Aff. at para. 247; MCI Comments at 48-49.

³⁷⁶ See AT&T Comments at 42-43; e.spire Comments at 30.

"Carrier No. 9," to illustrate.³⁷⁷ BellSouth's flow-through data for May 1998 show that it received 622 EDI orders from competing carrier No. 9, 18 of which were automatically rejected.³⁷⁸ These 18 automatically rejected orders are excluded from the flow-through calculation.³⁷⁹ Of the remaining 604 orders that BellSouth determined are "valid orders," 170 orders flowed through BellSouth's systems and, according to BellSouth, 67 orders dropped out for manual processing due to competing carriers' errors. In other words, 367 of 604 valid orders dropped out for manual processing for reasons other than the competing carrier's errors, producing a BellSouth-calculated flow-through rate of 31.6 percent.³⁸⁰ As noted above, the flow-through rates when BellSouth representatives place an order for their own retail operations are 96 percent for residential services and 82 percent for business services. BellSouth itself attributes the significantly lower flow-through rates for competing carriers to causes other than the competitors' errors.³⁸¹ The reasons for manual processing could include BellSouth-caused errors or a decision by BellSouth not to provide electronic processing for a particular order type.³⁸² In any event, these 367 manually processed orders are a substantial factor in the low EDI flow-through rate experienced by this particular carrier, and by BellSouth's own analysis, the manual processing of these orders is not attributable to errors by the competing carrier.

113. BellSouth has failed to correct other deficiencies previously identified as factors contributing to BellSouth's low flow-through rates. As in prior orders, we are unable to determine how many of the errors that BellSouth ascribes to competing carriers result from BellSouth's underlying failure to provide adequate information, such as business rules, concerning

³⁷⁷ For confidentiality purposes, BellSouth's filing does not identify carriers by name. *See* BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow-Through Service Requests (Detail)).

³⁷⁸ *See* BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow-Through Service Requests (Detail)).

³⁷⁹ See note 360 *supra*.

³⁸⁰ *See* BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow-Through Service Requests (Detail)). BellSouth calculates this figure of 31.6 percent by adjusting for competing carriers' errors, as determined by BellSouth. *See* BellSouth Application at 26. Our own calculation yields a flow-through rate of 28 percent for carrier No. 9 in May 1998 because, as noted in para. 111 *supra*, we do not accept BellSouth's analysis of competing carriers' errors.

³⁸¹ *See* BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow-Through Service Requests (Detail)).

³⁸² *See* Second BellSouth Louisiana Application, App., Tab. 12, Affidavit of William N. Stacy (BellSouth Stacy Perf. Meas. Reply Aff.) at para. 21, Ex. WNSPM Reply - 4c (Report: Percent Flow Through Service Requests (Detail)).

how BellSouth's internal systems process orders.³⁸³ We are unable to make such a judgment because, as noted above and in prior orders, BellSouth provides no evidence supporting its claims regarding the causes of order errors.³⁸⁴

114. In prior orders, we concluded that BellSouth's practice of returning order error notices to competing carriers manually, rather than electronically via the EDI interface, is not equivalent access because manual processes generally are "less timely and more prone to errors."³⁸⁵ Among other things, manual processes tend to lead to additional errors, and to lower BellSouth's flow-through rates.³⁸⁶ In its application, BellSouth states that it has developed a mechanism to provide competing carriers with electronic error notification via EDI or LENS, which includes a standard set of over 300 error messages.³⁸⁷ As discussed below, however, BellSouth's own data indicate that more than 80 percent of BellSouth's rejection notices still require manual re-keying.³⁸⁸ This does not constitute equivalent access.

115. We also found previously that the lack of integration between BellSouth's interfaces for pre-ordering and ordering functions contributed to BellSouth's low flow-through rates.³⁸⁹ As discussed in the *BellSouth South Carolina Order*, "[t]his lack of integration requires new entrants manually to re-enter data obtained from the pre-ordering interface into the ordering interface, a process that reasonably can be expected to contribute to errors committed by new entrants."³⁹⁰ We note that the order flow-through rates for competing carriers using the LENS

³⁸³ *BellSouth South Carolina Order*, 13 FCC Rcd at 601; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6263-64; *see also* AT&T Comments at 38-39; AT&T Bradbury Aff. at paras. 67-69. The Department of Justice contends that BellSouth still lacks fully documented business rules for ordering processes. Department of Justice Evaluation at 27 n.51; *see, e.g.*, AT&T Comments at 35-39; AT&T Bradbury Aff. at paras. 67-70.

³⁸⁴ *See supra* para. 111; *see also* AT&T Comments at 38-39, 43; AT&T Bradbury Aff. at paras. 67-69, 246.

³⁸⁵ *BellSouth South Carolina Order*, 13 FCC Rcd at 605; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6262-63; *see Ameritech Michigan Order*, 12 FCC Rcd at 20616-18 ("For those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers").

³⁸⁶ *See BellSouth South Carolina Order*, 13 FCC Rcd at 605; *see First BellSouth Louisiana Order*, 13 FCC Rcd at 6266-67.

³⁸⁷ BellSouth Stacy OSS Aff. at paras. 125, 127, Ex. WNS-45;

³⁸⁸ *See infra* paras. 118-119.

³⁸⁹ *BellSouth South Carolina Order*, 13 FCC Rcd at 602.

³⁹⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 602; *accord First BellSouth Louisiana Order*, 13 FCC Rcd at 6275-76, 6277.

interface, which provides integrated pre-ordering and ordering functions, generally are higher than EDI flow-through rates,³⁹¹ although BellSouth relies exclusively on EDI to show compliance with the requirements of this checklist item. As we conclude above, BellSouth still fails to provide access to integrated pre-ordering and ordering interfaces.³⁹²

116. In any future application, we would find persuasive evidence showing that the flow-through rates for competing carriers' orders for resale services at reasonably foreseeable demand levels will be substantially the same as the flow-through rates for BellSouth's retail orders.³⁹³ In the absence of such evidence, BellSouth has the burden of showing why its ordering systems for competing carriers nonetheless meet the nondiscriminatory standard, *i.e.*, that its systems provide competing carriers with access to OSS functions that is on par with that which the BOC provides its own retail operations.³⁹⁴

(ii) Order Status Notices and Average Installation Intervals

117. In this subsection we address BellSouth's performance results in providing access to ordering functionality. Specifically, we discuss BellSouth's performance in providing order rejection notices, firm order confirmation notices, average installation intervals, completion notices, and order jeopardy notices. As discussed below, each of these measurements provides information on the use of BellSouth's OSS for ordering by competing carriers. For example, when a competitive LEC submits an order, the order is either rejected or accepted. If the order is rejected, the competitive LEC receives a rejection notice from BellSouth. On the other hand, if the order is accepted, the competitive LEC receives a firm order confirmation notice. The timeliness of these notices, including order completion intervals, is crucial to the ability of new entrants to compete effectively.

118. Order Rejection Notices. Timely delivery of order rejection notices directly affects a competing carrier's ability to serve its customers, because such carriers are unable to correct

³⁹¹ See BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Percent Flow Through Service Requests (Detail)).

³⁹² See paras. 96-102 *supra*.

³⁹³ See KMC Comments at 15.

³⁹⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20567-70; see Department of Justice Evaluation at 35 (contending that "where the reported data has such numerous indications of deficient performance, BellSouth does not carry its burden by simply producing data and asserting that it shows adequate performance: BellSouth needs to discuss the results and, where apparent discrepancies exist, explain them"); ALTS Comments at 16; KMC Comments at 15.

errors and resubmit orders until they are notified of their rejection by BellSouth.³⁹⁵ In the *BellSouth South Carolina Order*, we concluded that BellSouth's manual provision of order rejection notices to competing carriers via facsimile failed to meet the standard of nondiscriminatory access.³⁹⁶ Under the process reviewed in previous orders, BellSouth representatives examined the rejected order for errors and sent a written rejection notice back to the competing carrier via facsimile.³⁹⁷ In comparison, BellSouth provides its retail operations with the equivalent of order rejection notices through electronic interfaces.³⁹⁸ We found that BellSouth's manual process for competing carriers led to untimely rejection notices and additional delays and errors in ordering.³⁹⁹ To address this, BellSouth states that it provides electronic notification of order errors via EDI version 7.0.⁴⁰⁰ BellSouth states that this process uses a standard set of more than 300 error messages to allow competing carriers to identify errors, and resubmit their corrected orders to BellSouth.⁴⁰¹

119. We commend BellSouth for its efforts to address the problems we previously identified with its process for returning order rejection notices to competing carriers. As the Department of Justice points out, however, BellSouth's data demonstrate that its performance on

³⁹⁵ See *Ameritech Michigan Order*, 12 FCC Rcd at 20642; *BellSouth South Carolina Order*, 13 FCC Rcd at 604; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6265.

³⁹⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 604-06; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6265-67.

³⁹⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 604; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6265.

³⁹⁸ See *BellSouth South Carolina Order*, 13 FCC Rcd at 605 n.350 ("We believe that the BOC performs the functional equivalent of an error notice for itself even if it does not do so in an identical manner"). Cf. *Ameritech Michigan Order*, 12 FCC Rcd at 20618 ("We conclude that equivalent access, as required by the Act and our rules, must be construed broadly to include comparisons of analogous functions between competing carriers and the BOC, even if the actual mechanism used to perform the function is different for competing carriers than for the BOC's retail operations").

³⁹⁹ *BellSouth South Carolina Order*, 13 FCC Rcd at 604-05; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6265-67.

⁴⁰⁰ BellSouth Stacy OSS Aff. at para. 125. BellSouth states that it also provides electronic error notification via LENS. BellSouth Stacy OSS Aff. at para. 125. We do not evaluate BellSouth's provision of error notices via LENS because BellSouth does not rely on LENS for nondiscriminatory access to ordering functions. See *supra* para. 111; BellSouth Stacy OSS Aff. at paras. 98-99; see also *BellSouth South Carolina Order*, 13 FCC Rcd at 623 n.453.

⁴⁰¹ BellSouth Stacy OSS Aff. at para. 127. See BellSouth Stacy OSS Aff., Ex. WNS-45 (LEO User Requirements for "Rejects").

order rejections is deficient, and that our prior concerns with BellSouth's manual provision of order rejection notices were well-founded.⁴⁰² Moreover, BellSouth offers no analysis of its data or any reasoned claim that the data support a finding that BellSouth meets the nondiscriminatory standard.⁴⁰³ According to AT&T, BellSouth's data "suggest that more than 80 percent of rejection notices [that should be returned electronically] are re-keyed [manually] by BellSouth representatives and then transmitted to the [competing carrier]."⁴⁰⁴ Moreover, BellSouth's performance, in terms of the timeliness of rejection information returned to competitors, is worse for these manually re-keyed rejection notices for electronically submitted orders, than for entirely manual orders.⁴⁰⁵ In May 1998, for electronically submitted orders for resale residential service, on average region-wide, BellSouth returned a reject notice 1.96 days after it received the order, if the notice was manually re-keyed.⁴⁰⁶ Over 37 percent of such notices were returned beyond a 24-hour interval.⁴⁰⁷ For entirely manual orders for resale residential service, on the other hand, the average reject notice interval region-wide is 1.61 days, and over 63 percent of such notices were returned beyond a 24-hour interval.⁴⁰⁸ The data also indicate that the average time for returning a reject notice for an electronically submitted order for residential resale service was nearly eight

⁴⁰² Department of Justice Evaluation at 32; *see* AT&T Comments at 43; AT&T Bradbury Aff. at para. 188; AT&T Reply at 21; e.spire Reply at 11; Intermedia Reply at 6.

⁴⁰³ *See* AT&T Comments at 49; AT&T Pfau-Dailey Aff. at paras. 61-63.

⁴⁰⁴ AT&T Bradbury Aff. at para. 188; *see* AT&T Comments at 43.

⁴⁰⁵ Department of Justice Evaluation at 32; *see* Second BellSouth Louisiana Application App. A., Vol. 6, Tab 23, Affidavit of William N. Stacy (BellSouth Stacy Perf. Meas. Aff.), Ex. WNS-3 (Report: Rejection Distribution Interval & Average Interval). The data for the months of April 1998 and March 1998 show a more striking disparity between BellSouth's reject notice performance for electronically submitted orders, and entirely manual orders. For April 1998, for electronically submitted orders for resale residential services, on average region-wide, BellSouth returned a reject notice 7.82 days after it received the order. Over 62 percent of such notices were returned beyond a 24-hour interval. The corresponding figures for March 1998 are similar: 7.98 days average interval and over 61 percent beyond a 24-hour interval. For entirely manual orders for resale residential service, on the other hand, the region-wide corresponding figures are 1.98 days, and over 61 percent, for April 1998, and 3.44 days, and over 65 percent, for March 1998. Unlike the May 1998 data, the performance data for April and March 1998 aggregate reject notices for all electronically submitted orders, whether the reject notice was automatically returned or manually re-keyed. All other things being equal, this should result in lower figures for average reject notice intervals and distribution intervals. *Id.*

⁴⁰⁶ *See* BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Rejection Distribution Interval & Average Interval); AT&T Comments at 43; AT&T Bradbury Aff. at paras. 250-51.

⁴⁰⁷ *See* BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Rejection Distribution Interval & Average Interval).

⁴⁰⁸ *Id.*

days in March and April 1998.⁴⁰⁹ As noted above, BellSouth provides electronic notification of order errors to its retail operations.⁴¹⁰ We will look closely at the evidence in any future application to determine whether BellSouth has taken adequate steps to transition to an automated error notice process, and whether BellSouth's performance has improved with respect to the provision of timely and accurate error notices.

120. Firm Order Confirmation (FOC) Notices. Timely return of a FOC notice is critical because it informs the competing carrier of the status of its order by (1) confirming that the order has been accepted, and (2) providing the due date for installation of service.⁴¹¹ We concluded in the *BellSouth South Carolina Order* that BellSouth failed to provide nondiscriminatory access to operations support systems because it failed to provide data either for its delivery of FOC notices to competing carriers or for its provision of equivalent information to its retail operations.⁴¹² BellSouth sends a FOC notice to inform a competing carrier that its order has been processed by BellSouth's internal operations support systems and to provide the actual due date for installation of service.⁴¹³ We stated that in any future application, we expected BellSouth to submit data to enable a comparison of BellSouth's delivery of FOC notices to competing carriers with its provision of equivalent information to its retail operations, including data for orders that are manually processed.⁴¹⁴

121. In its application, BellSouth submits performance data showing FOC timeliness, disaggregated by: (1) fully mechanized orders (*i.e.*, orders that flow through); (2) partially mechanized orders that are submitted electronically but require some manual processing; and (3) manually submitted and processed orders.⁴¹⁵ After further consultation, BellSouth submits data

⁴⁰⁹ See *supra* note 405; AT&T Bradbury Aff. at para. 188 n.87.

⁴¹⁰ See *supra* para. 118; BellSouth Stacy OSS Aff., Ex. WNS-42 (Affidavit of John Shivanandan) at paras. 18-22; AT&T Bradbury Aff. at para. 189.

⁴¹¹ See *Ameritech Michigan Order*, 12 FCC Rcd at 20642; *BellSouth South Carolina Order*, 13 FCC Rcd at 606; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6267.

⁴¹² *BellSouth South Carolina Order*, 13 FCC Rcd at 608. In the *Ameritech Michigan Order*, the Commission explicitly requested that a BOC provide such information. *Ameritech Michigan Order*, 12 FCC Rcd at 20643.

⁴¹³ *Ameritech Michigan Order*, 12 FCC Rcd at 20642; *BellSouth South Carolina Order*, 13 FCC Rcd at 606; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6267.

⁴¹⁴ *BellSouth South Carolina Order*, 13 FCC Rcd at 610; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6269.

⁴¹⁵ BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Firm Order Confirmation Timeliness.)

that allow us to calculate an overall FOC timeliness figure for mechanized orders.⁴¹⁶

122. Although we applaud BellSouth's efforts to address the problems that we previously identified, we agree with the Department of Justice that BellSouth's FOC performance continues to be deficient.⁴¹⁷ For the month of May 1998, for electronically submitted orders for resale residential services, on average in Louisiana, BellSouth returned a FOC notice over 18 hours after it received a valid service order, and over 21 percent of such notices were returned beyond a 24-hour interval.⁴¹⁸ The corresponding region-wide figures are 13 hours and over 13 percent.⁴¹⁹ For April and March 1998, BellSouth's FOC performance data are similar to its May figures.⁴²⁰

123. BellSouth again provides no data concerning its provision of equivalent information to its retail operations.⁴²¹ We stated in the *BellSouth South Carolina Order* that "the retail analogue of a FOC notice occurs when an order placed by the BOC's retail operations is recognized as valid by its internal OSS."⁴²² Yet BellSouth fails to provide any data in this regard. As we have done in two previous orders, we reject the argument that a BOC does not have a corresponding FOC notice for its retail operations.⁴²³ We reiterate that, one way for a BOC to

⁴¹⁶ Letter from Kathleen B. Levitz, Vice President - Federal Regulatory, BellSouth, to Carol Mattey, Chief, Policy and Program Planning Division, FCC (filed Aug. 19, 1998) (BellSouth Aug. 19 *Ex Parte*).

⁴¹⁷ Department of Justice Evaluation at 31-32; *see* AT&T Comments at 33; AT&T Bradbury Aff. at paras. 252-254; AT&T Pfau-Dailey Aff. at paras. 31-33; CompTel Comments at 6-7; KMC Comments at 11-12; AT&T Reply at 20; Intermedia Reply at 5.

⁴¹⁸ We calculated these figures using data supplied by BellSouth *ex parte*. *See* BellSouth Aug. 19 *Ex Parte*.

⁴¹⁹ *Id.*

⁴²⁰ For April and March 1998, for electronically submitted orders for resale residential services, on average in Louisiana, BellSouth returned a FOC notice more than 19 hours after it received a valid service order. For April 1998, over 24 percent of such notices were returned beyond a 24-hour interval, and for March 1998, this figure is over 27 percent. The region-wide corresponding figures for April 1998 are more than 13 hours and over 15 percent; and for March 1998, these figures are more than 11 hours and over 13 percent. *See* BellSouth Aug. 19 *Ex Parte*.

⁴²¹ *See* Department of Justice Evaluation at 28 n.53; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6268-69; CompTel Comments at 10-11; e.spire Comments at 34; Intermedia Comments at 13.

⁴²² *BellSouth South Carolina Order*, 13 FCC Rcd at 606 (*citing Ameritech Michigan Order*, 12 FCC Rcd at 20643 n.479).

⁴²³ *See BellSouth South Carolina Order*, 13 FCC Rcd at 608; *Ameritech Michigan Order*, 12 FCC Rcd at 20643 n.479 ("Evidence in the record suggests that the appropriate retail analogue for a FOC would be the time

demonstrate that it meets the nondiscriminatory standard is to provide data on the timing of its provision of FOC notices to competing carriers and data on the time it takes its retail operation to receive the equivalent of a FOC notice.⁴²⁴ Because BellSouth has failed to provide data comparing its delivery of FOC notices to competing carriers with how long it takes BellSouth's retail operations to receive the equivalent of a FOC notice for its own orders, BellSouth has not provided sufficient evidence to demonstrate that it is providing nondiscriminatory access.⁴²⁵

124. Average Installation Interval. In the *BellSouth South Carolina Order*, we concluded that in any future application, we expected BellSouth to provide performance data showing the average interval from when BellSouth first receives an order from a competing carrier to when BellSouth provisions the service requested in that order (average installation interval).⁴²⁶ In order to permit direct comparisons with BellSouth's retail performance, we also asked BellSouth to provide analogous data for its retail operations.⁴²⁷

125. These data are fundamental to a BOC's demonstration of nondiscriminatory access. As the Commission stated in the *Ameritech Michigan Order*, "[w]ithout data on average installation intervals comparing [the BOC's] retail performance with the performance provided to competing carriers, the Commission is unable to conclude that [the BOC] is providing nondiscriminatory access to OSS functions for the ordering and provisioning of resale."⁴²⁸ We also believe that nondiscriminatory access means that a BOC must provide services to competing carriers in substantially the same time that it provides analogous retail services.⁴²⁹ This is important because "it is likely, in a competitive marketplace, that customer decisions increasingly

that elapses between when [a BOC's retail] order is placed into the legacy systems and when the order is recognized as a valid order by the legacy systems. We believe that the BOC performs the functional equivalent of a 'FOC' for itself even if it does not do so in an identical manner."); AT&T Comments at 49; AT&T Pfau-Dailey Aff. at para. 33; CompTel Comments at 11; e.spire Comments at 34.

⁴²⁴ See AT&T Comments at 48-49; AT&T Pfau-Dailey Aff. at para. 33; CompTel Comments at 11; e.spire Comments at 34; Intermedia Comments at 13; MCI Comments at 55; MCI Green Aff. at para. 115.

⁴²⁵ See *BellSouth South Carolina Order*, 13 FCC Rcd at 608; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6269.

⁴²⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 611; see *First BellSouth Louisiana Order*, 13 FCC Rcd at 6273; *Ameritech Michigan Order*, 12 FCC Rcd at 20630-34.

⁴²⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 611; see *Ameritech Michigan Order*, 12 FCC Rcd at 20631, 20633; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6273.

⁴²⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20632.

⁴²⁹ *Id.* at 20631.

will be influenced by which carrier is able to offer them service most swiftly.⁴³⁰

126. We commend BellSouth for providing average installation interval data in its application. BellSouth states that it measures the average installation interval "from [BellSouth's] receipt of a syntactically correct order from the [competing carrier] to [BellSouth's] actual order completion date."⁴³¹ BellSouth's measurement is similar to the measurement we proposed in the *Performance Measurements NPRM*.⁴³² As the Department of Justice points out, however, the data show that there is a significant disparity between the average installation intervals for competing carriers and for BellSouth's own retail operations.⁴³³ For resale residential service orders that do not require dispatch of a service technician, for instance, BellSouth's region-wide May 1998 average installation interval for competing carriers is 1.79 days, and for itself, 0.89 days.⁴³⁴ Corresponding figures for April 1998 are 1.63 days for competing carriers and 0.80 days for BellSouth, and for March 1998, 2.06 for competitors and 0.82 days for itself.⁴³⁵ These data consistently support a general conclusion that BellSouth provides service to competing carriers' customers in twice the amount of time that it provides service to its retail customers.⁴³⁶ This is not equivalent access.

127. BellSouth provides other performance measurements that are designed to capture more fully the total amount of time that BellSouth takes to provide service, from the perspective of a competing carrier and that of its customer. Three of BellSouth's performance measurements, when added together, measure the total interval of time between BellSouth's receipt of a valid service order and its issuance of a notice to the competing carrier that service has been installed:

⁴³⁰ *Id.* at 20632.

⁴³¹ BellSouth Stacy Perf. Meas. Aff., Ex. WNS-1, Service Quality Measurements Regional Performance Reports, at 9. BellSouth terms its average installation interval measurement the "Average Completion Interval." *Id.*

⁴³² See *Performance Measurements NPRM*, 13 FCC Rcd at 12842 n.74.

⁴³³ Department of Justice Evaluation at 32-33.

⁴³⁴ Department of Justice Evaluation at 33; BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Order Completion Interval Distribution & Average Interval (No Dispatch)); see AT&T Pfau-Dailey Aff. at paras. 78-80.

⁴³⁵ BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Order Completion Interval Distribution & Average Interval (No Dispatch)).

⁴³⁶ AT&T Pfau-Dailey Aff. at paras. 78-79.

(1) FOC interval; (2) Average Installation Interval; and (3) Completion Notice Interval.⁴³⁷ From the customer's perspective, a service is provided when it is installed for the customer's use.⁴³⁸ Thus, we obtain a more complete representation of BellSouth's provision of service to a competing carrier's customer by adding the first two measurements. A competing carrier, on the other hand, needs to know when it should begin billing the customer for the service.⁴³⁹ From the competing carrier's perspective, therefore, we obtain a more complete representation of BellSouth's provision of service by adding all three measurements.

128. BellSouth does not provide analogous data on its retail operations for measurements (1) and (3), however, for purposes of comparison.⁴⁴⁰ We believe that these analogous time periods are negligible for BellSouth's retail operations. As a result, we expect that the disparity in BellSouth's provision of service, from the perspective of a competing carrier and that of its customer, may be significantly greater than suggested by the comparison set forth above of measurement (2), the Average Installation Interval data.⁴⁴¹ We noted above that the average interval for returning a FOC is over 18 hours and over 21 percent of FOCs are returned in excess of 24 hours.⁴⁴²

⁴³⁷ See BellSouth Stacy Perf. Meas. Aff., Ex. WNS-1. BellSouth's FOC interval begins when BellSouth receives a valid service order and ends when that order is processed by its Service Order Control System, or SOCs. The Average Completion Interval begins when the FOC interval ends, *i.e.*, when a valid service order clears the SOCS, and ends when service is installed. *See id.* The Completion Notice Interval begins when the Average Completion Interval ends, *i.e.*, service installation is completed, and ends when BellSouth issues a completion notice to the competing carrier. *See id.* Although these measurements cover many of the stages involved in providing service to a customer, they do not capture directly the amount of time consumed by any order rejections by BellSouth's systems that occur during the interval between the competing carrier's submission of an LSR and receipt of that LSR as a valid service order by BellSouth. BellSouth's performance measurements include other measurements that provide useful data on this interval, but do not measure it directly because these measurements do not capture the amount of time taken by a competing carrier to correct the error and resubmit the LSR to BellSouth. These measurements are helpful in assessing the impact of order rejections on whether the competing carrier is able to provide service to a customer in substantially the same amount of time as BellSouth: (1) Percent Rejected Service Requests ("Mechanized LSR w/No Errors" column); (2) Percent Flow Through Service Requests ("Auto Clarify" column); and (3) Reject Distribution Interval and Average Interval ("Mechanized LSR w/No Errors" column).

⁴³⁸ See Department of Justice Evaluation at 33-34.

⁴³⁹ See *id.* at 34.

⁴⁴⁰ See BellSouth Stacy Perf. Meas. Aff., Ex. WNS-1.

⁴⁴¹ See *supra* para. 126.

⁴⁴² BellSouth does not provide average completion notice intervals, as noted below.

129. Completion Notices. In the *BellSouth South Carolina Order*, we directed BellSouth to provide data showing the average interval from when BellSouth first receives an order to when BellSouth sends an order completion notice to the competing carrier ("average completion interval").⁴⁴³ We believe that the "average installation interval" and the "average completion interval" should not differ significantly. As stated in the *BellSouth South Carolina Order*, "[t]here should not be a material difference in time between the actual installation of service and the competing carrier's receipt of an order completion notice."⁴⁴⁴

130. We agree with the Department of Justice that BellSouth's performance for the provision of completion notices to competing carriers cannot be assessed at this time.⁴⁴⁵ BellSouth provides no data showing the "average completion interval," but states that it is currently developing a performance measure for "average completion notice interval."⁴⁴⁶ We explained in the *BellSouth South Carolina Order* that "the receipt of order status notices, including order completion notices, is critical to a competing carrier's ability to monitor orders for resale service both for its own records and in order to provide information to end user customers."⁴⁴⁷ We agree with AT&T that, "[u]ntil the [competing carrier] receives a service order completion notice, it does not know that the customer is in service, and it is unable to begin billing the customer for service or to address maintenance problems experienced by the customer."⁴⁴⁸ In any future application, we expect BellSouth to show that it provides competing carriers with order completion notices in a timely and accurate manner.

131. Order Jeopardy Notices. After a competing carrier has received a FOC notice with a committed due date for installation of a customer's service, it is critical that the BOC provide the competing carrier with a timely jeopardy notice if the BOC, for any reason, can no longer meet

⁴⁴³ *BellSouth South Carolina Order*, 13 FCC Rcd at 615.

⁴⁴⁴ *Id.*

⁴⁴⁵ Department of Justice Evaluation at 34.

⁴⁴⁶ BellSouth's proposed "average completion notice interval" measurement would measure the interval beginning at time of installation of service and ending at time of sending completion notice to customer. In other words, it measures the difference between "average installation interval" and the "average completion interval." As we noted above, these two measures should not differ significantly. *See supra* para. 87.

⁴⁴⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 615; *see generally* AT&T Comments at 48; MCI Comments at 55; MCI Green Aff. at para. 115.

⁴⁴⁸ AT&T Pfau-Dailey Aff. at para. 22; *see* Department of Justice Evaluation at 33-34; AT&T Reply at 21.

that due date.⁴⁴⁹ We found in the *BellSouth South Carolina Order* that BellSouth failed to meet the nondiscriminatory standard for OSS functions because it provided no service jeopardies (*i.e.*, jeopardy notices for delays caused by BellSouth) to competing carriers.⁴⁵⁰

132. In its application, BellSouth states that it has implemented a process for returning service jeopardies.⁴⁵¹ In this process, reports are run in the SOCS database to produce lists of service jeopardies that are printed both in the BellSouth retail centers and, at the same time, in the Local Carrier Service Center (LCSC).⁴⁵² For BellSouth retail, the representative may then call its customer directly with the jeopardy information.⁴⁵³ For competing carriers, the BellSouth LCSC representative provides the jeopardy information to the competing carrier by facsimile or, if it is near the time of installation, by telephone.⁴⁵⁴ The competing carrier may then call its customer with the jeopardy information.⁴⁵⁵

133. We are pleased with BellSouth's progress in providing competing carriers with service jeopardy notification, but the data are insufficient to enable us to determine whether BellSouth is providing such notification in a nondiscriminatory manner.⁴⁵⁶ BellSouth submits performance data on its provision of jeopardy notices to competing carriers for only a limited

⁴⁴⁹ *First BellSouth Louisiana Order*, 13 FCC Rcd at 6269; *see BellSouth South Carolina Order*, 13 FCC Rcd at 615.

⁴⁵⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 611; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6269-70. We noted that BellSouth's manual provision of customer- or carrier-caused jeopardies (*i.e.*, jeopardy notices for delays caused by the competing carrier or its customer) also did not meet the nondiscriminatory standard because BellSouth provides equivalent notification to itself electronically. *BellSouth South Carolina Order*, 13 FCC Rcd at 611 n.392. *See Ameritech Michigan Order*, 12 FCC Rcd at 20617 ("[f]or those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers").

⁴⁵¹ BellSouth Stacy OSS Aff. at para. 149. BellSouth states that electronic service jeopardy notification is available for competing carriers using LENS in addition to this manual process. *Id.* In addition, for customer- or carrier-caused jeopardies, BellSouth states that it provides electronic jeopardy notification for LENS and EDI orders. *Id.* at 150.

⁴⁵² BellSouth Stacy OSS Aff. at para. 149.

⁴⁵³ *Id.*

⁴⁵⁴ BellSouth Stacy OSS Aff. at para. 149.

⁴⁵⁵ *Id.*

⁴⁵⁶ *But see AT&T Comments at 43; AT&T Bradbury Aff. at paras. 190-95.*

period, the month of May 1998.⁴⁵⁷ We will examine any future application closely for sufficient, reliable data to determine whether BellSouth provides jeopardy notices to competing carriers in a timely and accurate manner.

(iii) Ordering Functionality for UNEs

134. Background. As stated in the *Ameritech Michigan Order*, a BOC must demonstrate that it provides competing carriers with access to OSS functions for resale and access to unbundled network elements.⁴⁵⁸ A BOC therefore cannot obtain section 271 entry until it shows that its OSS functions for use of unbundled network elements, as well as for resale, comply with the nondiscrimination requirements.⁴⁵⁹ As part of the nondiscrimination requirement for ordering and provisioning of unbundled network elements that have no retail analogue, a BOC must demonstrate that it offers access "sufficient to provide an efficient competitor a meaningful opportunity to compete."⁴⁶⁰ Previously, the Commission has stated that, in examining whether a BOC is meeting this requirement, it would consider whether specific performance standards exist for those functions.⁴⁶¹ The Commission further stated that performance standards established by state commissions would be more persuasive than a standard unilaterally imposed by the BOC.

135. In the *BellSouth South Carolina Order*, we identified a number of concerns relating to BellSouth's OSS functions for ordering and provisioning of unbundled network elements.⁴⁶² In particular, we were concerned with BellSouth's reliance on manual processing of UNE orders and BellSouth's OSS for ordering and provisioning of UNE combinations.⁴⁶³ We made it clear that BellSouth should address these issues in any future application, even though such issues did not form the basis of our decision in the *BellSouth South Carolina Order*.⁴⁶⁴

⁴⁵⁷ See BellSouth Stacy Perf. Meas. Aff., Ex. WNS-3 (Report: Jeopardy Interval & Percent Jeopardy).

⁴⁵⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20615.

⁴⁵⁹ *Id.*; see also *BellSouth South Carolina Order*, 13 FCC Rcd at 585-87.

⁴⁶⁰ *Ameritech Michigan Order*, 12 FCC Rcd at 20619-20; see also *BellSouth South Carolina Order*, 13 FCC Rcd at 615-18.

⁴⁶¹ *Ameritech Michigan*, 12 FCC Rcd at 20619-20.

⁴⁶² *BellSouth South Carolina Order*, 13 FCC Rcd at 615-618.

⁴⁶³ *Id.* at 617-18.

⁴⁶⁴ *Id.*

136. Access to OSS Functionality for UNEs. Although BellSouth has improved its ordering systems for UNEs, we do not believe that it has made a *prima facie* case that its current OSS for ordering UNEs is nondiscriminatory. In its application, BellSouth states that its EDI interface now supports fully mechanized ordering of four network elements, including flow-through capability and return of FOCs and completion notices, and, since implementation of EDI version 7.0 in March 1998, complies with industry standards.⁴⁶⁵ The EDI version 7.0 interface allows competing LECs to order four UNEs on a mechanized basis: (1) unbundled loops; (2) unbundled ports; (3) interim number portability; and (4) loop plus interim number portability.⁴⁶⁶ BellSouth's EDI version 7.0 also provides firm order confirmations and completion notices on a mechanized basis for ordering of these UNEs.⁴⁶⁷ BellSouth also states that directory listings can be ordered electronically using EDI. In addition, BellSouth offers the Exchange Access Control and Tracking ("EXACT") interface.⁴⁶⁸ BellSouth's EXACT interface allows competitive LECs the ability to order "infrastructure elements, such as trunking" and is the same interface used by interexchange carriers to order exchange access.⁴⁶⁹

137. We commend BellSouth for its continuing efforts to improve the efficiency of its systems. We believe that the additional ordering functionalities BellSouth has implemented represent significant and important progress in its UNE ordering and provisioning capability. We find, however, that BellSouth fails to demonstrate that its OSS for ordering UNEs meets the nondiscriminatory requirement as discussed below. We also commend BellSouth for implementing industry standards for ordering of UNEs. We recognize the multiple benefits of using industry standards for OSS such as providing nationally-based competing carriers with the ability to have a single interface throughout their service territory, rather than have multiple interfaces unique to a particular BOC.⁴⁷⁰ We reiterate, however, that compliance with industry standards may not meet the statutory requirement of providing nondiscriminatory access to OSS functions.⁴⁷¹ Likewise, compliance with industry standards is not a requirement of providing

⁴⁶⁵ BellSouth Stacy OSS Aff. at 52, 64-65, Ex. WNS-30 at 2.

⁴⁶⁶ BellSouth Application at 25.

⁴⁶⁷ *Id.* at 26.

⁴⁶⁸ See BellSouth Stacy OSS Aff. at 50.

⁴⁶⁹ BellSouth Stacy OSS Aff. at 56. *See also* BellSouth Stacy Exhibit WNS-30 for a complete listing of UNEs available through EXACT (e.g., 800 data base, line information database, and interconnection trunking).

⁴⁷⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 624.

⁴⁷¹ *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19738, 19744-45; *see also BellSouth South Carolina Order*, 13 FCC Rcd at 606.

nondiscriminatory access to OSS functions, especially in situations where there is no industry standard (*e.g.*, pre-ordering). In other words, a BOC must provide nondiscriminatory access to its OSS functions irrespective of the existence of, or whether it complies with, industry standards.

138. Manual Intervention As discussed above, BellSouth fails to demonstrate that it provides nondiscriminatory access to the ordering functionality over the EDI version 7.0 interface for resale. For the same reason, we find that BellSouth fails to demonstrate that it processes orders for UNEs in a nondiscriminatory manner. In particular, BellSouth does not disaggregate competing LECs' flow-through orders for UNEs placed over the EDI interface.⁴⁷² This level of disaggregation is necessary to evaluate whether BellSouth can process UNE orders placed over the EDI interface. In future applications, we expect BellSouth to address the degree of manual intervention for UNE orders and whether BellSouth's ordering interface for UNEs meets the nondiscriminatory requirement.

139. In addition, we conclude that BellSouth has not adequately supported its claim that its EDI interface has sufficient capacity to meet reasonably foreseeable demand.⁴⁷³ In support of that claim, BellSouth states that the EDI interface has undergone internal testing, which incorporated recommendations by IBM,⁴⁷⁴ and carrier to carrier testing.⁴⁷⁵ BellSouth also states that it did not perform any internal testing of the EXACT interface because of the existence of actual commercial usage by interexchange carriers. It is unclear to what extent BellSouth's internal testing and carrier-to-carrier testing of EDI was for ordering resale services versus UNEs.⁴⁷⁶

140. BellSouth's internal testing results do not address whether the ordering functionality for UNEs is nondiscriminatory. In particular, BellSouth fails to provide any end to

⁴⁷² *BellSouth South Carolina Order*, 13 FCC Rcd at 616-17 (concluding "[w]e are also concerned about the level of manual processing involved in the ordering and provisioning of unbundled network elements").

⁴⁷³ BellSouth Stacy Aff. at 99.

⁴⁷⁴ *Id.* at 99-100. IBM reported in May 1997, "The test approach is in the construction phase. With the anticipated refinements, it appears adequate. The data gathering, data points, and report layouts are in the design phase and appear acceptable. Given the schedule constraints, alternative tools are not recommended at this time."

⁴⁷⁵ *Id.* at 102.

⁴⁷⁶ See BellSouth Stacy Aff., Ex. WNS-33. BellSouth conducted end-to-end testing with MCI from September 9, 1997 to December, 11, 1997, for error-free purchase orders or local service, mechanized firm order completion notices, and mechanized completion notices. It is unclear from this document whether the test included resale orders, UNE orders, or whether the test was successful.

end testing of its interfaces for UNEs.⁴⁷⁷ Given the low volume of actual commercial usage, it is crucial to have testing results that provide reliable and predictable results of how BellSouth's systems would respond to actual commercial usage. In the absence of evidence of either adequate testing or commercial usage, we cannot conclude that BellSouth has demonstrated that its OSS for ordering UNEs is in compliance with our rules.

141. UNE Combinations. We agree with the Department of Justice that it is critical that competitive LECs have the ability to enter the local exchange market through the use of combinations of UNEs.⁴⁷⁸ A number of parties comment that BellSouth does not accept orders for combinations of UNEs even when the competitive LEC asks to perform the combining.⁴⁷⁹ We remain concerned that BellSouth does not provide competitive LECs the ability to order combinations of UNEs where the competitive LEC performs the combining. Based on this record, it is unclear whether competitive LECs can order and designate the specific elements they wish to combine. In future applications, we expect BellSouth to explain clearly the method by which competitive carriers can order UNEs that the competitive LECs plan to combine at cost-based rates under section 252(d)(1).

142. Other UNE Ordering Issues. We find that BellSouth fails to demonstrate that the ordering process it offers to competitive LECs for interim number portability, complex directory listings, and split accounts meets the nondiscriminatory requirement. A number of commenters argue that BellSouth has failed to provide nondiscriminatory access to the ordering function for UNEs. For example, AT&T claims that BellSouth has impeded its ability to enter the local exchange market.⁴⁸⁰ AT&T claims that BellSouth has impeded its entry through AT&T's Digital Link ("ADL") by failing to provide a means for ordering effectively split accounts, complex directory listings, and interim number portability. Commenters assert, and BellSouth does not dispute, that orders for UNE "split accounts" (*i.e.*, orders that switch some, but not all, of a

⁴⁷⁷ See Department of Justice Evaluation at 36.

⁴⁷⁸ *Id.* at 9.

⁴⁷⁹ See, e.g., AT&T Initial Comments at 64; MCI Initial Comments at 51; MCI Green Aff. at para. 156. BellSouth states that except for Kentucky, it will not process UNE combination orders at cost-based rates pursuant to the Eighth Circuit's ruling. See BellSouth Stacy Aff. at 57-58.

⁴⁸⁰ ADL service is provided by AT&T's existing toll switches and dedicated trunks connected to a PBX at an end user's premise. In order to complete local calls to BellSouth customers, ADL service requires interconnection trunks between its toll switch and BellSouth's switch. ADL also requires the use of dedicated transport, interim number portability, and complex directory listings. See AT&T Hassebrock Aff. at paras. 11-13.

customer's lines to a competing carrier) must be ordered manually.⁴⁸¹

143. AT&T states that it currently must fax orders for "split accounts" and that this "substantially hinders AT&T's market entry" for ADL service.⁴⁸² MCI estimates that "split accounts" could amount to more than 50 percent of its orders when it begins ordering UNEs via EDI.⁴⁸³ BellSouth responds to AT&T's complaints regarding ADL by stating that it has provided business rules to allow AT&T to order manually "subsequent partial migrations" beginning on July 17, 1998.⁴⁸⁴ In light of the evidence of substantial demand for UNE "split accounts," we question BellSouth's ability to process anticipated volumes of such orders given its reliance on manual processing.

144. We expect that, in any future application, BellSouth will demonstrate that the ordering process it offers to competitive LECs meets the nondiscriminatory requirement. In particular, BellSouth should provide evidence that it offers ordering functionality for UNEs, including complex directory listings, split accounts, and number portability, that provides an efficient competitor a meaningful opportunity to compete based on reasonably foreseeable demand.

(c) Maintenance and Repair

(i) Background

145. In addition to providing nondiscriminatory access to OSS capabilities for pre-ordering, ordering, and provisioning, BellSouth is obligated to provide competing carriers with nondiscriminatory access to its repair and maintenance systems.⁴⁸⁵ BellSouth must furnish competitors with equivalent access to all repair and maintenance OSS functions that BellSouth provides to itself.⁴⁸⁶ BellSouth must provide this access in a way that permits its competitors to

⁴⁸¹ "Split account" orders are also referred to as "partial migrations" or "subsequent partial migrations." See e.g., AT&T Hassebrock Aff. at para. 22.

⁴⁸² See AT&T Hassebrock Aff. at para. 47.

⁴⁸³ MCI Comments at 50; MCI Green Aff. at para. 152. In its comments, MCI claims that it expects to begin ordering UNEs through EDI in September 1998.

⁴⁸⁴ BellSouth Stacy Reply Aff. at 24.

⁴⁸⁵ See 47 CFR § 51.319(e)(3)(v)(f)(1).

⁴⁸⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

perform such OSS functions "in substantially the same time and manner" as BellSouth.⁴⁸⁷ These systems are necessary for competitive LECs to access network information and diagnostic tools that allow them to assist customers who experience service disruptions. Competitive LECs who offer service via resale or unbundled components of BellSouth's network must have access to BellSouth's repair and maintenance systems in order to diagnose and solve customer trouble complaints.⁴⁸⁸ Because problems with BellSouth's network appear to competitive LEC customers as problems with the competitive LEC's network, a competitive LEC's inability to access and utilize BellSouth's maintenance and repair functions would have a severe anticompetitive effect.⁴⁸⁹

(ii) Discussion

146. We conclude that BellSouth has failed to demonstrate that it provides nondiscriminatory access to repair and maintenance OSS functions. BellSouth contends that it offers three different interfaces in order for competitors to access its repair and maintenance systems. The repair and maintenance OSS functions used by competing carriers to access BellSouth's systems are analogous to those functions used by BellSouth itself in its retail operations. BellSouth is thus obligated to provide competing carriers with access "equivalent to the access [BellSouth] provides itself."⁴⁹⁰ Because BellSouth itself accesses repair and maintenance functions electronically, it is required to provide competitors with electronic access as well.⁴⁹¹ The electronic access provided by BellSouth must allow competing carriers to perform repair and maintenance OSS functions in "substantially the same time and manner" as BellSouth performs such functions for its own customers.⁴⁹²

⁴⁸⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64.

⁴⁸⁸ *Id.* at 15764 ("nondiscriminatory access to these support system functions . . . is vital to creating opportunities for meaningful competition").

⁴⁸⁹ See Department of Justice Evaluation at 34. The Department of Justice determined that BellSouth did not, at the time of its application, provide nondiscriminatory access to its repair and maintenance OSS functions. In particular, the Department focused on BellSouth's performance measurements, noting that competitive LEC resold business orders requiring trouble dispatches took over 40 percent more time to complete than BellSouth's own retail business orders. *Id.* The Department also noted that competitive LEC repeat maintenance reports, which it termed "a key indicator of maintenance process reliability," were "significantly worse than for BellSouth's retail business." *Id.* at 35.

⁴⁹⁰ *BellSouth South Carolina 271 Order*, 13 FCC Rcd at 593-94; *Ameritech Michigan 271 Order*, 12 FCC Rcd at 20618-19.

⁴⁹¹ *BellSouth South Carolina 271 Order*, 13 FCC Rcd at 593-94.

⁴⁹² *Id.*

147. BellSouth has submitted performance measurements as evidence that it gives competitive LECs nondiscriminatory access to its repair and maintenance systems. These measures do not, however, provide information on which of the three different repair and maintenance interfaces offered by BellSouth are reflected in the measurements.⁴⁹³ For example, BellSouth contends that thirty competitive LECs have used the Trouble Analysis and Facilitation Interface (TAFI), but it does not indicate which performance measures establish that competitors are able to use TAFI to gain nondiscriminatory access to BellSouth's repair and maintenance systems.⁴⁹⁴ Moreover, we do not rely solely on the lack of adequate performance measures to conclude that BellSouth fails to provide nondiscriminatory access to its repair and maintenance OSS functions. Rather, we are concerned that those performance measurements that BellSouth does provide show "indications of poor performance" by those systems, suggesting that competitors may not be gaining nondiscriminatory access.⁴⁹⁵ For example, competitive LEC resold business orders requiring dispatch of repair crews took nearly 40 percent more time to complete than BellSouth's own retail business orders.⁴⁹⁶ Because timely repair of a business's telephone lines can be crucial to the ability of that business to operate, we consider the timely resolution of competitive LEC business customer trouble reports to be extremely important. This measurement indicates that BellSouth is responding to its own customers' trouble complaints more efficiently than it responds to complaints of competitors' customers.⁴⁹⁷ In addition, competitive LEC business customers had repeat trouble reports as much as 97 percent more often than BellSouth's own business customers in the case of resold business lines.⁴⁹⁸ This measure indicates that BellSouth is providing inferior maintenance support in the initial resolution of trouble reports.⁴⁹⁹

148. BellSouth contends that it makes several different repair and maintenance interfaces available to permit competitive LECs to interact with BellSouth's own system.

⁴⁹³ BellSouth Stacy Perf. Meas. Aff. Ex. WNS-3. For example, BellSouth provides no information on Louisiana competitive LEC customer out-of-service durations for trunks, unbundled loops, UNE non-design, and resale and UNE design services. *Id.* BellSouth also fails to provide information on repeat trouble reports for trunks and UNE design services. *Id.*

⁴⁹⁴ BellSouth Stacy Aff. at para. 163.

⁴⁹⁵ Department of Justice Evaluation at 35.

⁴⁹⁶ Department of Justice Evaluation at 34; BellSouth Stacy Perf. Meas. Aff. Ex. WNS-3.

⁴⁹⁷ See *Performance Measurements NPRM* at para. 82.

⁴⁹⁸ Department of Justice Comments at 34; BellSouth Stacy Perf. Meas. Aff. Ex. WNS-3.

⁴⁹⁹ See *Performance Measurements NPRM* at para. 84.

BellSouth has not, however, satisfied its obligation to provide OSS access on a nondiscriminatory basis, *i.e.*, in a manner that permits competitive LECs to provide service to their customers at a level that matches the quality of service provided by BellSouth to its own customers.⁵⁰⁰ As we discuss below, none of BellSouth's repair and maintenance interfaces provide competitors with OSS functionalities equivalent to BellSouth's own capabilities.

149. TAFI. First, BellSouth provides competitors with access to its Trouble Analysis Facilitation Interface, or TAFI. TAFI, the system used by BellSouth's own retail representatives for business and residential repair and maintenance, is the most widely used by competing carriers.⁵⁰¹ BellSouth contends that competitive LECs using TAFI are able to enter trouble reports, obtain repair commitment times, and check on the status of previously entered reports "in the same way BellSouth retail service representatives do."⁵⁰² We conclude that TAFI does not provide nondiscriminatory access because it cannot be used for all types of services. Commenters also contend that TAFI is discriminatory because it does not offer competitors the ability to integrate their own back office systems with the TAFI system. TAFI is not an industry standard interface, but rather a BellSouth proprietary interface.⁵⁰³

150. BellSouth has not provided evidence that its TAFI interface permits competitors to process customer repair and maintenance complaints for all types of services. For example, AT&T contends that TAFI can process only UNEs that have telephone numbers assigned to them, such as ports. TAFI can also process repair and maintenance requests for POTS resale.⁵⁰⁴ All other types of repair and maintenance inquiries, for unbundled loops for example, simply drop out of the system.⁵⁰⁵ MCI similarly contends that TAFI cannot be used for unbundled loops, switching, transport, or dark fiber.⁵⁰⁶ BellSouth itself has no such limitation on the types of its services its TAFI system can process.⁵⁰⁷ The effect of the limitation BellSouth places on its TAFI

⁵⁰⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 593-94.

⁵⁰¹ BellSouth Application at 29.

⁵⁰² *Id.*

⁵⁰³ BellSouth Stacy Aff. at para. 159.

⁵⁰⁴ AT&T Bradbury Aff. at para. 225.

⁵⁰⁵ *Id.*

⁵⁰⁶ MCI Green Aff. at para. 170.

⁵⁰⁷ BellSouth does not counter these contentions, but rather argues that competitors could use a different interface for other types of services. BellSouth Stacy Reply Aff. at para. 70.

interface is to force competitors using TAFI to build a second interface to handle order types that TAFI is incapable of processing.⁵⁰⁸ Because TAFI does not provide new entrants with the ability to access BellSouth's repair and maintenance systems for all of the types of services that BellSouth is able to access itself, BellSouth's TAFI interface does not satisfy BellSouth's obligation to provide OSS parity to new entrants.

151. We also note that BellSouth concedes that it derives superior integration capabilities from TAFI than the capabilities offered to competitors. BellSouth states that TAFI is a "human to machine interface," meaning that new entrants using TAFI cannot integrate it with the entrant's own back office systems. As a practical matter, this requires competitors to take information from the TAFI system and manually re-enter it into their own computer system, and *vice versa*.⁵⁰⁹ Thus, an MCI customer service representative taking a report of a service outage from an MCI customer must complete a trouble ticket in MCI's own computer system, and then duplicate the effort by completing a second trouble ticket in the TAFI system for submission to BellSouth.⁵¹⁰ BellSouth, on the other hand, is able to take advantage of its own TAFI system's capability of "automatically interacting with other internal systems as appropriate" and its customer service representatives need not duplicate their efforts in the same way.⁵¹¹ In other words, TAFI is integrated with BellSouth's other back office systems.

152. We do not here conclude that TAFI's lack of integration *per se* fails to constitute nondiscriminatory access, although we do believe BellSouth would provide a more complete opportunity to compete if it offered competitive LECs an integrated system with the same functionalities available to BellSouth's own service representatives.⁵¹² BellSouth's application and supporting documents provide insufficient evidence that TAFI otherwise satisfies BellSouth's obligation to provide nondiscriminatory access to its repair and maintenance OSS functions. Because BellSouth fails to provide sufficient evidence that its TAFI interface gives competitors nondiscriminatory access to BellSouth's repair and maintenance capabilities, TAFI does not satisfy BellSouth's checklist obligations.⁵¹³

⁵⁰⁸ See MCI Green Aff. at para. 172.

⁵⁰⁹ See AT&T Bradbury Aff. at para. 226, MCI Green Aff. at 171.

⁵¹⁰ MCI Green Aff. at para. 171.

⁵¹¹ BellSouth Stacy Aff. at para. 161.

⁵¹² As discussed further below, Electronic Communication Trouble Administration (ECTA) is a machine-to-machine interface and can thus be integrated, but ECTA does not offer the same functions that BellSouth service representatives have with TAFI.

⁵¹³ 47 CFR § 51.319(e)(3)(v)(f)(1).

153. T1/M1 IXC Interface/EC-CPM. Second, BellSouth contends that it makes the same repair and maintenance interface used by interexchange carriers (IXC) available to competitive LECs. BellSouth's IXC trouble reporting system, the T1/M1 interface, is a machine-to-machine interface that delivers trouble tickets to BellSouth's Work Force Administration (WFA) system. This interface works only for "designed," *i.e.*, circuit ID-based, systems such as complex private line services and interconnection trunking.⁵¹⁴ BellSouth contends that competitive LECs can also use its Exchange Carrier-Common Presentation Manager (EC-CPM) for designed (*i.e.* circuit-ID based) resale services and UNEs.⁵¹⁵ BellSouth notes that no competitive LECs are using either of these interfaces.⁵¹⁶

154. We conclude that BellSouth's T1/M1 interface does not provide new entrants with nondiscriminatory access to BellSouth's OSS functions. We agree with AT&T that the T1/M1 interface, which was not designed for local service, and provides no flow through into BellSouth's legacy repair and maintenance systems, does not provide parity with the systems that BellSouth uses itself.⁵¹⁷ As such, any trouble reports for retail services will fall out for manual processing, because this interface can only handle access services.⁵¹⁸ Because the interface only works with designed services, new entrants using this interface would be relegated to phoning BellSouth to report trouble for a customer served by UNEs, whereas BellSouth would be able to use its legacy system for electronic processing of trouble reports from its own retail customers.⁵¹⁹

155. In addition, EC-CPM does not satisfy BellSouth's obligation to provide a nondiscriminatory repair and maintenance OSS interface. Although BellSouth contends that competitive LECs could use its EC-CPM interface for "designed resale and UNEs," it presents no evidence that this interface offers competitors the ability to access the same repair and maintenance functionalities as BellSouth provides itself.⁵²⁰ BellSouth has also failed to provide

⁵¹⁴ BellSouth Stacy Aff. at para. 173. Circuit-ID systems do not have telephone numbers assigned to them, and thus are identified by circuit rather than telephone number.

⁵¹⁵ *Id.* at para. 174.

⁵¹⁶ *Id.* at paras. 173-74.

⁵¹⁷ AT&T Bradbury Aff. at para. 222.

⁵¹⁸ *Id.*

⁵¹⁹ *See id.*

⁵²⁰ BellSouth Stacy Aff. at para. 174. The only evidence BellSouth offers is that EC-CPM "was made available to the [competitive] LEC community as of March 31, 1997." *Id.* BellSouth does not provide evidence that EC-CPM is a machine-to-machine interface, or whether it offers new entrants with the ability to interact with BellSouth's legacy systems.

any evidence of either commercial usage or the operational readiness of this interface, and thus has failed to demonstrate that EC-CPM provides nondiscriminatory OSS access.

156. ECTA. Third, BellSouth contends that its Electronic Communication Trouble Administration (ECTA) interface offers nondiscriminatory access to BellSouth's OSS system. ECTA is a T1/M1 standard machine-to-machine interface for local exchange trouble reporting and notification that supports both resale and UNEs.⁵²¹ BellSouth avers that ECTA supports both telephone number and circuit-identified resold services and UNEs.⁵²²

157. We conclude that ECTA as provided by BellSouth does not provide parity to competitors seeking to access BellSouth's repair and maintenance OSS functions. Although BellSouth correctly points out that ECTA is a T1/M1 industry-standard interface, BellSouth concedes that its own legacy TAFI system "is superior to the limited functionality supported by the industry standard for trouble reporting."⁵²³ Thus, for example, competitive LEC customer service representatives using the ECTA interface cannot correct as many service problems while on line with the customer as BellSouth's service representatives.⁵²⁴ In addition, despite TAFI's limitations described above, TAFI still permits customer service representatives to conduct a larger number of line tests than ECTA.⁵²⁵ The ability to correct trouble reports while on line with the customer is a crucial competitive advantage, as revealed by BellSouth's own figures which indicate that it corrects upwards of 85 percent of its own non-designed service trouble reports while its customer is still on the line.⁵²⁶ A new entrant that is unable to provide such instantaneous trouble resolution services to its customers cannot compete effectively with BellSouth which has the capability of resolving many trouble complaints while their customers are still on the line. As such, BellSouth has not satisfied its obligation to provide a nondiscriminatory OSS interface for repair and maintenance functions.

(d) Billing

158. BellSouth's OSS obligations also extend to the provision of nondiscriminatory

⁵²¹ *Id.* at para. 175; BellSouth Reply Brief at 39.

⁵²² BellSouth Stacy Aff. at para. 175.

⁵²³ *Id.* at para. 159.

⁵²⁴ See AT&T Bradbury Aff. at para. 223, n.102.

⁵²⁵ *Id.*

⁵²⁶ BellSouth Stacy Aff., Attachment WNS-52, pp. 59-60, 65-66.

access to billing functions.⁵²⁷ Without access to billing information, competitors will be unable to provide accurate and timely bills to their customers. BellSouth is obligated to provide competitors with complete and accurate reports on the service usage of competitors' customers in the same manner that BellSouth provides such information to itself.

159. In our discussion of unbundled local switching, we address deficiencies with BellSouth's billing processes as they relate to switch functionalities.⁵²⁸ In the context of billing interfaces, MCI contends that BellSouth does not provide daily usage information for all of MCI's customers. Specifically, MCI contends that BellSouth provides usage information only for MCI's measured-rate customers, *i.e.*, those customers who are billed based on actual minutes of usage.⁵²⁹ MCI contends that it needs information on its non-measured rate customers "so that MCI will know if a particular customer would be better off becoming a measured-rate customer and can advise the customer of this fact."⁵³⁰

160. We conclude that BellSouth has failed to provide sufficient evidence that it has complied with its obligation to provide competitors with nondiscriminatory access to billing information. We conclude, as MCI contends, that BellSouth is obligated to provide its competitors with access to the information on customer usage that competitors request and that is technically feasible to provide. BellSouth is currently not providing carriers with usage data for flat rate calls,⁵³¹ which prevents competitors from marketing and offering calling plans based on flat rate usage.⁵³² In addition, as discussed in further detail in our discussion of switching,⁵³³ BellSouth did not, at the time it filed this application, provide access usage data to competitors for exchange access, thus preventing competitors from billing IXCs for such services.⁵³⁴ Finally,

⁵²⁷ See 47 CFR § 51.319(e)(3)(v)(f)(1).

⁵²⁸ See *supra* section (VI)(C)(vi).

⁵²⁹ MCI Green Aff. at para. 177.

⁵³⁰ *Id.*

⁵³¹ AT&T notes that BellSouth provides such information to itself for two purposes: (1) verification of CLEC interconnection bills, and (2) facilitation of local number portability. AT&T Bradbury Aff. at para. 233.

⁵³² *Id.*

⁵³³ See *supra*, section (VI)(C)(vi).

⁵³⁴ Access usage data allows competitive LECs to bill customers, such as interexchange carriers, for access services. See AT&T Bradbury Aff. at para. 231; BellSouth Reply Brief at 40. BellSouth contends that it has been providing a daily Access Daily Usage File (ADUF) to AT&T since July 24, 1998, which is after BellSouth filed the instant application. BellSouth Reply Brief at 40.

BellSouth does not currently provide competitors with billing data for intrastate access services. Although BellSouth commits to provide such records by October 31, 1998, and to "work with [competitive] LECs to develop an alternative compensation process" in the meantime, BellSouth has not met its OSS obligations until such time as it provides these records to competitors.⁵³⁵ Competing carriers unable to provide their customers with complete and accurate bills for all services they offer because of BellSouth's failure to provide complete and accurate billing information are at a competitive disadvantage.

b. Combining Network Elements

(1) Background

161. As previously stated, item (ii) of the competitive checklist, requires that a section 271 applicant show that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."⁵³⁶ Section 251(c)(3) requires the incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . ."⁵³⁷ Section 251(c)(3) further provides that an incumbent LEC "shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."⁵³⁸

162. In the *Local Competition Order*, the Commission concluded that, except where technically infeasible, section 251(c)(3) requires incumbent LECs to provide new entrants with access to network elements in a manner that is "at least equal-in-quality to that which the incumbent LEC provides to itself."⁵³⁹ The Commission held that "any requesting carrier may choose any method of technically feasible . . . access to unbundled elements," including, but not limited to, physical or virtual collocation.⁵⁴⁰ The Commission also ruled that new entrants may

⁵³⁵ *Id.* at 40-41. Although BellSouth contends that "it does not currently bill terminating intrastate access associated with the toll calls it carries," BellSouth does not argue that it is not required to provide such data to competitors. *Id.* at 40.

⁵³⁶ 47 U.S.C. § 271(c)(2)(B)(ii).

⁵³⁷ 47 U.S.C. § 251(c)(3).

⁵³⁸ *Id.*

⁵³⁹ *Local Competition First Report and Order*, 11 FCC Rcd at 15658; see 47 C.F.R. §§ 51.311(b), 51.313(b).

⁵⁴⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15779; 47 C.F.R. § 51.321(b)(1).

provide telecommunications services wholly through the use of unbundled network elements purchased from incumbent LECs, without using any facilities of their own.⁵⁴¹ The Eighth Circuit upheld these holdings and rules.⁵⁴² The court vacated the Commission's rules requiring incumbent LECs to combine network elements for new entrants and barring incumbent LECs from separating network elements that were already combined in the incumbent LECs' networks.⁵⁴³ The court stated, however, that incumbent LECs must offer network elements in a nondiscriminatory manner that allows new entrants to combine them to provide a finished telecommunications service.⁵⁴⁴

163. In the *BellSouth South Carolina Order*, we held that, in order to satisfy item (ii) of the competitive checklist, BellSouth had to demonstrate that, as a legal and practical matter, it could make access to unbundled network elements available in a manner that allows competing carriers to combine them.⁵⁴⁵ The Commission found that BellSouth had failed to satisfy this standard because BellSouth's SGAT lacked definite terms and conditions for collocation -- the only method that BellSouth proposed for use by new entrants in combining unbundled network elements.⁵⁴⁶ The Commission further concluded that BellSouth had failed to demonstrate, through either actual commercial usage or testing, that it could deliver unbundled network elements in a timely fashion to new entrants' collocation space for the purpose of being combined, and that the provision of those elements would be at an acceptable level of quality.⁵⁴⁷ The Commission also was concerned that BellSouth had failed to provide sufficient information on whether it would provide virtual collocation in a manner that permits new entrants to combine unbundled network elements.⁵⁴⁸

(2) Discussion

164. Based on our review of the record, we conclude that BellSouth does not

⁵⁴¹ *Local Competition First Report and Order*, 11 FCC Rcd at 15666.

⁵⁴² *Iowa Utils. Bd.*, 120 F.3d at 813-17, 818 n.38, 819.

⁵⁴³ *Id.* at 813; *Iowa Utils. Bd. v. FCC, Rehearing Order*.

⁵⁴⁴ *Iowa Utils. Bd.*, 120 F.3d at 814; *Iowa Utils. Bd. v. FCC, Rehearing Order*.

⁵⁴⁵ *BellSouth South Carolina Order*, 13 FCC Rcd at 638-39.

⁵⁴⁶ *Id.* at 647-48.

⁵⁴⁷ *Id.* at 654.

⁵⁴⁸ *Id.* at 654-55.

demonstrate that, as a legal and practical matter, it can make access to unbundled network elements available in a manner that satisfies the requirements of section 251(c)(3), as incorporated in section 271.⁵⁴⁹ BellSouth fails to make a *prima facie* showing that it can provide nondiscriminatory access to unbundled network elements through the one method that it has identified for such access -- collocation. BellSouth's collocation offerings in Louisiana contain the same defects as the collocation arrangements that the Commission found deficient in the *BellSouth South Carolina Order*. In addition, we find that BellSouth can not limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements.

165. BellSouth contends that its physical and virtual collocation offerings satisfy the requirement for nondiscriminatory access to network elements, and that section 251(c)(3) does not require it to provide new entrants with any other method for combining elements.⁵⁵⁰ For the same reasons stated above in our discussion of BellSouth's collocation offering for the purpose of interconnection, we find that BellSouth has not met its burden of proving that its collocation offering satisfies the requirements of section 251(c)(3). Specifically, BellSouth's SGAT does not provide new entrants with the requisite definite, concrete, and binding terms and conditions for collocation.⁵⁵¹ In addition, we concur with the Department of Justice and commenters that BellSouth fails to show, through either commercial use or testing, that it can provide access to network elements through collocation in a timely and reliable manner that would allow new

⁵⁴⁹ The Louisiana Commission's Comments, stating its view that BellSouth has satisfied the requirements of section 271, do not specifically discuss the issue of nondiscriminatory access to network elements. Louisiana Comments at 1-10. As discussed below, the Department of Justice and several commenters maintain that BellSouth has not demonstrated that it provides nondiscriminatory access.

⁵⁵⁰ BellSouth Application at 40; BellSouth Reply at 43-44. Aside from the provisions discussed above in our analysis of BellSouth's collocation offerings, the only provision that BellSouth offers to satisfy its obligation to provide network elements to new entrants in a manner that allows them to be combined is section II.F. of the SGAT. Section II.F. provides:

F. Combining Network Elements. A requesting carrier is entitled to gain access to all of the unbundled elements that when combined by the requesting carrier are sufficient to enable the requesting carrier to provide telecommunications service. Requesting carriers will combine the unbundled elements themselves.

SGAT § II.F. Section II.F. of BellSouth's SGAT does nothing more than paraphrase the requirement of section 251(c)(3) of the Telecommunications Act.

⁵⁵¹ In particular, BellSouth's SGAT does not include specific collocation installation intervals. See SGAT § II.F.

entrants to recombine network elements to meet reasonable foreseeable demand.⁵⁵²

166. In demonstrating availability of a checklist item, evidence of actual commercial usage of that item is most probative, but a BOC also may submit evidence such as carrier-to-carrier testing, independent third party testing, and internal testing to demonstrate its ability to provide a checklist item.⁵⁵³ BellSouth makes no showing that there is actual commercial usage of collocation anywhere in Louisiana or even in its region for the purpose of recombining unbundled network elements as contemplated in section II.F. of the SGAT,⁵⁵⁴ nor does it submit any evidence on any type of testing of its collocation offerings for this purpose.⁵⁵⁵ As MCI observes, BellSouth's bare statement that it anticipates no problem because its own loops are connected to its switch by cross-connects is insufficient.⁵⁵⁶ The process of combining network elements through collocation would involve many more cross-connects and require BellSouth to accept, coordinate, and deliver orders for various network elements in a rapid and reliable manner for combination by new entrants at unprecedented volumes in order to accommodate widespread competition.⁵⁵⁷ To the extent BellSouth contends that it has no obligation to test the efficacy of its collocation arrangement for the combination of network elements because it is the new entrant rather than BellSouth that will accomplish the combination, BellSouth is incorrect.⁵⁵⁸ BellSouth must prove the efficacy of its collocation arrangement in order to demonstrate that, as a legal and practical matter, BellSouth can "provide . . . unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service"⁵⁵⁹ and in a manner that allows competitors to accommodate both current and projected demand for unbundled network elements and combinations of unbundled network elements.⁵⁶⁰

⁵⁵² Department of Justice Evaluation at 16-18; ALTS Comments at 17-18; AT&T Comments at 30; MCI Comments at 16-17; WorldCom Comments at 20-22; Excel Comments at 5-6.

⁵⁵³ *Ameritech Michigan Order*, 12 FCC Rcd at 20618; *BellSouth South Carolina Order*, 13 FCC Rcd at 593.

⁵⁵⁴ Excel Comments at 6; MCI Comments at 17; WorldCom Comments at 21-22.

⁵⁵⁵ See BellSouth Milner Aff. at para. 32 (BellSouth has performed no end-to-end testing of either its virtual or physical collocation arrangements for combining network elements).

⁵⁵⁶ MCI Comments at 16-17.

⁵⁵⁷ See *BellSouth South Carolina Order*, 13 FCC Rcd at 653; Department of Justice Evaluation at 14, 16-18; AT&T Comments at 16; Excel Comments at 8; MCI Comments at 16.

⁵⁵⁸ See BellSouth Reply at 48.

⁵⁵⁹ 47 U.S.C. § 251(c)(3).

⁵⁶⁰ *BellSouth South Carolina Order*, 13 FCC Rcd at 618-19.

BellSouth's refusal to heed the requirement, explicitly stated in the *BellSouth South Carolina Order*,⁵⁶¹ that BellSouth provide such proof through either commercial usage or testing is grounds for denial of BellSouth's section 271 application.

167. Accordingly, we conclude that BellSouth fails to demonstrate that, as a legal and practical matter, it can make available access to unbundled network elements through collocation in a manner that allows new entrants to combine network elements and provide competitive service on a widespread basis. BellSouth therefore does not satisfy the requirement of item (ii) of the competitive checklist for nondiscriminatory access to unbundled network elements.

168. In addition, BellSouth's offering in Louisiana of collocation as the sole method for combining unbundled network elements is inconsistent with section 251(c)(3).⁵⁶² Competitive carriers are entitled to request any other "technically feasible" methods of gaining access to and combining unbundled network elements that are consistent with the holdings of the Eighth Circuit.⁵⁶³ In enacting sections 251(c)(3) and section 251(c)(6), Congress established two separate provisions that impose distinct duties on incumbent LECs in providing access to their networks.⁵⁶⁴ Section 251(c)(6) imposes an obligation of incumbent LECs "to provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . [.]" Section 251(c)(6) was designed to clarify the authority of the Commission to require physical collocation

⁵⁶¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 653.

⁵⁶² BellSouth argues that "[b]y making physical and virtual collocation available at PSC-approved prices and on clearly stated, nondiscriminatory terms, BellSouth satisfies the statutory requirement that [competing carriers] have at least one option for combining UNEs on nondiscriminatory terms." BellSouth Brief at 40, BellSouth Reply at 44. Ameritech asserts in its comments that collocation is the only authorized method for competing LECs to combine unbundled network elements at the incumbent's premises. Ameritech Comments at 14-16, Ameritech Reply at 9-11. Several commenters argue that collocation is not the only method for combining unbundled network elements allowed under the 1996 Act and that when offered as the sole method for combining network elements, it is unreasonable, discriminatory, and anticompetitive. *See, e.g.*, AT&T Comments 12-22; Intermedia Comments at 17; MCI Comments at 15-16; Letter from Mary L. Brown, Senior Policy Counsel, MCI, to Magalie Roman Salas, Secretary, FCC at 1-2 (filed Sep. 15, 1998).

⁵⁶³ The Eighth Circuit stated ". . . the Act indicates that the requesting carriers will combine the unbundled network elements themselves . . ." and that "section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled (as opposed to combined) basis." *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813. At the same time, the Eighth Circuit also concluded that "[n]othing in this subsection [251(c)(3)] requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements." *Iowa Utils. Bd. v. FCC*, 120 F.3d at 814.

⁵⁶⁴ *See* 47 U.S.C. § 251(c)(3); 47 U.S.C. § 251(c)(6).

in light of an earlier decision by the court of appeals that the Commission lacked such authority.⁵⁶⁵ Section 251(c)(3) imposes a separate obligation on the incumbent LEC to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁵⁶⁶ Section 251(c)(3) also specifies that incumbent LECs shall provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide . . . telecommunications service."⁵⁶⁷ Nothing in the language of section 251(c)(3) limits a competing carrier's right of access to unbundled network elements to the use of collocation arrangements. If Congress had intended to make collocation the exclusive means of access to unbundled network elements, it would have said so explicitly. Instead, Congress adopted an additional requirement under section 251(c)(3) that imposes different and distinct duties on incumbent LECs.

169. Our rules implementing sections 251(c)(3) also make clear that incumbent LECs can not offer collocation as the sole method for gaining access to and combining unbundled network elements. Section 51.321 of the Commission's rules states that technically feasible methods of access to unbundled network elements "include, but are not limited to," physical and virtual collocation at the incumbent LECs' premises.⁵⁶⁸ Similarly, in section 51.5, the Commission defined "technically feasible" with reference to collocation "and other methods of achieving interconnection or access to unbundled network elements."⁵⁶⁹ The Eighth Circuit decision did not

⁵⁶⁵ In the *Expanded Interconnection* proceeding, the Commission required Tier 1 LECs to offer physical collocation for the purpose of allowing competitors and end users to terminate their own special access and switched transport access transmission facilities at LEC central offices. In 1994, the U.S. Court of Appeals for the District of Columbia Circuit found that the Commission lacked the authority under section 201 of the Communications Act to require physical collocation. *See Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (*Special Access Interconnection Order*), recon., 8 FCC Rcd 127 (1992), further recon., 8 FCC Rcd 7341 (1993), vacated in part and remanded *sub nom. Bell Atlantic Telephone Cos. v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994); (subsequent citations omitted). In the 1996 Act, Congress specifically directed incumbent LECs to provide physical collocation for interconnection and access to unbundled network elements, absent technical or space constraints, pursuant to section 251(c)(6) of the Communications Act. 47 U.S.C. § 251(c)(6). *See H.R. Rep. No. 104-204 at 73 (1995)* ("[T]his provision is necessary . . . because a recent court decision indicates that the Commission lacks the authority under the Communications Act to order physical collocation.") (*citing Bell Atlantic Telephone Companies v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994)).

⁵⁶⁶ 47 U.S.C. § 251(c)(3).

⁵⁶⁷ *Id.*

⁵⁶⁸ 47 C.F.R. § 51.321(b)(1).

⁵⁶⁹ 47 C.F.R. § 51.5.

disturb either section 51.5 or section 51.321, and these rules therefore remain in full effect.⁵⁷⁰

170. The Eighth Circuit decision also upheld the Commission's interpretation of section 251(c)(3) that allows requesting carriers to obtain the ability to provide finished telecommunications services entirely by acquiring access to the unbundled elements of an incumbent LEC's network.⁵⁷¹ Because collocation requires competitors to provide their own equipment,⁵⁷² it appears that BellSouth's collocation requirement may be inconsistent with the Eighth Circuit decision insofar that it upheld our rules permitting competing carriers to provide telecommunications services *completely through* access to the unbundled elements of an incumbent LEC's network.⁵⁷³ Accordingly, we find that an incumbent LEC can not limit a competitive carrier's choice to collocation as the only method for gaining access to and recombining network elements.

3. Checklist Item 3 -- Poles, Ducts, Conduits, and Rights-of-Way

a. Background

⁵⁷⁰ The Eighth Circuit ruled that the plain language of section 251(c)(3) does not require the incumbent LECs to do the actual combining of elements or to offer existing combinations on a bundled basis. Accordingly, the court vacated the Commission's rules that prohibit incumbent LECs from separating existing combinations and required incumbent LECs to combine unbundled network elements when requested by competitors. *Iowa Utils. Bd. v. FCC*, 120 F.3d at 813. The court did not, however, vacate the Commission's rules implementing the statutory nondiscrimination requirements for access to and combination of these elements.

⁵⁷¹ See *Iowa Utils. Bd.*, 120 F.3d at 816-17; *Iowa Utils. Bd. Rehearing Order*. We note that several states agree. See, e.g., *AT&T Communications et al. to Compel BellSouth Telecommunications, Inc., . . . To Set Non-Recurring Charges for Combinations of Network Elements*, Florida PSC, Docket No. 971140-T.P., Order No. PSC 98-08100-FOF-T.P at 52-53 (June 12, 1998) ("Nowhere in the Act or the FCC's rules and interconnection orders or the Eighth Circuit's opinion is there support for BellSouth's position that [a competitive LEC must be collocated in order to receive access to UNES] . . . We believe that under the Eighth Circuit's opinion, collocation is only a choice for the [competitive LEC], not a mandate[.]"); *Petition of AT&T Communications of the Mountain States, Inc., Pursuant to 47 U.S.C. Section 252(b) for Arbitration of Rates, Terms and Conditions of Interconnection With US WEST Communications, Inc.*, Montana Dept. of Public Service Regulation, Docket No. D96.11.200, Order No. 5961d at para. 19 (April 30, 1998) (US WEST's collocation requirement "is contrary to the Eighth Circuit's holding that [competitive LECs] can provide services entirely through the [incumbent LEC's] unbundled elements without owning or controlling any of their own facilities").

⁵⁷² See, e.g., BellSouth Tipton Aff. at paras. 28-31; BellSouth's Master Agreement at §§ 3.1, 3.5; BellSouth Collocation Handbook at § 3.14; BellSouth Milner Aff. at para. 39. To combine the loop and switch elements, the competitive LEC would have to install a small main distribution frame (MDF) in its cage. AT&T Falcone Aff. at paras. 46-49.

⁵⁷³ *Iowa Utils. Bd.*, 120 F.3d at 816-17.

171. Section 271(c)(2)(B)(iii) requires BOCs to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224."⁵⁷⁴ In the *Local Competition First Report and Order*, the Commission interpreted section 251(b)(4) as requiring nondiscriminatory access to LEC poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in accordance with the requirements of section 224.⁵⁷⁵ In addition, we have recently interpreted the revised requirements of section 224 governing rates, terms and conditions for telecommunications carriers' attachments to utility poles in the *Pole Attachment Telecommunications Rate Order*.⁵⁷⁶

172. Section 224(f)(1) states that "[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."⁵⁷⁷ Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."⁵⁷⁸

173. Section 224 also contains two separate provisions governing the maximum rates

⁵⁷⁴ 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs.

⁵⁷⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 16073.

⁵⁷⁶ *Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, 13 FCC Rcd 6777 (1998) (*Pole Attachment Telecommunications Rate Order*).

⁵⁷⁷ 47 U.S.C. § 224(f)(1). Section 224(a) defines "utility" to include any entity, including a LEC, that controls, "poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." 47 U.S.C. § 224(a)(1).

⁵⁷⁸ 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, or rights-of-way, because of insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81.

that a utility may charge for "pole attachments."⁵⁷⁹ Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are "just and reasonable."⁵⁸⁰ Notwithstanding this general grant of authority, section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State." As of 1992, nineteen states, including the state of Louisiana, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.⁵⁸¹

b. Discussion

174. We find that BellSouth demonstrates that it is providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms and conditions in accordance with the requirements of section 224, and thus has satisfied the requirements of checklist item (iii). Specifically, BellSouth makes a *prima facie* showing that it has established nondiscriminatory procedures for: (1) evaluating facilities requests pursuant to section 224 of the Act and the *Local Competition Order*; (2) granting competitors nondiscriminatory access to information on facilities availability; (3) permitting competitors to use non-BellSouth workers to complete site preparation; and (4) compliance with state and federal rates.

175. Based upon our review of the SGAT and interconnection agreements, we conclude that BellSouth has a concrete and specific legal obligation to provide nondiscriminatory access to poles, ducts, conduits and rights-of way.⁵⁸²

176. Evaluation of facilities requests. First, BellSouth has established nondiscriminatory procedures for evaluating facilities requests pursuant to section 224 of the Act. Consistent with

⁵⁷⁹ Section 224(a)(4) defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." 47 U.S.C. § 224(a)(4).

⁵⁸⁰ 47 U.S.C. § 224(b)(1).

⁵⁸¹ See States That Have Certified That They Regulate Pole Attachments, Public Notice, 7 FCC Rcd 1498 (1992). The 1996 Act extended the Commission's authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of way. *Local Competition First Report and Order*, 11 FCC Rcd at 16104; 47 U.S.C. § 224(f). Absent state regulation of the terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Id.*

⁵⁸² See, e.g., SGAT at Attachment D; Metrocom Agreement at 12; WinStar Agreement at 27-8; ACSI Agreement at 28-9.

the Commission's regulations implementing section 224, we conclude that BellSouth must provide competing telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on reasonable terms and conditions comparable to those which it provides itself and within reasonable time frames.⁵⁸³ Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."⁵⁸⁴ Pursuant to the Commission's rules, BellSouth must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted.⁵⁸⁵ If BellSouth denies such a request, it must do so in writing and must enumerate the reasons access is denied, citing one of the permissible grounds for denial discussed above.⁵⁸⁶

177. BellSouth has made a *prima facie* showing of compliance with the requirements set forth above. BellSouth demonstrates that it utilizes a standard license agreement for access to poles, conduits, ducts, and rights of way, which outlines specific terms and conditions. BellSouth also commits to inform competitors within 45 days if facilities are not available.⁵⁸⁷ In addition, BellSouth provides a "user's guide" to assist competitive LECs in preparing application forms, and BellSouth handles all applications on a first-come, first served basis.⁵⁸⁸ BellSouth further commits to inform competitive LECs of the precise date when any necessary make-ready work can be completed, and to complete the necessary provisioning work "in a nondiscriminatory manner . . .⁵⁸⁹

⁵⁸³ As stated above, although a BOC may deny access on the basis of the concerns listed in section 224(f)(2) (capacity, safety, reliability, and generally applicable engineering principles), the assessment of such factors must be done in a nondiscriminatory manner, and denials will be very carefully scrutinized where the requesting party is a competing telecommunications carrier.

⁵⁸⁴ *Local Competition First Report and Order*, 11 FCC Rcd at 16067.

⁵⁸⁵ 47 C.F.R. § 1.1403(b).

⁵⁸⁶ We reiterate that lack of capacity on a particular facility does not entitle a BOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require a BOC to take all reasonable steps to accommodate access in these situations. If a telecommunications carrier's request for access cannot be accommodated due to a lack of available space, a BOC must modify the facility to increase capacity under the principle of nondiscrimination. *Local Competition First Report and Order*, 11 FCC Rcd at 16075-76.

⁵⁸⁷ BellSouth Kinsey Aff. at paras. 5, 11.

⁵⁸⁸ *Id.* at para. 6.

⁵⁸⁹ *Id.* at paras. 11, 14.

178. BellSouth avers that it "does not and will not favor itself over other carriers when provisioning access to poles, ducts, conduits and rights-of-way."⁵⁹⁰ In its SGAT, BellSouth commits to provide competitive LECs with "access to and use of such rights-of-way to the same extent and for the same purposes that BellSouth may access or use such rights of way . . ."⁵⁹¹ BellSouth's SGAT further establishes definite technical specifications for competitive LECs to follow in installing and maintaining their facilities.⁵⁹² Competitive LECs and BellSouth conduct site surveys at mutually agreed upon times and locations, and BellSouth does not reserve space for itself or give itself a preference when assigning space.⁵⁹³ BellSouth further commits to nondiscriminatory provisioning of competitive LEC requests and states that "[w]ork requested by a [competitive] LEC is treated identically to work requested by BellSouth itself."⁵⁹⁴ Based on this information, we cannot accept Sprint's assertion that BellSouth's "first-come, first-served" policy for acting on pole space requests allows BellSouth to put itself at the front of the line when provisioning requests.⁵⁹⁵ Finally, BellSouth avers that it will not charge competitive LECs for "any changes that are made to meet BellSouth's needs."⁵⁹⁶ BellSouth's SGAT and affidavits provide a *prima facie* showing that BellSouth has nondiscriminatory application procedures in place. We note that no commenter contends that BellSouth discriminates against competitors in the application process.

179. We reject Sprint's assertion that BellSouth cannot demonstrate compliance with checklist item (iii) because BellSouth has only completed make-ready work for competitive LECs in Louisiana, and no such LECs have yet occupied space on or in BellSouth's facilities.⁵⁹⁷ Contrary to Sprint's contention, BellSouth is not obligated to wait until competitive LECs have finished the process of installing their equipment before BellSouth can demonstrate compliance with checklist item (iii). Rather, BellSouth has shown that it has the procedures and policies in place to satisfy the requirements of this checklist item.

⁵⁹⁰ BellSouth Varner Reply Aff. at para. 54.

⁵⁹¹ SGAT at Attachment D, p. 6. The Louisiana Commission approved BellSouth's SGAT as it applies to checklist item (iii). Louisiana Commission November 24, 1997 Comments at 12.

⁵⁹² SGAT at Attachment D, pp. 9-17.

⁵⁹³ *Id.* at Attachment D, p. 21; BellSouth Kinsey Aff. at para. 13.

⁵⁹⁴ BellSouth Kinsey Aff. at para 14.

⁵⁹⁵ See Sprint Comments at 59.

⁵⁹⁶ BellSouth Kinsey Aff. at para. 16.

⁵⁹⁷ Sprint Comments at 58.

180. Access to facilities information. BellSouth has made a *prima facie* showing that it provides competitors with nondiscriminatory access to information concerning its facilities. In the *Local Competition First Report and Order*, the Commission concluded that terms and conditions imposed by BOCs on facilities access "must be applied on a nondiscriminatory basis."⁵⁹⁸ In order to comply with this requirement, BellSouth must give competitors nondiscriminatory access to information about its facilities. Access to maps and similar records is crucial for competitors who wish to utilize BellSouth facilities and need information about the location and functionalities of such facilities. BellSouth commits in its SGAT to provide "access to relevant plats, maps, engineering records and other data" upon receiving a bona fide request for such information.⁵⁹⁹ BellSouth further commits to providing competitive LECs with access to engineering records within five business days of a competitor's request for such information.⁶⁰⁰ We reject AT&T's contention that a five business day waiting period for competitors is discriminatory, when BellSouth has instant access to engineering information.⁶⁰¹ We believe this disparity in time is reasonable in the specific context presented here, given that BellSouth needs to redact its records to protect proprietary information.

181. Choice of workforce. BellSouth has satisfied its statutory obligation to permit attaching parties to use the individual workers of their choice to perform any make-ready or other work necessary for the attaching of their facilities, so long as those workers have the same qualifications as BellSouth's own workers.⁶⁰² BellSouth permits competitive LECs to utilize their own contractors, provided such contractors are "BellSouth-certified."⁶⁰³ We interpret BellSouth's statement that it allows "BellSouth-certified" contractors to do make-ready work to mean that BellSouth will comply with the obligations established by the Commission in the *Local Competition Order* that utilities allow competitors to utilize workers with "the same qualifications, in terms of training, as the utility's own workers."⁶⁰⁴ We expect that BellSouth will

⁵⁹⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 16073.

⁵⁹⁹ SGAT at § III.B.

⁶⁰⁰ BellSouth Kinsey Aff. at para. 10. BellSouth will mail such records to the requesting carrier within 20 days if the carrier does not want to view the records on-site at the BellSouth Records Maintenance Center. *Id.* While we have concerns about the length of time that BellSouth takes to mail records, no commenter specifically argues that 20 days is not a reasonable time frame within which to provide such records by mail.

⁶⁰¹ AT&T Comments at 69-70.

⁶⁰² *Local Competition First Report and Order*, 11 FCC Rcd at 16083.

⁶⁰³ BellSouth Kinsey Aff. at para. 16.

⁶⁰⁴ *Local Competition First Report and Order*, 11 FCC Rcd at 16083. See also SGAT, Attachment D at 19 ("In lieu of obtaining performance of make-ready work by BellSouth, [competitive] LEC at its option may arrange

not use its "certification" process to discriminate against competitors by delaying their ability to commence facilities work.

182. Rates. BellSouth has submitted *prima facie* evidence that its rates comport with the requirements of the checklist.⁶⁰⁵ Currently, BellSouth would satisfy its duty under checklist item (iii) to provide nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at "just and reasonable" rates if it charges attaching entities a rate for pole attachments used in the provision of telecommunications service that complies with the rate methodology set forth in section 224(d)(1), and that is uniformly applied to all telecommunications carriers. After February 8, 2001, however, a rate for pole attachments used to provide telecommunications service is just and reasonable if the rate for such attachment complies with the Commission's regulations implementing the requirements of section 224(e), and is uniformly applied to all telecommunications carriers. Thus, BellSouth may favor neither itself nor any particular attaching entity in establishing the applicable rate for pole attachments.

183. BellSouth states that its fees for attachments are "consistent with Sections 224(d)(1) and (e) of the Act and the FCC rules promulgated thereunder, as well as the rates established by the state commissions, and negotiated rates."⁶⁰⁶ Given BellSouth's statement that its rates comply with the requirements of section 224 of the Act, as well as rate decisions of the Louisiana Commission, we conclude that BellSouth has satisfied the requirement of checklist item (iii) that it provide just and reasonable rates.⁶⁰⁷

4. Checklist Item 4 -- Unbundled Local Loops

a. Background

184. Section 271(c)(2)(B)(iv) of the Act, item (iv) of the competitive checklist, requires that BellSouth offer "[l]ocal loop transmission from the central office to the customer's premises,

for the performance of such work by a contractor certified by BellSouth to work on or in its facilities. Certification shall be granted based upon reasonable and customary criteria employed by BellSouth in the selection of its own contract labor.")

⁶⁰⁵ We note that no commenter argues that BellSouth has not established just and reasonable rates as required by checklist item (iii).

⁶⁰⁶ BellSouth Kinsey Aff. at para. 18.

⁶⁰⁷ Although as of 1992 Louisiana had certified to the Commission that it regulated rates, terms and conditions for pole attachments consistent with sections 224(c)(1) and (3), the record is unclear as to the extent to which Louisiana has exercised its authority for pole attachment rates. BellSouth avers, however, that it complies with both Commission and Louisiana regulations to the extent applicable. BellSouth Kinsey Aff. at para. 18.

unbundled from local switching or other services.⁶⁰⁸ The Commission has defined the loop as "a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises."⁶⁰⁹ The definition includes different types of loops, for example, "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals."⁶¹⁰

185. The local loop is an unbundled network element that must be provided on a nondiscriminatory basis pursuant to section 251(c)(3).⁶¹¹ In order to provide nondiscriminatory access to unbundled loops, the BOC must be able to deliver unbundled loops, of the same quality as the loops that the BOC uses to provide service to its own customers, to the competing carrier within a reasonable timeframe and with a minimum of service disruption.⁶¹²

186. As described in the discussion of checklist item (ii), competing carriers must have nondiscriminatory access to the various functions of the BOCs' OSS in order to obtain unbundled loops in a timely and efficient manner.⁶¹³ One way that a BOC can demonstrate compliance with this checklist item is by submitting performance data such as the time interval for providing unbundled loops and whether due dates are met.

187. A BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.⁶¹⁴ In order to provide the functionality requested, such as the ability to deliver ISDN or xDSL, the BOC may have to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. The BOC must provide competitors with access to unbundled loops regardless of

⁶⁰⁸ 47 U.S.C. § 271(c)(2)(B)(iv).

⁶⁰⁹ *Local Competition First Report and Order*, 11 FCC Rcd at 15691; 47 C.F.R. § 51.319(a).

⁶¹⁰ *Local Competition First Report and Order*, 11 FCC Rcd at 15691; 47 C.F.R. § 51.319(a).

⁶¹¹ See 47 U.S.C. § 271(c)(2)(B)(ii) and (iv); 47 C.F.R. § 51.319.

⁶¹² 47 C.F.R. § 51.313(b); 47 C.F.R. § 51.311(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15658-15661.

⁶¹³ *Ameritech Michigan Order*, 12 FCC Rcd at 20614.

⁶¹⁴ *Local Competition First Report and Order*, 11 FCC Rcd at 15691.

whether the BOC uses integrated digital loop carrier (IDLC) technology⁶¹⁵ or similar remote concentration devices for the particular loop sought by the competitor.⁶¹⁶

188. A BOC must provide cross-connect facilities between an unbundled loop and a requesting carrier's collocated equipment on terms and conditions that are reasonable and nondiscriminatory under section 251(c)(3).⁶¹⁷ The Commission also required incumbent LECs to provide requesting carriers access to unbundled network interface devices so that the requesting carrier may connect its own loop facilities at that point.⁶¹⁸

b. Discussion

189. We find that BellSouth fails to demonstrate that it provides local loop transmission, unbundled from local switching or other services in accordance with our rules. BellSouth demonstrates that it has a legal obligation to provide unbundled local loops on terms and conditions consistent with our rules. We conclude, however, that BellSouth fails to make a *prima facie* showing that it offers unbundled local loop transmission in a nondiscriminatory fashion.

190. Based upon our review of the SGAT and interconnection agreements, BellSouth has a concrete and specific legal obligation to provide nondiscriminatory access to unbundled local loops. BellSouth states that it makes local loop transmission available on an unbundled basis in compliance with section 271 through its SGAT, including 2-wire, and 4-wire grade analog lines, 2-wire ISDN lines, 2-wire ADSL lines, 2-wire and 4-wire HDSL lines, and 4-wire DS-1 lines, and 56 or 64 Kbps digital grade lines.⁶¹⁹ BellSouth states that other loop technologies may be requested through the bona fide request process.⁶²⁰

191. In addition, BellSouth states that it provides access to unbundled loops at any

⁶¹⁵ IDLC allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops.

⁶¹⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15692.

⁶¹⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15693.

⁶¹⁸ 47 C.F.R. § 51.319(b). The network interface device is a cross-connect device used to connect loop facilities to inside wiring. See 47 C.F.R. § 51.319(b)(1).

⁶¹⁹ BellSouth Application at 42; BellSouth Varner Aff. at para. 91; BellSouth SGAT § IV.A.

⁶²⁰ BellSouth Application at 42; BellSouth Varner Aff. at para. 91; see also BellSouth Milner Aff. at Exhibit WKM-4. Tabs 6, 7.

technically feasible point with access to all features, functions, and capabilities and without any restrictions that impair use by competitive LECs. BellSouth states that competitive LECs can combine loops with other unbundled network elements.⁶²¹ BellSouth asserts that the unbundled loops it provides to competitive LECs are equal in quality to the loops BellSouth uses in the provision of its retail services, and are provided using the same equipment and technical specifications that BellSouth uses itself.⁶²² BellSouth also states that it offers 2-wire and 4-wire voice grade cross-connects as well as DS1 and DS3 cross-connects.⁶²³ BellSouth asserts that it can and will make all of its loops available to competitive LECs on an unbundled basis, including those loops served by integrated digital loop carrier.⁶²⁴ In addition to the unbundled loop, competitive LECs may request loop feeder, loop distribution, loop cross connects, loop concentration and channelization, and access to network interface devices.⁶²⁵

192. Provisioning of Unbundled Local Loops. BellSouth fails to make a *prima facie* case that it provides unbundled loops in a nondiscriminatory manner. In particular, BellSouth fails to demonstrate that it provides access for the provisioning and ordering of unbundled local loops sufficient to allow an efficient competitor a meaningful opportunity to compete.⁶²⁶ Furthermore, BellSouth fails to demonstrate that it can provide loop crossovers based on reasonably foreseeable demand in a timely and reliable fashion.⁶²⁷

193. In support of its claim of providing unbundled loops in a nondiscriminatory manner, BellSouth states that, as of June 1, 1998, it had provisioned 18,749 unbundled loops to competitive LECs in its nine-state region and 107 loops in Louisiana.⁶²⁸ BellSouth also asserts

⁶²¹ BellSouth Application at 42; BellSouth Varner Aff. at para. 91.

⁶²² BellSouth Application at 42; BellSouth Varner Aff. at para. 92; *see also* BellSouth Milner Aff. at paras. 55, 66-67.

⁶²³ BellSouth Application at 43; BellSouth Varner Aff. at para. 98.

⁶²⁴ BellSouth Milner Aff. at para. 52.

⁶²⁵ BellSouth Varner Aff. at paras. 95-102.

⁶²⁶ *BellSouth South Carolina Order*, 13 FCC Rcd at 594.

⁶²⁷ *See Ameritech Michigan Order*, 12 FCC Rcd at 20601-20602, 20618.

⁶²⁸ BellSouth Application at 43; BellSouth Milner Aff. at para. 52; BellSouth Wright Aff. at para. 41. BellSouth has not had any significant commercial experience in Louisiana in delivering unbundled loops. Since BellSouth's last application, only two competitive carriers in Louisiana have used any unbundled loops in conjunction with their own network facilities, and, collectively, these carriers have placed in service only about 100 unbundled loops. BellSouth, Notice of 1998 Annual Meeting Proxy Statement A-3 (Mar. 10, 1998)

that it has conducted testing to verify that unbundled local loop transmission is properly provisioned and billed to competitive LECs.⁶²⁹ BellSouth asserts that its performance measurements demonstrate that it offers access to unbundled local loops that allows an efficient competitor a meaningful opportunity to compete.⁶³⁰ BellSouth asserts that it has taken steps to ensure that loop cutover orders are coordinated and can be done in a single order. Finally, BellSouth asserts that many of the competitive LECs' initial problems with loop crossovers were due to BellSouth's inexperience in providing unbundled local loops.⁶³¹

194. We find that the performance data that BellSouth has provided on the ordering and provisioning of unbundled local loops does not demonstrate that it provides nondiscriminatory access. In support of its claim that it is offering loops in compliance with the terms of the Act, BellSouth presents both performance data and the results of a study it conducted of loop crossovers for a single competing carrier in Georgia. BellSouth states that this study showed that 318 out of the 325 loops that it had provisioned to a particular carrier were cut over within 15 minutes.⁶³² BellSouth, however, provides no further information on how it conducted the study; nor does it include the study as an attachment in its filing. Without additional information, we have no way of assessing the probative weight of the study. For example, we do not know whether the crossovers occurred when originally scheduled, or whether there were delays. Carriers have expressed concerns about scheduling delays which, they argue, have caused severe problems with their customers.⁶³³ Moreover, as we describe below, carriers using BellSouth's unbundled loops have provided evidence that BellSouth has not completed loop crossovers in a timely manner.

195. BellSouth's region-wide performance data also fails to demonstrate that competitive LECs have nondiscriminatory access to unbundled loops. In most cases, disaggregated information is not yet available for unbundled loops.⁶³⁴ Rather, unbundled loop

<<http://www.sec.gov/Archives/edgar/data/732713/0001047469-98-008732.txt>>; *see also* Department of Justice Evaluation at 8, 28. In contrast, BellSouth has roughly 2.2 million access lines in Louisiana. Department of Justice Evaluation at 8.

⁶²⁹ BellSouth Application at 43; BellSouth Milner Aff. at para. 63.

⁶³⁰ BellSouth Application at 44.

⁶³¹ BellSouth Milner Aff. at paras. 67-71.

⁶³² BellSouth Milner Aff. at para. 67.

⁶³³ *See, e.g.*, e.spire Comments at 23-25; KMC Comments at 22-23.

⁶³⁴ *See, e.g.*, BellSouth Stacy Perf. Aff. Ex. WNS-3, Report: Order Completion Interval Distribution & Average Interval (Dispatch), n.1 (performance data "currently cannot separately identify UNE loop with LNP Orders").

data are subsumed under broader categories ("UNE Design" and "UNE Non-Design"), which include unbundled port and transport data. Based on the manner in which BellSouth presents its performance data, particularly the lack of any explanation of the data, we are unable evaluate whether loop ordering and provisioning intervals demonstrate that BellSouth provides nondiscriminatory access to unbundled loops.

196. BellSouth states that its target installation interval for provisioning unbundled local loops varies between seven and ten days, but BellSouth's May 1998 report indicates that the average installation interval for "UNE Design" (which includes unbundled loops) is twelve days.⁶³⁵ We find that BellSouth's performance results for unbundled loops fail to demonstrate whether BellSouth meets its target intervals. As noted above, BellSouth does not provide disaggregated information for unbundled loops, making it impossible for us to determine whether BellSouth is meeting its target intervals.⁶³⁶

197. Finally, BellSouth provides performance data on "Coordinated Customer Conversions" which indicates that, between March 1 and March 31, 1998, it took, on average, 5.8 minutes to cut over an unbundled loop.⁶³⁷ This may well be an acceptable loop cutover interval. BellSouth, however, gives no explanation of how it derived this number. Furthermore, BellSouth fails to disaggregate the data according to whether the unbundled loop was provisioned with or without number portability. BellSouth simply asserts in a footnote that such disaggregation of data is not available at this time.⁶³⁸ In addition, competitors have complained of significant cutover disconnection periods.⁶³⁹ Thus, it is impossible for us to determine whether loops are being cut over in a timely manner.

198. Because the provisioning of unbundled local loops has no retail analogue, BellSouth must demonstrate that it provides unbundled loops in a manner that offers an efficient carrier a meaningful opportunity to compete.⁶⁴⁰ In future applications, we expect BellSouth to

⁶³⁵ BellSouth Stacy OSS Aff. Ex. WNS-18; *see also* BellSouth Stacy Perf. Aff. Ex. WNS-3, Report: Order Completion Interval Distribution & Average Interval (Dispatch).

⁶³⁶ *See supra* para. 195.

⁶³⁷ BellSouth Stacy Perf. Aff. Ex. WNS-3, Report: Coordinated Customer Conversions.

⁶³⁸ *Id.*, n.1.

⁶³⁹ *See, e.g.*, e.spire Comments at 23-25; KMC Comments at 22-23.

⁶⁴⁰ *See Ameritech Michigan Order*, 12 FCC Rcd at 20619 ("For those OSS functions that have no retail analogue, such as the ordering and provisioning of unbundled network elements, the BOC must demonstrate that the access it provides to competing carriers satisfies its duty of nondiscrimination because it offers an efficient

explain how it derives and calculates its data on loop provisioning and why its performance data demonstrates that competitive LECs have nondiscriminatory access to unbundled loops. Furthermore, BellSouth should identify any performance standards that have been adopted by the relevant state commission or agreed upon by the parties in an interconnection agreement or during the implementation of such an agreement in order to serve as a basis for comparing BellSouth's provisioning intervals.⁶⁴¹

199. The reported experiences of BellSouth's competitors with unbundled loops suggest that there may be problems with BellSouth's procedures for providing unbundled loops, even at very low volumes. BellSouth's loop provisioning procedures may be plagued by operational flaws, which may have resulted in unexpected disconnects, late cutovers, and number portability failures even with a very limited volume of orders. New entrants have complained that BellSouth has been unable to provide unbundled loops properly, and that their customers have been harmed as a result.⁶⁴² Comments also raise concerns that competitors still do not enjoy nondiscriminatory access to BellSouth's OSS for the provisioning of unbundled loops.⁶⁴³

200. If BellSouth had made its *prima facie* case that it provides unbundled loops in accordance with the checklist, the anecdotal accounts of poor unbundled loop provisioning would be insufficient, in and of themselves, to rebut BellSouth's *prima facie* case. In fact, BellSouth has responded to these allegations in its Reply Brief and supporting documents with its own accounts of the incidents.⁶⁴⁴ BellSouth notes that many of the alleged loop provisioning problems occurred when BellSouth was still developing its loop cutover processes and merely indicate former

competitor a meaningful opportunity to compete.").

⁶⁴¹ See Ameritech Michigan Order, 12 FCC Rcd at 20619-20.

⁶⁴² AT&T Falcone Aff. at paras. 66-67.

⁶⁴³ See, e.g., KMC Comments at 22-24 (KMC contends that it has experienced difficulties with BellSouth in coordinating cutovers. Among other things, KMC states that lines have been disconnected prior to the specified cutover date and that the actual cutover can take an excessive amount of time. A KMC customer's lines were disconnected two days before the specified cutover date and the customer lost service for two hours before the connection could be restored. Twelve hours before the specified cutover time, BellSouth executed a translation order without notifying KMC forcing KMC to work the order early to restore the customer's service. On another occasion, BellSouth disconnected a KMC customer's lines prior to the scheduled cutover date and KMC experienced serious delays in getting the customer's service restored.); see also AT&T Comments at 17 (BellSouth continues mistakenly to take the competitor's "customer out of service, often in the midst of a business day" and to cause extended outages "of three hours" to accomplish what was promised to last "five minutes.").

⁶⁴⁴ See BellSouth Reply at 62-66; BellSouth Milner Reply Aff. at paras. 19-29.

problems with BellSouth's procedures that have since been corrected.⁶⁴⁵ We do not find it necessary at this time to determine whether BellSouth's or the competitive LECs' accounts of these incidents are more credible. We advise BellSouth to respond, in future applications, with verifiable information refuting competitive LEC allegations. Likewise, we advise competitive LECs to respond with verifiable information refuting BellSouth's assertions and evidence. For example, in response to Sprint's allegation that it has experienced "ongoing" problems with loops, BellSouth asserts that between January 2, 1998 and August 14, 1998, only 1.3 percent of unbundled loops provided to Sprint had problems resulting in missed due dates. BellSouth adds that during this same period it met 91 percent of its due dates. Moreover, BellSouth claims that 97.5 percent of unbundled loop cutovers for Sprint were completed within the expected time interval.⁶⁴⁶ BellSouth's affiant, however, simply presents these figures without any supporting documentation or analysis to allow the Commission, or other third-party observer, to verify the numbers.

5. Checklist Item 5 -- Unbundled Local Transport

a. Background

201. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."⁶⁴⁷ In the *Local Competition First Report and Order*, the Commission concluded that incumbent LECs must provide interoffice transmission facilities, or transport, on an unbundled basis, to requesting telecommunications carriers pursuant to section 251(c)(3).⁶⁴⁸ The Commission further concluded that "interoffice transmission facilities" include both dedicated transport⁶⁴⁹ and shared transport⁶⁵⁰ and set forth incumbent LECs' obligations with

⁶⁴⁵ BellSouth Reply at 65; BellSouth Milner Aff. at paras. 68-76.

⁶⁴⁶ BellSouth Milner Reply Aff. at para. 19.

⁶⁴⁷ 47 U.S.C. § 271(c)(2)(B)(v).

⁶⁴⁸ See *Local Competition First Report and Order*, 11 FCC Rcd at 15714-22; 47 C.F.R. § 51.319(d)(2). Although the United States Court of Appeals for the Eighth Circuit, in *Iowa Utilities Board v. FCC*, vacated certain provisions of the *Local Competition First Report and Order*, it affirmed the Commission's authority to identify network elements to which incumbent LECs must provide access on an unbundled basis. *Iowa Utils. Bd.*, 120 F.3d 753 (8th Cir. 1997). See also *Southwestern Bell Telephone v. FCC*, No. 97-3389, 1998 WL 459536 (8th Cir. Aug. 10, 1998) (*Southwestern Bell*) (affirming Commission determination that incumbent LECs must make shared transport available to new entrants on an unbundled basis).

⁶⁴⁹ The Commission defined dedicated transport as "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting

respect to these types of transport.⁶⁵¹ In the *Local Competition Third Reconsideration Order*, the Commission clarified its rules pertaining to shared transport.⁶⁵²

b. Discussion

202. We conclude that, but for deficiencies in its OSS functions described above,⁶⁵³ BellSouth demonstrates that it provides unbundled local transport as required in section 271. Although the terms and conditions under which BellSouth provides interoffice transmission facilities are consistent with our rules, we find that BellSouth has failed to make a *prima facie* showing that it provides nondiscriminatory access to OSS for the ordering and provisioning of dedicated and shared transport facilities. No commenter addressed this checklist item.

203. Based upon our review of the SGAT and interconnection agreements, we conclude

telecommunications carriers." 47 C.F.R. § 51.319(d)(1)(i).

⁶⁵⁰ The Commission defined shared transport as "transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network." 47 C.F.R. § 51.319(d)(1)(ii).

⁶⁵¹ An incumbent LEC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers, including at a minimum, interoffice facilities between end offices and serving wire centers (SWCs), SWCs and interexchange carriers' points of presence (POP), tandem switches and SWCs, end offices or tandems of the incumbent LEC, and the wire centers of incumbent LECs and requesting carriers, *Local Competition First Report and Order*, 11 FCC Rcd at 15718; (b) provide all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier levels (e.g., OC-3/12/48/96) that the competing provider could use to provide telecommunications services, *id.*; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnection is technically feasible, or restrict the use of unbundled transport facilities, *id.*; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that incumbent LECs offer such capabilities to interexchange carriers that purchase transport services, *id.* at 15719-20; 47 C.F.R. § 51.319(d)(2)(iv). See note 652 for an incumbent LEC's obligations with respect to shared transport.

⁶⁵² An incumbent LEC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that an incumbent LEC uses for its own traffic, *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12474; (b) provide shared transmission facilities between end offices switches, between end office and tandem switches, and between tandem switches, in its network, *id.* at 12475; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the incumbent LEC's switch, *id.*; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service, *id.* at 12483.

⁶⁵³ See Section V.C.2. (a.), *supra*.

that BellSouth has a concrete and specific legal obligation to provide local transport as an unbundled network element on a nondiscriminatory basis.⁶⁵⁴

204. Shared Transport: BellSouth provides sufficient evidence that it meets the requirements set forth in the *Local Competition First Report and Order* and *Local Competition Third Reconsideration Order* with respect to shared transport facilities. For example, BellSouth represents that it offers to provide shared transport when a competitive LEC requests unbundled local switching, and that the traffic of competitive LECs follows the same transmission path as BellSouth's traffic does.⁶⁵⁵ Moreover, BellSouth maintains that it offers shared transport "between all BellSouth tandems and BellSouth switches that subtend those tandems."⁶⁵⁶ We interpret this statement to mean that BellSouth complies with the Commission's requirement that it provide shared transport between end offices, between end office and tandem switches, and between tandem switches. BellSouth also asserts that it permits requesting carriers that purchase unbundled shared transport to use the same routing table that is resident in BellSouth's switch.⁶⁵⁷ Finally, BellSouth contends that it permits requesting carriers to use shared transport to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is providing local exchange service and to collect the associated access charges.⁶⁵⁸

205. Dedicated Transport: BellSouth provides sufficient evidence that it meets the requirements set forth in the *Local Competition First Report and Order* with respect to dedicated transport facilities. Specifically, BellSouth states that it does not limit the facilities to which dedicated facilities are connected, and offers dedicated transmission facilities between all BellSouth central offices, BellSouth end offices and BellSouth tandem central offices, and BellSouth central offices and interexchange POPs.⁶⁵⁹ We assume from this description that BellSouth also provides, consistent with our rules, dedicated transport between its end offices and SWCs, its SWCs and interexchange carriers' POPs, its tandem switches and SWCs, and its SWCs

⁶⁵⁴ SGAT § V.

⁶⁵⁵ Second BellSouth Louisiana Application, App. A, Vol. 6, Tab 25, Affidavit of Alphonso J. Varner (BellSouth Varner Aff.) at para. 116.

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.* at para. 114.

and those of requesting carriers.⁶⁶⁰ In addition, BellSouth represents that it makes unbundled digital cross-connect capacity available through its unbundled channelization offering.⁶⁶¹ BellSouth also submits evidence that it offers competitive LECs DS1 transport facilities, and that a competitive LEC can request other forms of dedicated transport requiring higher levels of capacity through the BFR process.⁶⁶² BellSouth maintains that the BFR process assures competitive LECs timely access to such transport without unnecessary delays.⁶⁶³ We will examine any future applications to ensure that this BFR process does not impose unreasonable delays in the provision of higher transmission capabilities such as DS3 and Optical Carrier levels.

206. Operations Support Systems: Although BellSouth demonstrates that it offers shared and dedicated transport on terms and conditions that are consistent with our rules, it fails to submit persuasive evidence that its OSS functions provide access to unbundled local transport on a nondiscriminatory basis. Accordingly, BellSouth has failed to persuade us that it provides nondiscriminatory access to unbundled local transport.⁶⁶⁴ BellSouth submits evidence in which it aggregates its performance results for local transport with all "design circuit orders," which includes unbundled loops. We find this to be an insufficient measure of demonstrating that BellSouth provides nondiscriminatory access to dedicated and shared transport. Without nondiscriminatory access to local transport, a competitive LEC will be unable to compete on a level playing field. Although we do not require a particular type of evidence to demonstrate nondiscriminatory access, we believe that performance data specifically measuring the provisioning of dedicated and shared transport facilities would be persuasive.⁶⁶⁵ We also expect BellSouth in future applications to demonstrate that its OSS functions provide competitors the ability to order unbundled local transport in a nondiscriminatory fashion.

6. Checklist Item 6 -- Unbundled Local Switching

a. Background

207. Section 271(c)(2)(B)(vi) of the Act, item (vi) of the competitive checklist, requires

⁶⁶⁰ See 47 C.F.R. § 51.319(d)(1)(i).

⁶⁶¹ See BellSouth Varner Aff. at para. 118.

⁶⁶² *Id.* at paras. 114-15.

⁶⁶³ *Id.* at para. 115.

⁶⁶⁴ See *supra*. para. ?.

⁶⁶⁵ We note that the Louisiana Commission has recently adopted a requirement that BellSouth provide separate reporting information for transport.

a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."⁶⁶⁶ In the *Local Competition First Report and Order*, the Commission concluded that incumbent LECs must provide local switching as an unbundled network element.⁶⁶⁷ The Commission defined local switching to encompass line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.⁶⁶⁸ The features functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.⁶⁶⁹ Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.⁶⁷⁰

208. Moreover, in the *Local Competition First Report and Order*, the Commission concluded that incumbent LECs must permit competing carriers to purchase unbundled network elements, including unbundled local switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.⁶⁷¹ In the *Ameritech Michigan Order*, the Commission also concluded that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and therefore a BOC must demonstrate that it is providing equivalent access to billing information.⁶⁷² Thus, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching. Billing is also one of the primary OSS functions.⁶⁷³ There is thus an overlap between the provision of unbundled local switching and the provision of the OSS billing function.

209. In the *Ameritech Michigan Order*, the Commission concluded that, to comply with this checklist item, a BOC must also make available trunk ports on a shared basis, and routing tables resident in the BOC's switch, as necessary to provide access to shared transport

⁶⁶⁶ 47 U.S.C. § 271(c)(2)(B)(vi); *see also* 47 C.F.R. § 51.319(c).

⁶⁶⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15705; *see* 47 U.S.C. § 3(29).

⁶⁶⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15706.

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.* at 15682, n.772.

⁶⁷² *Ameritech Michigan Order*, 12 FCC Rcd at 20619, 20717-18.

⁶⁷³ *Local Competition First Report and Order*, 11 FCC Rcd at 15763, 15766-67.

functionality.⁶⁷⁴ The Commission clarified that an incumbent LEC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.⁶⁷⁵

b. Discussion

210. BellSouth does not demonstrate that it is providing local switching unbundled from transport, local loop transmission, or other services,⁶⁷⁶ and thus does not satisfy the requirements of checklist item (vi). BellSouth makes a *prima facie* showing that it provides, or can provide, the line-side and trunk-side facilities of the switch, the basic switching function, trunk ports on a shared basis, and unbundled tandem switching. BellSouth fails to make a *prima facie* showing that it provides vertical features, customized routing, and usage information for billing for exchange access and reciprocal compensation in accordance with our rules. As evidence of the availability of unbundled local switching, BellSouth states it has provisioned two unbundled switch ports in Louisiana and eighty in its region.⁶⁷⁷

211. As discussed in more detail below, BellSouth fails to demonstrate that it has a concrete and specific legal obligation to provide all vertical features that the switch is capable of providing.⁶⁷⁸ BellSouth demonstrates, however, that it otherwise has a legal obligation to furnish unbundled local switching to competitive LECs pursuant to the Act, our rules, and our decisions. We discuss below BellSouth's obligation to provide particular features, functions, and capabilities of the unbundled local switch.

⁶⁷⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20705; *see also Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12475-79; *see supra* section VI C 5.

⁶⁷⁵ *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15.

⁶⁷⁶ 47 U.S.C. § 271(c)(2)(B)(vi); *see also* 47 C.F.R. § 51.319(c).

⁶⁷⁷ BellSouth Milner Aff. at para. 80. The Department of Justice notes that "there has been minimal use of unbundled switching or transport in Louisiana. . . despite the fact that some CLECs perceive UNEs as an important way to enter the market and serve significant segments of customers." Department of Justice Evaluation at 8 (*citing* BellSouth Application at 44, 46). The Department of Justice continues "to question whether competitors wishing to offer services that use BellSouth's unbundled switching and vertical features are being competitively disadvantaged by unreasonably high prices for those unbundled elements." Department of Justice Evaluation at 25-26. The Department of Justice reaches this decision by comparing unbundled local switching prices in other states -- including two other BellSouth states, Florida and Georgia -- and questions the way the Louisiana PSC reached its pricing decision. Department of Justice Evaluation at 24-25; *see* AT&T Comments at 65.

⁶⁷⁸ *See infra* paras. 216-220.

212. Line-Side and Trunk-Side Facilities of the Switch. BellSouth makes a *prima facie* showing that it is meeting the requirements of our rules and the *Local Competition First Report and Order* that it provide requesting carriers access to line-side,⁶⁷⁹ and trunk-side facilities.⁶⁸⁰ In its state-approved SGAT, BellSouth legally obligates itself to provide competing carriers with access to such facilities in a nondiscriminatory manner.⁶⁸¹ BellSouth also sets forth prices and other terms and conditions for providing unbundled local switching.⁶⁸²

213. MCI claims that it is interested in obtaining trunk ports at BellSouth's end offices.⁶⁸³ To this end it contacted BellSouth in December of 1997, seeking information necessary to order trunk ports at BellSouth's switches.⁶⁸⁴ MCI claims that after exchanging E-mails and letters, MCI and BellSouth finally met in July of 1998.⁶⁸⁵ BellSouth responds that MCI never raised the issue of trunk ports in arbitration, nor did MCI request them via the BFR process.⁶⁸⁶ Furthermore, BellSouth claims that MCI is constructing "a strained argument that BellSouth is not providing unbundled switching in compliance with the Act" because requesting a "trunk port"

⁶⁷⁹ Line-side facilities include, but are not limited to, the connection between a loop termination at a main distribution frame, and a switch line card. 47 C.F.R. § 51.319(c)(1)(i)(A); *Local Competition First Report and Order* at 15706.

⁶⁸⁰ Trunk-side facilities include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card. 47 C.F.R. § 51.319(c)(1)(i)(B); *Local Competition First Report and Order* at 15706.

⁶⁸¹ See SGAT § VI A; see also SGAT, Att. C, § 5; BellSouth Varner Aff. at paras. 121, 134.

⁶⁸² SGAT § VI B; Att. A; see also BellSouth Varner Aff. at para. 131.

⁶⁸³ MCI Comments at 29.

⁶⁸⁴ *Id.* at 30; MCI Henry Decl. at para. 56, Ex. 2. In its letter to BellSouth, MCI requested trunk type translation requirements for each switch type, ordering forms and requirements, information relating to how MCI should inform BellSouth of other carriers' use of the dedicated transport, information relating to overflow onto BellSouth's common trunk groups, and other information relating to BellSouth's treatment of MCI's proposed arrangement. MCI Henry Decl. at para. 56, Ex. 2.

⁶⁸⁵ MCI Henry Decl. at para. 56; but see BellSouth Milner Reply Aff. at para. 30. At the meeting, BellSouth informed MCI that it would have to collocate at both the end office and the tandem in order to connect with BellSouth's facilities, or, MCI could purchase dedicated transport from BellSouth pursuant to a Bona Fide Request (BFR). "Either of these options would cause additional and unnecessary delay and expense, all to achieve an uncomplicated arrangement that BellSouth should be prepared to provide as a standard offering." MCI Henry Decl. at para. 56.

⁶⁸⁶ BellSouth Reply at 69; BellSouth Milner Aff. at para. 88. BellSouth claims that trunk ports, like other components of the switch are "highly complicated with many interrelated parts" and that they "would provide no useful functionality by themselves." BellSouth Milner Aff. at para. 88.

without the necessary switching apparatus is nonsensical in that having only a trunk port would not provide any usable functionality.⁶⁸⁷

214. We conclude that MCI's allegation is insufficient to overcome BellSouth's *prima facie* showing because MCI's contentions are too vague. If MCI's request for trunk ports simply involves seeking access to the functions of the switch through the trunk side facilities of the switch, we believe that such a request is encompassed in our definition of unbundled local switching and BellSouth's failure to provide it would render it noncompliant.⁶⁸⁸ On the other hand, if MCI is seeking a trunk port unbundled from other switching functionality, as BellSouth appears to contend, such sub-element unbundling of the switch has never been expressly provided for in our rules. Because we cannot determine on this record which of these two circumstances exist, we conclude that MCI does not present sufficient evidence to overcome BellSouth's *prima facie* showing.⁶⁸⁹

215. Basic Switching Function. BellSouth demonstrates that it meets the requirements of our rules and the *Local Competition First Report and Order* that it provide requesting carriers access to basic switching functions.⁶⁹⁰ In its state-approved SGAT, BellSouth legally obligates itself to provide competing carriers with access to such facilities in a nondiscriminatory manner.⁶⁹¹ BellSouth also has set forth prices and other terms and conditions for providing unbundled local switching.⁶⁹²

216. Obligation to Provide Vertical Features. BellSouth fails to acknowledge that, consistent with our rules, it is legally obligated to provide all vertical features "that the switch is

⁶⁸⁷ BellSouth Milner Reply Aff. at para. 30; *see* BellSouth Reply at 69.

⁶⁸⁸ *See* 47 C.F.R. § 51.319(c)(1)(i); *see also* 47 C.F.R. § 51.305(a)(2).

⁶⁸⁹ In either case, we believe that BellSouth must respond to a competing carrier's requests in a timely, efficient manner that comports with our other OSS requirements. *See Ameritech Michigan Order*, 12 FCC Rcd at 20618, 20619. If MCI's request is encompassed in our definition of unbundled local switching, BellSouth must also provision the request in compliance with our OSS requirements. *Id.*

⁶⁹⁰ The basic switching function includes, but is not limited to: connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as the same basic capabilities that are available to the BOC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. 47 C.F.R. § 51.319(c)(1)(i)(C)(1); *Local Competition First Report and Order* at 15706.

⁶⁹¹ SGAT § VI C.

⁶⁹² SGAT Att. A at 4-5, 7.

capable of providing.⁶⁹³ Vertical features provide end-users with various services such as custom calling, call waiting, three-way calling, caller ID, and Centrex. According to BellSouth's interpretation of this rule, it is only legally obligated to make available vertical features that it currently offers to its retail customers.⁶⁹⁴ We disagree.

217. Our rules require BellSouth to provide all vertical features loaded in the software of the switch, whether or not BellSouth offers it on a retail basis.⁶⁹⁵ As the Commission has previously explained, requiring BOCs to provide all vertical features that the switch is capable of providing permits competing carriers using unbundled local switching to compete more effectively by designing new packages and pricing plans.⁶⁹⁶ BellSouth's interpretation would limit the end user's choice of vertical features to those that BellSouth has made a business decision to offer, and therefore, would stifle the ability of competing carriers to offer innovative packages of vertical features.

218. BellSouth argues that requiring it to provide vertical features it does not offer to its retail customers is tantamount to requiring it to provide superior service, in contravention of the Eighth Circuit's decision.⁶⁹⁷ We disagree. Activating a vertical feature loaded in the software of a switch,⁶⁹⁸ constitutes a modification to the BOC's facility necessary to accommodate access

⁶⁹³ 47 C.F.R. § 51.319(c)(1)(i)(C)(2); *Local Competition First Report and Order*, 11 FCC Rcd at 15706.

⁶⁹⁴ BellSouth Varner Aff. at para. 125, Figure 1; BellSouth Reply at 68; BellSouth Varner Reply Aff. at paras. 4-5 (citing *Iowa Utils. Bd.*, 120 F.3d at 813). BellSouth thus contends that it is not obligated to provide three different categories of features: (1) those loaded and activated in the switch but not offered as a BellSouth retail offering; (2) those loaded in the switch but not activated, and (3) those not loaded in the switch that require an upgrade of the switch to provide. BellSouth Varner Aff. at para. 125, Figure 1. BellSouth claims that "[p]ursuant to the BFR process, BellSouth will work with CLECs to develop [any of these three categories of] features which BellSouth currently does not offer." BellSouth Varner Aff. at para. 125; cf. BellSouth Reply at 68; *see also* BellSouth Varner Reply Aff. at paras. 4-5 (citing *Iowa Utils. Bd.*, 120 F.3d at 813). As part of the BFR analysis, "BellSouth [] shall indicate in this analysis its agreement or disagreement with a CLEC's designation of the request as being pursuant to the Act or pursuant to the needs of the business." BellSouth Varner Aff. Ex. AJV-1, Att. B, § 1.4. BellSouth, however, does not obligate itself to providing these features.

⁶⁹⁵ The only time a switch could not offer all vertical features is if two or more of the vertical features conflicted with each other. BellSouth would then have the burden of proof to demonstrate it was not technically feasible to offer both features at the same time.

⁶⁹⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15705.

⁶⁹⁷ *Iowa Utils. Bd.*, 120 F.3d at 813. The Eighth Circuit held that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network -- not to a yet unbuilt superior one." *Id.*

⁶⁹⁸ We use the phrase "loaded in the software of the switch" to include any vertical feature that is included in the generic software package installed in the BOC's switch or that the BOC has special-ordered from the switch

to unbundled local switching.⁶⁹⁹ Activating vertical features does not require a BOC to alter its network substantially; instead, it merely requires the BOC to allow competing carriers to obtain access to parts of its *existing* network that the BOC has decided not to use. Consistent with this analysis, we agree with BellSouth's claim that it is not obligated to provide vertical features that are not loaded in the switch software, because this would require BellSouth to build a network of superior quality.⁷⁰⁰

219. A related issue concerning vertical features is the competitive LECs' ability to order individual or packages of vertical features.⁷⁰¹ BellSouth currently limits the packages of vertical features that purchasers of unbundled local switching may activate to the same packages BellSouth offers its own customers. We conclude that a BOC must activate any vertical feature or combination of vertical features requested by a competing carrier unless the BOC can demonstrate to the state commission, through "clear and convincing evidence," that activation of that particular combination of vertical features is not technically feasible.⁷⁰²

220. We recognize that, before offering a vertical feature for the first time, a BOC will want to ensure that the requested feature will not cause adverse network reliability effects. Furthermore, a BOC will need to modify its systems to accept orders for these new features, and develop maintenance routines to resolve problems. Therefore, we find that a BOC can require a requesting carrier to submit a request for such a vertical feature through a predetermined process that gives the BOC an opportunity to ensure that it is technically feasible and otherwise develop the necessary procedures for ordering those features. The process cannot be open ended and it should not be used to delay the availability of the vertical feature. A BOC must provide the

manufacturer.

⁶⁹⁹ In the *Local Competition First Report and Order*, the Commission realized that incumbent LEC networks were not designed to accommodate third-party interconnection or use of network elements, and that the purposes of sections 251(c)(2) and 251(c)(3) would often be frustrated if incumbent LECs were not required to adapt their facilities for use by other carriers. *Local Competition First Report and Order*, 11 FCC Rcd at 15605. The Commission, therefore, concluded that the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications and adaptations to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements. *Id.* at 15602. Although the Eighth Circuit limited the Commission's ability to require modifications and adaptations by striking down the Commission's superior quality rules, it upheld "the Commission's statement that 'the obligations imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements.'" *Iowa Utils. Bd.*, 120 F.3d at 812-813, n.33.

⁷⁰⁰ See BellSouth Varner Aff. at para. 125, Figure 1.

⁷⁰¹ See AT&T Hamman Aff. paras. 45-47.

⁷⁰² See *Local Competition First Report and Order*, 11 FCC Rcd at 15602 (defining "technically feasible").

requesting carrier with a response within a reasonable and definite amount of time. Furthermore, a BOC must demonstrate that the access it provides to competing carriers satisfies its duty of nondiscrimination.⁷⁰³

221. Customized Routing.⁷⁰⁴ BellSouth does not meet the requirements set forth in the *Local Competition First Report and Order* and our rules that an incumbent LEC provide technically feasible customized routing functions.⁷⁰⁵ Customized routing permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from competitors' customers.⁷⁰⁶ Without customized routing, competing carriers will be not be able to select the routes its customers' calls will take to reach their destination nor will they be able to select the final destination. For instance, if a competing carrier wants to establish its own operator services or directory assistance services, it would need the ability to route its customers' 0-, 0+, 4-1-1, (area code) 5-5-5-1-2-1-2 calls over trunks leading to its operator services and directory assistance platform.⁷⁰⁷ BellSouth has proffered two methods of providing customized routing: Advanced Intelligent Network (AIN) and line class codes.⁷⁰⁸

222. Upon implementation, BellSouth's proposed AIN solution has the potential to meet the requirements of the *Local Competition First Report and Order* for providing customized routing on a nondiscriminatory basis.⁷⁰⁹ BellSouth concedes however, that AIN is not currently being offered.⁷¹⁰ Although we are encouraged by BellSouth's continued development of its AIN

⁷⁰³ *Ameritech Michigan Order*, 12 FCC Rcd at 20619-20.

⁷⁰⁴ Customized routing is sometimes referred to as selective routing.

⁷⁰⁵ An incumbent LEC must provide customized routing as part of the local switching element, unless it can prove to the state commission that customized routing in a particular switch is not technically feasible. *Local Competition First Report and Order*, 11 FCC Rcd at 15709.

⁷⁰⁶ Incumbent LECs, including BOCs, currently use this functionality to direct certain classes of traffic to certain trunks. For example, an incumbent LEC such as a BOC would have its switches send 0 minus and 0 plus calls to its own operator services platform and 4-1-1, 5-5-5-1-2-1-2, and area code plus 5-5-5-1-2-1-2 calls to its directory assistance platform. Routing instructions are encoded in the line class code.

⁷⁰⁷ See AT&T Comments at 53; AT&T Hamman Aff. at para. 28; MCI Comments at 60; MCI Henry Decl. at para. 51. The 0-, 0+, 4-1-1, and (area code) 5-5-5-1-2-1-2 calls are all examples of classes of traffic.

⁷⁰⁸ BellSouth Application at 46-47.

⁷⁰⁹ 47 C.F.R. § 51.319(c)(1)(i)(C)(2); *Local Competition First Report and Order*, 11 FCC Rcd at 15706, 15709.

⁷¹⁰ BellSouth Varner Aff. at 133 BellSouth asserts that customized "routing will be provided through BellSouth's proposed AIN-based Selective Carrier Routing Service, upon successful completion of the trial of that

solution for customized routing, BellSouth's proposed AIN solution currently cannot be relied upon to show compliance with the requirement for the provision of customized routing.⁷¹¹

223. BellSouth's use of line class codes would be an acceptable interim method of providing customized routing.⁷¹² However, BellSouth does not demonstrate that it can make customized routing practically available in a nondiscriminatory manner due to the inability of competitive LECs to order customized routing efficiently. BellSouth claims that, when a competitor "purchases unbundled local switching elements, the competitor's access will be identical to that of BellSouth in the same switch."⁷¹³ BellSouth notes that it has been in negotiations with AT&T concerning standard processes and forms for ordering line class codes.⁷¹⁴ AT&T claims that BellSouth seeks to impose unnecessary and discriminatory "logistical hurdles to commercial use of such codes for customized routing."⁷¹⁵ AT&T claims that BellSouth's ordering procedure for customized routing is discriminatory because it requires AT&T to determine, and then include, the correct line class code as part of the order it submits to BellSouth.⁷¹⁶ AT&T argues that, in contrast, BellSouth's employees do not have to ascertain line class codes when they submit orders for BellSouth retail customers.⁷¹⁷ BellSouth counters that

service and in the interim through line class codes to any requesting carrier." BellSouth Varner Aff. at 133; *see also* SGAT § VI A 2; BellSouth Milner Aff. at 83 ("Until such time as this method [AIN] is made available, BellSouth will provide customized routing through line class codes."); *see* AT&T Comments at 54; AT&T Hamman Aff. at para. 38.

⁷¹¹ In the *Ameritech Michigan Order*, the Commission determined that a BOC's promise of future performance has no probative value in demonstrating its present compliance. To gain in-region, interLATA entry a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. *Ameritech Michigan Order*, 12 FCC Rcd at 20573-74.

⁷¹² *See* BellSouth Varner Aff. at para. 133; BellSouth Milner Aff. at para. 82.

⁷¹³ BellSouth Milner Aff. at para. 81; SGAT § VI, C.

⁷¹⁴ BellSouth Milner Aff. at para. 86. BellSouth and AT&T agree that in Georgia they have completed work that will enable AT&T to custom route calls to its operator services and directory assistance using line class codes. AT&T Hamman Aff. at para. 31; BellSouth Milner Aff. at para. 82.

⁷¹⁵ AT&T Hamman Aff. at para. 31.

⁷¹⁶ AT&T Hamman Aff. at paras. 31-33.

⁷¹⁷ BellSouth wants AT&T to perform this function and send the appropriate line class code as part of an order, BellSouth Reply at 69; BellSouth Milner Reply Aff. at para. 33, whereas AT&T wants BellSouth to determine the appropriate line class code based on the information that AT&T supplies with its order. AT&T Hamman Aff. at paras. 31-33.

only AT&T knows how it wants its customers' calls routed, and therefore, AT&T must indicate the appropriate line class code so BellSouth knows to provision the switch with that line class code as well as the selective routing information corresponding to that line class code.⁷¹⁸

224. We agree with BellSouth that a competitive LEC must tell BellSouth how to route its customers' calls. If a competitive LEC wants all of its customers' calls routed in the same way, it should be able to inform BellSouth, and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for its own customers.⁷¹⁹ If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use.⁷²⁰ BellSouth should not require the competitive LEC to provide the actual line class codes, which may differ from switch to switch, if BellSouth is capable of accepting a single code region-wide.

225. Furthermore, BellSouth must ensure that orders containing a code indicating the desired routing of calls are efficiently processed. AT&T contends that BellSouth's insistence on adding routing information to customer orders causes AT&T's orders to require manual intervention.⁷²¹ We have repeatedly recognized that manual intervention results in less efficient processing.⁷²² In future applications, we expect BellSouth to demonstrate that, if it requires specific information for selective routing that results in manual intervention in the processing of such orders, BellSouth will be able to process such orders in a timely manner and in volumes reflecting reasonably foreseeable demand. Of course, the easiest way for BellSouth to make this

⁷¹⁸ BellSouth Reply at 69; BellSouth Milner Reply Aff. at para. 33.

⁷¹⁹ For example, if AT&T wants all of its customers' calls routed to AT&T's operator services and directory assistance, AT&T should be able to tell this to BellSouth once, by letter for instance, and BellSouth should be able to route the calls without requiring AT&T to indicate this information on every order.

⁷²⁰ For example, if AT&T wants some of its operator services and directory assistance calls routed to its operator services and directory assistance platform, but it wants other operator service and directory assistance calls directed to BellSouth's platform, BellSouth does not know whether to route AT&T's customers' calls to AT&T's platform or its own unless AT&T tells BellSouth which option it is choosing.

⁷²¹ AT&T Hamman Aff. at para. 35. Initially BellSouth informed AT&T to include the correct line class code in the remarks section of the Local Service Request (LSR). This caused the orders, otherwise capable of mechanical processing, to fall out for manual processing. BellSouth then informed AT&T to use a "feature" field on the LSR. That practice also caused the orders to drop out for manual processing. According to AT&T, at the time this application was filed, BellSouth still had not informed AT&T how to place orders for customized routing in a manner that would permit the order to be mechanically processed. AT&T Hamman Comments at para. 35.

⁷²² See *First BellSouth Louisiana Order*, 13 FCC Rcd at 6261-62; *Ameritech Michigan Order*, 12 FCC Rcd at 20648.

demonstration is to ensure that orders that include selective routing information do not require manual intervention.

226. MCI raises a separate challenge to BellSouth's customized routing offering. MCI claims that BellSouth will not "translate" its customers' local operator services and directory assistance calls to Feature Group D signaling. As a result, MCI cannot offer its own operator services and directory assistance services to customers it serves using unbundled local switching.⁷²³ MCI, however, fails to demonstrate that it has requested Feature Group D signaling, and BellSouth claims that it has never received such a request.⁷²⁴ Thus, the record is inconclusive as to this objection. We believe, however, that MCI may have otherwise raised a legitimate concern. If a competing carrier requests Feature Group D signalling and it is technically feasible for the incumbent LEC to offer it,⁷²⁵ the incumbent LEC's failure to provide it would constitute a violation of section 251(c)(3) of the Act.⁷²⁶ Our rules require incumbent LECs, including BOCs, to make network modifications to the extent necessary to accommodate interconnection or access to network elements.⁷²⁷

227. In its reply comments, BellSouth claims that "the concept of using [Feature Group D signaling] for operator services signaling appears to present significant problems that will require technical investigation and testing."⁷²⁸ As a result, "[s]hould this [Feature Group D signaling] approach prove feasible, time would be needed to develop and implement switching arrangements."⁷²⁹ Although it will take time to determine technical feasibility, modify and adapt its facilities, and establish ordering systems to allow the requesting carrier to offer new service, a BOC should accomplish these in a swift, efficient, and businesslike manner that would give an

⁷²³ MCI Henry Decl. at para. 51.

⁷²⁴ BellSouth Reply at 70; BellSouth Milner Reply Aff. at para. 3; *but see supra* para. 213. According to BellSouth, "no requests or unanswered Bona Fide Requests (BFRs) are pending with MCI or any other CLECs relating to this issue." BellSouth Milner Reply Aff. at para. 3.

⁷²⁵ State commissions are charged with reviewing the technical feasibility of competing carriers' requests for customized routing. *Local Competition First Report and Order*, 11 FCC Rcd at 15709.

⁷²⁶ See 47 C.F.R. § 51.319(c)(1)(i)(C)(2).

⁷²⁷ *Local Competition First Report and Order*, 11 FCC Rcd at 15602. We note that the Commission previously found that, to the extent that incumbent LECs incur costs to provide interconnection or access under section 251(c)(2) or section 251(c)(3), incumbent LECs may recover such costs from requesting carriers. *Id.* at 15604.

⁷²⁸ BellSouth Milner Reply Aff. at para. 4.

⁷²⁹ BellSouth Milner Reply Aff. at para. 4.

efficient competitor a meaningful opportunity to compete.

228. Trunk Ports on a Shared Basis. BellSouth demonstrates that it meets the requirements set forth in the *Local Competition Third Reconsideration Order* and the *Ameritech Michigan Order* that it provide trunk ports on a shared basis, and routing tables resident in the BOC's switch, as necessary to provide nondiscriminatory access to shared transport facilities.⁷³⁰ BellSouth claims that "[l]ocal switching also provides access to additional capabilities such as common and dedicated transport."⁷³¹ Because it is not possible to offer shared transport without shared trunk ports, BellSouth by implication, is committing itself to providing shared trunk ports. To reach a shared trunk port to use shared transport, a routing table must "instruct" the call to follow a specified path. Therefore, BellSouth is obligated to provide shared trunk ports and the routing tables necessary to get to the shared trunk port as a consequence of its legal obligation to provide shared transport.

229. Unbundled Tandem Switching. BellSouth demonstrates that it meets the requirements of our rules and the *Local Competition First Report and Order* that it provide requesting carriers access to unbundled tandem switching.⁷³² BellSouth asserts that it satisfies the Commission's unbundled tandem switching rules.⁷³³ No commenter alleges that BellSouth is unable to provide unbundled tandem switching. Furthermore, in its state-approved SGAT, BellSouth legally obligates itself to provide competing carriers with access to all the functionalities of its tandem switches.⁷³⁴

230. Usage Information for Billing Exchange Access. BellSouth does not demonstrate that purchasers of unbundled local switching can provide exchange access service to interexchange carriers through the use of the unbundled local switch as contemplated by our

⁷³⁰ *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12475-79; *Ameritech Michigan Order* at 20716-17.

⁷³¹ BellSouth Varner Aff. at para. 121 (emphasis added), 116. BellSouth refers to shared transport as common transport. See BellSouth Varner Aff. at para. 111.

⁷³² The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and, (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signalling conversion features. 47 C.F.R. § 51.319(c)(2); *Local Competition First Report and Order*, 11 FCC Rcd at 15713.

⁷³³ BellSouth Application at 45-46; BellSouth Varner Aff. at para. 122.

⁷³⁴ See SGAT V A 3.

rules,⁷³⁵ because it fails to demonstrate that it is able to provide these carriers with the usage information necessary to bill for exchange access. Purchasers of unbundled local switching may assess exchange access charges to carriers for originating or terminating exchange access calls using those elements.⁷³⁶ For example, if an end user with MCI as its local service provider and Sprint as its interexchange provider, makes an interexchange call, *i.e.*, a toll call, to a customer whose local service provider is Intermedia, MCI, as the originating exchange access provider, and Intermedia, as the terminating exchange access provider, have the right to charge Sprint for originating and terminating exchange access charges, respectively, even if MCI and Intermedia are using unbundled local switching provided by BellSouth. To assess such charges, the local service providers must have either: (1) the actual usage information necessary to determine appropriate access charges,⁷³⁷ or (2) a negotiated or state-approved surrogate for this information. When the local service providers are providing exchange access by purchasing unbundled local switching, the BOC providing the unbundled local switching must provide this information to the purchaser so that the purchaser obtains the right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service for that end user.⁷³⁸

231. BellSouth claims that it "provides bills to CLECs using the same systems it uses to

⁷³⁵ Our rules implementing section 251(c)(3) define unbundled network elements as providing purchasers with the ability "to provide exchange access services to [themselves] in order to provide interexchange services to subscribers." 47 C.F.R. § 51.309(b). The Commission clarified, in the *Local Competition First Reconsideration Order*, that "a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user." *Local Competition First Reconsideration Order*, 11 FCC Rcd at 13048. The Commission further stated that "where a requesting carrier provides interstate exchange access services to customers, to whom it also provides local exchange service, the requesting carrier is entitled to assess originating and terminating access charges to interexchange carriers, and it is not obligated to pay access charges to the incumbent LEC." *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12483.

⁷³⁶ See *Local Competition First Report and Order*, 11 FCC Rcd at 15682, n.772; *Local Competition Third Reconsideration Order*, 12 FCC Rcd at 12483; *Ameritech Michigan Order*, 12 FCC Rcd at 20715; see also *Local Competition First Reconsideration Order*, 11 FCC Rcd 13048. We note that the states have the right to determine whether purchasers of unbundled local switching have the right to collect exchange access charges for intrastate exchange access calls. It is our hope that states will allow purchasers of unbundled local switching to collect such charges and not the incumbent LEC.

⁷³⁷ Such information might include the identity of the interexchange provider so the local service providers know who to bill, the time the call was placed so that the rate can be determined, and the length of the call so that amount of the charges can be calculated.

⁷³⁸ *Local Competition First Reconsideration Order*, 12 FCC Rcd at 13048 (citing *Local Competition First Report and Order*, 11 FCC Rcd at 15712).

provide bills to its retail and interexchange access customers.⁷³⁹ BellSouth however, concedes that it did not begin providing AT&T with the necessary information until after it filed this application.⁷⁴⁰ BellSouth also acknowledges it is not currently providing usage information necessary for competitors to bill BellSouth for terminating intraLATA exchange access traffic where BellSouth is the intraLATA toll carrier, even though BellSouth has agreed that competitive LECs may bill for such services.⁷⁴¹ Furthermore, BellSouth concedes that it has not developed an alternative compensation process to calculate the charges for terminating intraLATA toll calls by BellSouth.⁷⁴² We expect that when BellSouth next files a 271 application, it will have in place the necessary billing procedures, and that it will show that competing carriers are provided timely and accurate information necessary for competitive carriers to bill interexchange carriers, including BellSouth, for interLATA and intraLATA exchange access services.

232. Usage Information Necessary for Billing for Reciprocal Compensation. BellSouth

⁷³⁹ Second BellSouth Louisiana Application App. A, Vol. 4, Affidavit of David Scollard (BellSouth Scollard Aff.) at para. 5. The sources of information used to generate bills include "switch recordings which provide records of billable call events." *Id.* at para. 7. BellSouth has developed the Daily Usage Files (DUFs) to provide competitors with usage records for billable call events that are recorded by BellSouth's central offices. *Id.* at para. 10. According to BellSouth, two files are currently available. *Id.* The two files are the Optional Daily Usage File (ODUF) which contains information on billable transactions for resold lines, interim number portability accounts and some unbundled network elements such as unbundled ports, and the Access Daily Usage File (ADUF) which provides competitors with records for billing interstate access charges to interexchange carriers for calls originating from, and terminating to, unbundled ports. *Id.* BellSouth further claims that its "Access Daily Usage File (ADUF) provides [competitors'] with records for billing interstate access charges to interexchange carriers for calls originating from and *terminating to* unbundled ports." *Id.* (emphasis added).

⁷⁴⁰ BellSouth Reply at 67. BellSouth states that "Since July 24, 1998, BellSouth has been providing a daily [Access Daily Usage File] to AT&T." BellSouth Scollard Reply Aff. at para. 2. BellSouth's statement that "any other CLEC can obtain the ADUF as well," BellSouth Reply at 67; BellSouth Scollard Reply Aff. at para. 2, leads us to believe that no other competing carrier is currently receiving this information.

⁷⁴¹ BellSouth Reply at 67; BellSouth Scollard Aff. at para. 10, 21; BellSouth Scollard Reply Aff. at para. 2. BellSouth recently agreed to provide competitors with this information as part of the usage information it provides competitors. Nevertheless, BellSouth is not currently providing competitors with this information. BellSouth Scollard Aff. at para. 10. BellSouth claims it will provide the information for intraLATA toll calls in the ADUF. As a result, billing of intrastate access will be done in the same manner as it is being done for interstate access. *Id.* "Since BellSouth does not currently bill terminating intra-state access associated with the toll calls it carries, switch recordings for these types of calls are not produced. BellSouth will implement the mechanized capability to provide records for these types of calls by October 31, 1998." BellSouth Scollard Aff. at para. 21.

⁷⁴² BellSouth Scollard Aff. at para. 21; BellSouth Reply at 68; BellSouth Scollard Reply Aff. at para. 2. We note that BellSouth indicates that it will implement a mechanized ability to provide records for intraLATA exchange access calls where BellSouth is the interexchange provider by October 31, 1998. In the meantime, BellSouth claims it will jointly develop an alternative compensation process. BellSouth Scollard Aff. at para. 21; BellSouth Reply at 68.

does not meet the requirements set forth in the Act and our orders that it provide competitive LECs with information necessary to bill for reciprocal compensation or, alternatively, that it have in place other arrangements such as a surrogate. Section 251(b)(5) requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."⁷⁴³ Without this information or other arrangements, competing carriers purchasing unbundled local switching will not be able to bill and collect reciprocal compensation.⁷⁴⁴

233. We require, therefore, that a BOC provide a purchaser of unbundled local switching with either: (1) actual terminating usage data indicating how many calls/minutes its customers received and identifying the carriers that originated those calls;⁷⁴⁵ or (2) a reasonable surrogate for this information.⁷⁴⁶ Because we believe that installing equipment necessary to measure local usage for purposes of providing billing information may impose an unreasonable economic burden on an incumbent LEC,⁷⁴⁷ we find that a reasonable surrogate or agreed upon arrangement is sufficient to meet the billing requirement for unbundled local switching. The Commission has previously allowed carriers to utilize usage factors or other surrogates as substitutes for actual billing information.⁷⁴⁸ We believe that the best approach would be for the interested parties to agree on a surrogate for actual usage information. We recognize, however, that there may be circumstances where parties are unable to reach agreement. In those situations we will look to the respective state commissions to take the steps necessary to resolve the

⁷⁴³ 47 U.S.C. § 251(b)(5).

⁷⁴⁴ Section 251(b)(5) requires each LEC to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). Section 271(c)(2)(B)(xiii) requires BOCs to provide "Reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." 47 U.S.C. § 271(c)(2)(B)(xiii). Section 252(d)(2)(A) states in part: "a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -- (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . ." 47 U.S.C. § 252(d)(2)(A).

⁷⁴⁵ AT&T Comments at 52; AT&T Hamman Aff. at para. 23.

⁷⁴⁶ AT&T claims that BellSouth has not demonstrated that it is providing unbundled local switching purchasers with a reasonable surrogate for the information necessary to recover reciprocal compensation. AT&T Hamman Aff. at para. 24.

⁷⁴⁷ Letter from Lynn Starr, Executive Director Federal Relations, Ameritech to Magalie Roman Salas, Secretary FCC at 6-7 (filed March 2, 1998, in CC Docket 96-98).

⁷⁴⁸ See, e.g., *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Transport Phase I, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374, 7442 (1993).

remaining disputes.

234. BellSouth argues that it is not legally required to provide billing information for terminating traffic because any reciprocal compensation payments due from BellSouth are offset by payments due to BellSouth for the competitors' use of unbundled local switching to terminate traffic.⁷⁴⁹ We reject this argument. We conclude that BellSouth's position ignores its obligations under our rules requiring it to provide billing information to purchasers of unbundled local switching.⁷⁵⁰

7. Checklist Item 7

a. 911 and E911 services

(1). Background

235. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to -- (I) 911 and E911 services."⁷⁵¹ In the *Ameritech Michigan Order*, the Commission found that "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity."⁷⁵² Specifically, the Commission found that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."⁷⁵³ For facilities-based carriers, the BOC must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."⁷⁵⁴ The Commission applied these standards in the *BellSouth South Carolina Order*, and found that BellSouth, through its SGAT, made a *prima facie* showing that it offered

⁷⁴⁹ BellSouth Varner Aff. at para. 192.

⁷⁵⁰ We note that, under its proposal, BellSouth would fail to provide the usage information a purchaser of unbundled local switching would need to bill for reciprocal compensation if the rates for reciprocal compensation and terminating unbundled switching were not the same, and therefore, resulted in an imbalance in payments due.

⁷⁵¹ 47 U.S.C. § 271(c)(2)(B)(vii).

⁷⁵² *Ameritech Michigan Order*, 12 FCC Rcd at 20679.

⁷⁵³ *Id.*

⁷⁵⁴ *Id.*

nondiscriminatory access to 911 and E911.⁷⁵⁵

(2). Discussion

236. BellSouth again demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item (vii)(I). BellSouth makes a *prima facie* showing that it has a legal obligation to provide access to 911 services and that it continues to meet the requirements described in the *Ameritech Michigan Order* and the *BellSouth South Carolina Order*.

237. BellSouth has a concrete and specific legal obligation to provide access to 911/E911 services in its SGAT and interconnection agreements.⁷⁵⁶ Moreover, BellSouth states that: (1) resellers are able to provide 911 service in the same manner that BellSouth provides this service to its own customers; (2) facilities-based carriers are able to obtain trunks to BellSouth's switch, and then either forward 911 calls and automatic number identification (ANI) to the appropriate tandem, or, if a tandem is unavailable, route the call over BellSouth's interoffice network using a 7-digit number; (3) BellSouth routinely monitors call blockage on E911 trunk groups, and when necessary takes corrective action using the same trunking service procedures as for its own E911 trunk groups; and (4) an independent third party manages the E911 database, and corrects any errors in BellSouth records that fail validity edits, and, in the case of CLECs that do not have a similar arrangement with the third party, errors are faxed back to the CLEC for review, investigation, correction, and resubmission.⁷⁵⁷

238. We reject the claim made by Cox Communications that BellSouth is not offering

⁷⁵⁵ *BellSouth South Carolina Order*, 13 FCC Rcd at 666-67. The Commission expressly noted BellSouth's statements that it offered its competitors' customers access to 911 service in the same manner that it provided such service to its own customers, that it provided facilities-based carriers with trunks for E911 services, that it corrected E911 call blockage from CLEC switches in the same manner that it corrected such blockage from BellSouth switches, and that it had instituted procedures to maintain 911 database entries for competitors with the same accuracy and reliability that it maintained database entries for its own customers. Because of these facts and because no commenter alleged that BellSouth was not maintaining or populating the 911 database for competitors with the same accuracy and reliability as for its own customers, or that BellSouth was not providing equivalent access to the 911 database or to dedicated trunks, the Commission found that BellSouth showed that it offered nondiscriminatory access to 911 and E911. *Id.* at 665-67.

⁷⁵⁶ See, e.g., SGAT § VII; AT&T Interconnection Agreement 2, § 16.7. We note that BellSouth's SGAT in Louisiana is identical to its SGAT in South Carolina, which we concluded established a *prima facie* case of compliance. *BellSouth South Carolina Order*, 13 FCC Rcd at 666-67.

⁷⁵⁷ BellSouth Application at 48-49; Second BellSouth Louisiana Application App. A, Vol. 4, Tab 17, Affidavit of Valerie Sapp (BellSouth Sapp Aff.) at paras. 6, 8, 15; Second BellSouth Louisiana Application App. A, Vol. 3, Tab 12, Affidavit of William Marczak (BellSouth Marczak Aff.) at para. 7.

nondiscriminatory access to these services because errors in BellSouth records are corrected automatically, while errors in some CLEC records are instead faxed back to the CLEC.⁷⁵⁸ Neither Cox nor any other commenter alleges that this procedure has caused a problem with the accuracy and integrity of the 911 database, and we conclude that no party has rebutted BellSouth's *prima facie* case.⁷⁵⁹

b. Directory Assistance/Operator Services

(1). Background

239. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.⁷⁶⁰ Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."⁷⁶¹ The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*.⁷⁶²

⁷⁵⁸ Cox Comments at 3. Cox also contends that the Commission cannot credit the Louisiana Commission's determination on BellSouth's 911 compliance, because no party was given an opportunity to cross-examine and present any views in response to BellSouth's presentation to the Louisiana Commission on this issue, and the Louisiana Commission did not address these concerns in its order on BellSouth's application. *See Cox Comments at 3, n. 6.* As set forth below, however, our decision that BellSouth has made a *prima facie* case that it offers nondiscriminatory access to its 911 and E911 services is not dependent on the Louisiana Commission's determination. Instead, our decision is based on Cox's failure to rebut BellSouth's *prima facie* case.

⁷⁵⁹ In the *BellSouth South Carolina Order*, the Commission, noting BellSouth's statement that CLECs are manually notified about errors, recognized that such a process could lead to significant delays. *BellSouth South Carolina Order*, 13 FCC Rcd at 666-67. The Commission stated, however, that "[it] would be concerned if this manual notification process leads to untimely notification or to problems with the accuracy and the integrity of the 911 database, and would reevaluate [its] conclusion herein should such evidence be presented in future applications. With respect to 911 and E911 services, however, no party contends that the fact that BellSouth notifies competing carriers via facsimile about errors has led to a lack of parity or problems such as incorrect end-user information being sent to emergency personnel." *Id.* at 667 (citations omitted).

⁷⁶⁰ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

⁷⁶¹ 47 U.S.C. § 251(b)(3).

⁷⁶² 47 C.F.R. § 51.217; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*), vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), cert. granted, *AT&T Corp. v. Iowa Util. Bd.*, 118 S.Ct 879 (Jan. 26, 1998).

240. Given the similarity of the language in sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III) to that in section 251(b)(3), we conclude that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III).⁷⁶³ In the *Local Competition First Report and Order*, the Commission concluded that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with nondiscriminatory access to such functionalities at any technically feasible point.⁷⁶⁴

241. In the *Local Competition Second Report and Order*, the Commission held that the phrase "nondiscriminatory access to directory assistance and directory listings" meant that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory listing is requested."⁷⁶⁵ The Commission concluded that nondiscriminatory access to the dialing patterns of

⁷⁶³ While both section 251(b)(3) and section 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to "directory assistance," section 251(b)(3) refers to nondiscriminatory access to "operator services" while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to "operator call completion services." 47 U.S.C. § 251(b)(3), 271(c)(2)(B)(vii)(III). The term "operator call completion services" is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term "operator services" was defined as meaning "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." *Local Competition Second Report and Order*, 11 FCC Rcd at 19448. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, for checklist compliance purposes we conclude that "operator call completion services" is a subset of or equivalent to "operator services." As a result, the Commission will use the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is being provided.

⁷⁶⁴ 47 C.F.R. § 51.319 (g); *Local Competition First Report and Order*, 11 FCC Rcd at 15771-72. The Commission included a discussion of operator services and directory assistance in the network elements section. *see supra* section (VI)(C)(2); *see also Local Competition First Report and Order*, 11 FCC Rcd at 15772-73.

⁷⁶⁵ 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456, 19457. We note that the *Local Competition Second Report and Order*'s interpretation of section 251(b)(3) is limited "to access to each LEC's directory assistance service." *Id.* at 19456. However, section 271(c)(2)(B)(vii) is not limited to the LEC's systems but rather requires "Nondiscriminatory access to . . . directory assistance services to allow the other carrier's customers to obtain telephone numbers." 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the

4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.⁷⁶⁶ The Commission specifically held that the phrase "nondiscriminatory access to operator services" means that ". . . a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."⁷⁶⁷

242. There are various methods by which competing carriers can provide operator services and directory assistance to their customers through the use of BellSouth's facilities, personnel, and databases. First, the competing carrier can use BellSouth's operator services and directory assistance, *i.e.*, when its customer dials 0, 4-1-1, etc., the customer is connected to BellSouth's operator services or directory assistance that provides the requested service on behalf of the competing carrier. Pursuant to our rules, when a competing carrier uses this method of providing operator services and directory assistance, it may request that the BOC brand its calls.⁷⁶⁸ Second, the competing carrier can use its own operator services or directory assistance with its own personnel and facilities.⁷⁶⁹ In this context, competing carriers must be able to obtain

Commission's conclusion that "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible," *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, section 271(c)(2)(B)(vii)'s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor: provides such services itself; selects the BOC to provide such services; or, chooses a third party to provide such services.

⁷⁶⁶ *Local Competition Second Report and Order*, 11 FCC Rcd at 19464.

⁷⁶⁷ *Local Competition Second Report and Order*, 11 FCC Rcd at 19449, 19450; *see also* 47 C.F.R. § 51.217(c)(2). We note that the *Local Competition Second Report and Order* only requires that "a telephone service customer . . . must be able to connect to a local operator." *Local Competition Second Report and Order*, 11 FCC Rcd at 19449, 19450. As discussed above, *see supra* note 764, section 271(c)(2)(B)(vii)'s requirement is broader than section 251(b)(3)'s requirement, therefore, the BOC must provide nondiscriminatory access to the operator service provider selected by the customer's local service provider, regardless of whether the competitor provides such service itself, selects the BOC to provide such services, or chooses a third party to provide such service.

⁷⁶⁸ 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19455, 19463. For example, when customers call the operator or calls for directory assistance, they typically hear a message such as "Thank you for using XYZ Telephone Company." BellSouth brands its calls with a message indicating that BellSouth is providing the service. Competing carriers may request that BellSouth brand the call with its name or it can request that BellSouth not brand the call at all. 47 C.F.R. § 51.217(d).

⁷⁶⁹ *See Local Competition Second Report and Order*, 11 FCC Rcd at 19451 (operator services), 19457-58 (directory assistance).

directory listings of other carriers,⁷⁷⁰ either by obtaining directory information on a "read only" or "per dip" inquiry basis from BellSouth's directory assistance database, or by creating its own directory database by obtaining the subscriber listing information in the BOC's database.⁷⁷¹

(2). Discussion

243. BellSouth does not demonstrate that it is providing nondiscriminatory access to directory assistance and operator services as required by the Commission's rules pursuant to section 251(b)(3) of the Act,⁷⁷² and thus does not satisfy the requirements of this checklist item. BellSouth makes a *prima facie* showing that it has a concrete legal obligation to provide such access, and that it provides access to its directory assistance database on a "read only" or "per dip" inquiry basis. BellSouth, however, fails to make a *prima facie* showing that it provides nondiscriminatory access: (1) to BellSouth-supplied operator services and directory assistance; and (2) to the directory listings in its directory assistance databases. We note, however, that many of the deficiencies we identify below should be readily correctable by BellSouth. We review BellSouth's compliance in relation to the methods of using BellSouth's operator services and directory listings described above.

244. BellSouth legally obligates itself to provide competing carriers with nondiscriminatory access to its operator services and directory assistance in its SGAT and interconnection agreements.⁷⁷³ In reaching this conclusion, we reject AT&T's argument that BellSouth only obligates itself to provide directory assistance "on the same terms as they are currently offered to other telecommunications providers."⁷⁷⁴ AT&T contends that this is insufficient because our rules require that BOCs must provide not only equality of access as among competing carriers, but the access must be equal in quality to that which the BOC provides itself. Although we agree with AT&T's recitation of our standard, we disagree that BellSouth's legal obligation is deficient. When read in full, BellSouth's SGAT legally obligates BellSouth to provide nondiscriminatory access to directory assistance on par with that which it provides itself.

245. Access to BellSouth-Supplied Operator Services and Directory Assistance. BellSouth does not demonstrate that it provides access to its operator services and directory

⁷⁷⁰ *Id.* at 19458.

⁷⁷¹ 47 C.F.R. § 51.217(c)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61.

⁷⁷² See para. 240, *supra*, explaining the relationship between section 251(b)(3) and 271(c)(2)(B)(vii).

⁷⁷³ See SGAT § VII B ("BellSouth provides CLECs nondiscriminatory access to directory assistance services on the following terms . . .").

⁷⁷⁴ AT&T Comments at 62-63 (citing SGAT § VII B 2.)

assistance in a nondiscriminatory manner. BellSouth submits performance data purportedly demonstrating nondiscriminatory access through two performance measurements: (1) the average time it takes to answer a customer's call to "toll assistance" and directory assistance; and (2) the percentage of calls answered within two time intervals, 30 seconds and 20 seconds.⁷⁷⁵ Although these are appropriate performance criteria to measure, BellSouth has not separated the performance data between itself and competing carriers. It may be that such disaggregation is either not technically feasible or unnecessary given the method by which competing carriers' customers access BellSouth's operator services and directory assistance. In any future application, if BellSouth seeks to rely on such performance data to demonstrate compliance, it should either disaggregate the data or explain why disaggregation is not feasible or is unnecessary to show nondiscrimination.⁷⁷⁶ The absence of such an explanation in the record or any other corroborative evidence that it is providing nondiscriminatory access precludes us from finding that BellSouth is providing access to its operator services and directory assistance that is consistent with our rules.

246. BellSouth also fails to demonstrate that it complies with our rebranding requirements.⁷⁷⁷ When a competing carrier provides its customers with operator services and directory assistance using BellSouth's facilities, personnel, and databases, BellSouth is required to rebrand or unbrand these services, *i.e.*, although BellSouth's employees or facilities would be used to answer the call, BellSouth would either identify the service as being provided by the competing carrier or not identify any carrier at all.⁷⁷⁸ As noted above, under our rules, BellSouth must rebrand or unbrand its operator services or directory assistance services when a competing carrier uses BellSouth's facilities, personnel, and databases, and makes a reasonable request that BellSouth rebrand or unbrand these services.⁷⁷⁹

247. BellSouth claims that it allows competitors to brand or to unbrand all operator

⁷⁷⁵ See BellSouth Stacy Perf. Aff., Ex. WNS-1 at 30; WNS-3.

⁷⁷⁶ In its explanation of its measurements, BellSouth claims that: "[t]he same facilities and operators are used to handle BST and [competitive] LEC customer calls, as well as inbound call queues that will not differentiate between BST & [competitive] LEC service." Stacy Perf. Aff., Ex. WNS-1 at 30.

⁷⁷⁷ 47 C.F.R. § 51.217(d).

⁷⁷⁸ See *supra* note 767.

⁷⁷⁹ The rule states: "The refusal of a providing local exchange carrier (LEC) to comply with the reasonable request of a competing provider that the providing LEC rebrand its operator services and directory assistance, or remove its brand from such services, creates a presumption that the providing LEC is unlawfully restricting access to its operator services and directory assistance. The providing LEC can rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request." 47 C.F.R. § 51.217(d).

services and directory assistance services.⁷⁸⁰ According to BellSouth, competing carriers can have their operator services and directory assistance calls branded or unbranded by purchasing dedicated transport trunks between each end office in which a competing carrier has customers and BellSouth's operator services and directory assistance platform.⁷⁸¹ BellSouth contends that, without trunks going into its operator services and directory assistance dedicated to specific carriers, there is no way to identify which carrier is serving the calling customer in order to properly brand the call.⁷⁸² BellSouth fails, however, to offer any explanation of why this method of rebranding results in nondiscriminatory access. In this regard, we note that MCI alleges that BellSouth's rebranding solution imposes "an unreasonable requirement that would result in a grossly inefficient and costly parallel network for each CLEC seeking branded operator services."⁷⁸³ In any future application, BellSouth must demonstrate that its method of providing branding results in nondiscriminatory access. It could accomplish this by showing, for example, that the way it brands operator calls for competing carriers is the same as the way it provides access to operator services for its own customers.

248. Access to BellSouth's Directory Assistance Databases. As we explained above, a competing carrier may wish to supply its own operator services and directory assistance. When this is the case, BellSouth must either provide access to BellSouth's directory database on a "read only" or "per dip" basis, or provide the entire database of subscriber listings to be incorporated into the competing carrier's directory assistance database.⁷⁸⁴ BellSouth demonstrates that it meets the requirements of the *Local Competition Second Report and Order* when it provides access to its directory assistance database on a "read only" basis.⁷⁸⁵ BellSouth provides such service through its Direct Access Directory Assistance Service (DADAS), "which provides direct on-line

⁷⁸⁰ BellSouth Milner Aff. at para. 94; BellSouth Application at 50; Second BellSouth Louisiana Application App. A, Vol. 1, Tab 5, Affidavit of Douglas R. Coutee (BellSouth Coutee Aff.) at para. 13; *see also* BellSouth Varner Aff. at para. 143.

⁷⁸¹ BellSouth states that "to obtain selective routing for branding or other purposes, a [competitive] LEC must use dedicated transport between its switch and BellSouth's OS/DA platform." BellSouth Varner Aff. at para. 143.

⁷⁸² BellSouth Varner Aff. at para. 143. BellSouth claims that its operator services and directory assistance systems cannot identify the carrier to which the call belongs without a dedicated trunk. *Id.*

⁷⁸³ MCI Comments at 61; MCI Henry Decl. at para. 52. According to MCI, BellSouth "could simply route the calls to its operator services platform over its usual trunk groups and brand them on the basis of the Automatic Number Identification of the call." MCI Comments at 61-62; MCI Henry Decl. at para. 53.

⁷⁸⁴ 47 C.F.R. § 51.217(c)(3)(ii).

⁷⁸⁵ 47 C.F.R. § 51.217(c)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19461.

access to BellSouth's directory assistance database on a per inquiry basis.⁷⁸⁶ No party challenges this showing.

249. BellSouth fails, however, to demonstrate that it meets the requirements of the *Local Competition Second Report and Order* that it provide the subscriber listing information in its directory assistance database in a way that allows competing carriers to incorporate that information into their own database.⁷⁸⁷ To comply with this requirement, a LEC, including a BOC, must provide a requesting carrier with all the subscriber listings in its operator services and directory assistance databases except listings for unlisted numbers.⁷⁸⁸

250. BellSouth concedes that the database provided to competing carriers does not contain all the listings that are in BellSouth's own directory assistance and operator services databases. It contends that it is precluded from providing the excluded listings because it has contracts with certain independent companies and competitive LECs that prevent it from including those carriers' subscribers' listings in the database.⁷⁸⁹ BellSouth claims that it is actively pursuing "contract modifications to permit it to provide all listings," and that it will provide

⁷⁸⁶ BellSouth Varner Aff. at para. 140; SGAT § VII (B)(2)(b). Using DADAS, a competing carrier "must connect to the BellSouth directory assistance database using its own switch, workstation, audio, and transport facilities." BellSouth Couteau Aff. at para. 11.

⁷⁸⁷ 47 C.F.R. § 51.217(c)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460. The Commission's rules state, in part: "A LEC shall provide directory listings to competing providers in readily accessible magnetic tape or electronic formats in a timely fashion." 47 C.F.R. § 51.217(c)(3)(ii) In the *Local Competition First Report and Order*, the Commission determined that databases used in the provision of both operator call completion services and directory assistance must be unbundled by incumbent LECs upon a request for access by a competing provider. *Local Competition First Report and Order*, 11 FCC Rcd at 15773-74. Furthermore, in the *Local Competition Second Report and Order*, the Commission stated that: "When a customer contacts his or her provider's directory assistance services, the customer's provider can obtain access to the directory listings of other carriers; thus, the customer should be able to obtain any directory listing (other than listings that are protected or not available, such as unlisted numbers)." *Local Competition Second Report and Order*, 11 FCC Rcd at 19458.

⁷⁸⁸ 47 C.F.R. § 51.217(c)(3). The rule states in part that: "A LEC shall permit competing providers to have access to its directory assistance services so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iii) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested." 47 C.F.R. § 51.217(c)(3)(i).

⁷⁸⁹ BellSouth Varner Aff. at para. 141; BellSouth Reply at 73. "DADS includes all eligible BellSouth subscriber listing information (non-published listings are not provided) and, where authorized by agreement, third party listings of CLECs and independent local exchange companies." BellSouth Couteau Aff. at para. 11. We note that the requirements of section 251(b)(3) and section 51.217 of our rules apply to *all* LECs, including competing carriers and independent companies (ICOs). See 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217.

competing carriers or independent companies' listings in the database if such companies are willing to waive the restrictive parts of their agreements.⁷⁹⁰ It claims that, as a result of these negotiations, most agreements now permit such listings.⁷⁹¹ Although we are encouraged by BellSouth's progress in renegotiating its agreements, we find that, based on BellSouth's own admission, BellSouth fails to demonstrate that it complies with section 51.217(c)(3)(i) of the Commission's rules.⁷⁹²

251. We reject AT&T's assertion that BellSouth has not demonstrated compliance with our rule requiring a BOC whose own database indicates that a particular telephone number is unlisted to include a similar indication in the database it provides to competitors.⁷⁹³ AT&T claims that it is its "understanding [] that BellSouth does not provide CLECs with nonpublished listing indicators in the 'extracts' it provides of its directory assistance database."⁷⁹⁴ AT&T claims that without such information a competitive LEC operator can only report that it cannot find a listing whereas a BellSouth operator can inform a caller that the requested number is unlisted. In reply comments, BellSouth represents that its "record layout for the directory assistance database provides the customers' name and a special indicator designating the customer's listing as nonpublished."⁷⁹⁵ Thus, a competitive LEC's operator could provide the same unpublished number information as BellSouth's operator. We conclude that BellSouth's reply dispels AT&T's "understanding" to the contrary and that BellSouth has sufficiently demonstrated that it complies with this requirement.

⁷⁹⁰ BellSouth Varner Aff. at para. 141. Further, BellSouth claims it will provide all listings if released from its contractual obligations in Louisiana by the Louisiana Commission or by the courts. *Id.*

⁷⁹¹ BellSouth Varner Aff. at para. 141.

⁷⁹² See *supra* note 787.

⁷⁹³ Section 51.217(c)(3)(iii) states that "A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available. The LEC shall ensure that access is permitted only to the same directory information that is available to its own directory assistance customers." 47 C.F.R. § 51.217(c)(3)(iii); see *Local Competition Second Report and Order*, 11 FCC Rcd at 19458.

⁷⁹⁴ AT&T Comments at 63 ("DADS includes all eligible BellSouth subscriber listing information (nonpublished listings are not provided) . . ." BellSouth Couteau Aff. at para. 11).

⁷⁹⁵ BellSouth Varner Reply Aff. at para. 23.

8. Checklist Item 8 -- White Pages Directory Listings

a. Background

252. Section 271(c)(2)(B)(viii) requires a BOC to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service."⁷⁹⁶ We note that section 251(b)(3) obligates all LECs to permit competitive providers of telephone exchange service to have nondiscriminatory access to directory listings.⁷⁹⁷ Given the similarity of the language in these two sections of the Act, we believe it reasonable to conclude that the term "directory listing" as used in section 251(b)(3) is comparable to "white pages directory listings" as used in section 271(c)(2)(B)(viii). In the *Local Competition Second Report and Order*, the Commission determined that, "[a]s a minimum standard . . . the term 'directory listing' as used in section 251(b)(3) is synonymous with the definition of 'subscriber list information' in section 222(f)(3)."⁷⁹⁸ In addition, the Commission has previously stated that "[a] white pages directory is a compilation of the individual white pages listings."⁷⁹⁹ The Louisiana PSC found that the BellSouth SGAT complies with the white pages checklist requirement.⁸⁰⁰

b. Discussion

253. BellSouth has demonstrated that it is providing white pages directory listings for customers of competitive LECs' telephone exchange service, and thus has satisfied the requirements of checklist item (viii). BellSouth makes a *prima facie* showing that: (1) it provides nondiscriminatory appearance and integration of white page listings to customers of competitive

⁷⁹⁶ 47 U.S.C. § 271(c)(2)(B)(viii).

⁷⁹⁷ 47 U.S.C. § 251(b)(3).

⁷⁹⁸ *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59. Section 222(f)(3) defines the term "subscriber list information" as any information:

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

47 U.S.C. § 222(f)(3)(A), (B).

⁷⁹⁹ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, 8785 n.142 (1997).

⁸⁰⁰ See Louisiana Commission November 27, 1997 Comments at 16.

LECs; and (2) it provides white page listings for competitor's customers with the same accuracy and reliability that it provides its own customers.

254. Based upon our review of the SGAT and interconnection agreements, we conclude that BellSouth has a concrete and specific legal obligation to provide white page listings to competitors' customers.⁸⁰¹

255. As an initial matter, we conclude that, consistent with the Commission's interpretation of "directory listing" as used in section 251(b)(3), the term "white pages" in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider. We further conclude that the term "directory listing," as used in this section, includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof.⁸⁰²

256. Nondiscriminatory Appearance and Integration of White Page Listings. We find that, to comply with this checklist item, a BOC must provide customers of competitive LECs with white page listings that are nondiscriminatory in appearance and integration, and that BellSouth has adduced sufficient evidence to demonstrate that it is satisfying this requirement. To compete effectively in the local exchange market, new entrants must be able to provide service to their customers at a level that is comparable to the service provided by the BOC. Inherent in the obligation to provide a white pages directory listing in a nondiscriminatory fashion is the requirement that the listing the BOC provides to a competitor's customers is identical to, and fully integrated with,⁸⁰³ the BOC's customers' listings.⁸⁰⁴ We find persuasive BellSouth's evidence that

⁸⁰¹ See, e.g., SGAT § VIII; US LEC Agreement at ¶ XI; TRICOMM Agreement at ¶ 11; ACSI Agreement at ¶ H. BellSouth commits in its SGAT to include competitive LEC residential and business customer listings in the appropriate directory and to "make no distinction between [competitive] LEC and BellSouth subscribers" in those directories. *Id.* We note that BellSouth offers competitive LEC customers white page directory listings for their primary listings at no charge. SGAT, Attachment A at 16.

⁸⁰² See 47 U.S.C. § 222(f)(3)(A).

⁸⁰³ By "identical," we refer to factors such as the size, font, and typeface of the listing. Customers may, of course, request and negotiate different arrangements for "enhanced" listings, such as boldface, italic, and other deviations from the basic primary listing that the BOC provides its own customers. Use of the term "fully integrated" means that the BOC should not separate the competing carrier's customers listings from its own customers.

⁸⁰⁴ See, e.g., *Ameritech Michigan Order*, 11 FCC Rcd at 20662-63 (interpreting the term "nondiscriminatory" for purposes of section 271 to require a BOC to provide competitors access to its services in the same manner that the BOC obtains such access, *i.e.*, at parity); *Local Competition First Report and Order*, 11 FCC Rcd at 15612, 15614-15 (interpreting the term "nondiscriminatory" for purposes of section 251 to include a comparison between the level of service the incumbent LEC provides competitors and the level of service it

"[t]he listing for a [competitive] LEC customer looks identical to the listing for a [BellSouth] customer," that competitive LEC customers "are not separately classified, or otherwise identified, on the printed directory pages," and that competitive LEC customer listings "are included in the same font and size as BST [BellSouth Telephone] customers and without any distinguishing characteristics."⁸⁰⁵ BellSouth further avers that for white page listings, "the exact same process is performed in the same way and at the same time for the [competitive] LEC orders" as for its own.⁸⁰⁶ We note that no commenter argues that BellSouth's white page listings for competitive LEC customers are not comparable to listings of BellSouth customers.

257. Nondiscriminatory accuracy and reliability of white page listings. We find that, to comply with this checklist item, a BOC must also demonstrate that it provides white pages directory listings for a competing carrier's customers with the same accuracy and reliability that it provides to its own customers, and that BellSouth has submitted sufficient evidence to demonstrate that it is satisfying this requirement. A competitive LEC will be unable to compete effectively in the local market if its customers cannot obtain white pages listings that are as accurate and reliable as those provided to customers of the BOC. We, therefore, require that, at a minimum, a BOC have procedures in place that are intended to minimize the potential for errors in the listings provided to the customers of a competing telecommunications service provider.

258. We find persuasive BellSouth's affidavit testimony that it provides listings to competitive LEC customers that include "names, addresses and telephone numbers" with the same degree of accuracy and reliability as BellSouth provides to itself.⁸⁰⁷ We also find persuasive BellSouth's affidavit evidence that it provides competing carriers with instructions for obtaining a listing in the white pages directory, including a description of the procedures for submitting a directory listing request, a description of the proper format for submitting subscriber listing information, publishing schedules and deadlines, and procedures for updating the directory listings database.⁸⁰⁸ BellSouth also affords competing carriers a reasonable opportunity to verify the

provides to itself).

⁸⁰⁵ BellSouth Barretto Aff. at para. 16.

⁸⁰⁶ *Id.* at para. 13.

⁸⁰⁷ BellSouth Varner Aff. at para. 162. BellSouth also provides Directory Review Listings Reports to competitive LECs at no charge, allowing them to review drafts of white page listings in advance of publication to verify their accuracy. BellSouth Barretto Aff. at para. 23.

⁸⁰⁸ BellSouth Barretto Aff. at paras. 13-18. BellSouth's SGAT states that BellSouth will provide competitive LECs with a "magnetic tape or computer disk containing the proper format for submitting subscriber listings." SGAT § 8.

accuracy of the listings to be included in the white pages directory.⁸⁰⁹ In particular, we are persuaded that BellSouth has a procedure in place for competing carriers to review, and if necessary to edit, white pages listings prior to their publication in the directory.⁸¹⁰ None of the commenters allege that BellSouth provides inaccurate white page listings for customers of competitive LECs.

259. We reject AT&T's contention that BellSouth has not satisfied this checklist item because it forces AT&T to use a BellSouth-assigned account number for each white page listing order and does not process multi-line directory orders in the same fashion as single line orders.⁸¹¹ AT&T fails to demonstrate either how BellSouth's refusal to permit AT&T to submit single telephone number white page listings and listings of multi-line customers on the same order form, or how AT&T's use of a BellSouth-assigned account number, results in the discriminatory provision of white page listings for customers of competitive LECs.⁸¹²

9. Checklist Item 9 -- Numbering Administration

a. Background

260. Section 271(c)(2)(B)(ix) of the competitive checklist requires BellSouth to provide "nondiscriminatory access to telephone numbers" for assignment to competing carriers' telephone exchange service customers, "[u]ntil the date by which telecommunications numbering administration guidelines, plan, or rules are established."⁸¹³ The Commission, interpreting section 251(b)(3) in the *Local Competition Second Report and Order*, concluded that "the term 'nondiscriminatory access to telephone numbers' requires a LEC providing telephone numbers to permit competing providers access to these numbers that is identical to the access that the LEC provides to itself."⁸¹⁴ The Commission further stated that, in assessing a BOC's compliance with checklist item (ix), the Commission "will look specifically at the circumstances and business

⁸⁰⁹ BellSouth Barretto Aff. at paras. 14-17, 22-3. In particular, BellSouth makes its own error correction procedures available to competitors, and its white page listing accuracy for customers of competitive LECs is currently comparable to the rate for its own customers. *Id.* at para. 21.

⁸¹⁰ *Id.* at para. 23.

⁸¹¹ See AT&T Hassebrock Aff. at para. 64.

⁸¹² AT&T Bradbury Aff. at paras. 57-9; see also AT&T Comments at 62, AT&T Hassebrock Aff. at paras. 61-5. But see discussion of OSS issues related to complex directory listings, *infra* section VI.

⁸¹³ 47 U.S.C. § 271(c)(2)(B)(ix).

⁸¹⁴ *Local Competition Second Report and Order*, 11 FCC Rcd at 19446-47.

practices governing CO [Central Office] code administration in each applicant's state."⁸¹⁵

261. After the date by which numbering administration guidelines, plan, or rules are established, BellSouth is required to comply with such guidelines, plan, or rules.⁸¹⁶ In accordance with the Commission's *NANP Order*⁸¹⁷ and industry guidelines, Lockheed Martin assumed the role of CO code administrator for the area served by BellSouth as of August 14, 1998.⁸¹⁸ This transfer of responsibility from BellSouth to Lockheed Martin constitutes the date upon which numbering administration guidelines were established in BellSouth's territory.

b. Discussion

262. BellSouth demonstrates that it has provided nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers, and thus BellSouth has satisfied the requirements of checklist item (ix). BellSouth makes a *prima facie* showing that, in acting as the code administrator, it has adhered to industry guidelines and the Commission's requirements under section 251(b)(3). None of the commenters allege that BellSouth has failed to meet this checklist item.

263. Based on our review of the SGAT and interconnection agreements, we note that BellSouth had a legal obligation to provide nondiscriminatory access to telephone numbers during its tenure as the CO code administrator.⁸¹⁹ BellSouth also states that it will comply with number administration guidelines pursuant to section 251(e) upon relinquishment of CO code administration duties.⁸²⁰

⁸¹⁵ *Local Competition Second Report and Order*, 11 FCC Rcd at 19542. In implementing section 251(b)(3), the Commission required an incumbent LEC to comply with the following rules: (1) it must charge one uniform fee to all carriers, including itself, for the assignment of CO codes, 47 C.F.R. § 52.15(c)(1); (2) it must not assess unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers, *Local Competition Second Report and Order*, 11 FCC Rcd at 19538; and (3) it must apply identical standards and procedures for processing all numbering requests, regardless of the party making the request. 47 C.F.R. § 52.15(c)(2).

⁸¹⁶ 47 U.S.C. § 271(c)(2)(B)(ix).

⁸¹⁷ See Administration of the North American Numbering Plan, CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2632 (1995) (*NANP Order*).

⁸¹⁸ See NANPA Transition Plan: Central Office Code Administration and NPA Relief Planning (Feb. 18, 1998), Appendix E. This document is available at <<http://www.atis.org/atis/nanp/nanpreq.htm>>.

⁸¹⁹ SGAT § IX.A. See also MereTel Agreement at § XII.A.

⁸²⁰ SGAT § IX.B.

264. BellSouth submits sufficient evidence to demonstrate that it is meeting the requirements of checklist item (ix). BellSouth states that it adheres to industry-established guidelines.⁸²¹ Moreover, BellSouth demonstrates that it satisfies the requirements under section 251(b)(3): (1) as of the date of its application, it did not charge any fees for activating CO codes to any carrier or group of carriers,⁸²² and (2) it applied identical standards and procedures for processing all numbering requests, regardless of the party making the request.⁸²³

265. As noted above, Lockheed Martin assumed CO code administration responsibilities in BellSouth's territory subsequent to the filing of this application. In future applications, therefore, BellSouth will be required to demonstrate that it adheres to the industry's CO administration guidelines and Commission rules, including those sections requiring the accurate reporting of data to the CO code administrator.⁸²⁴

10. Checklist Item 10 -- Databases and Associated Signaling

a. Background

266. Section 271(c)(2)(B)(x) of the competitive checklist requires BellSouth to offer "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion."⁸²⁵ In the *Local Competition First Report and Order*, the Commission identified signaling networks and call-related databases as network elements, and concluded that LECs must provide the exchange of signaling information between LECs necessary to exchange traffic and access call related databases.⁸²⁶

b. Discussion

⁸²¹ See SGAT § IX.A.; Second BellSouth Louisiana Application App. A, Vol. 3, Tab 14, Affidavit of W. Keith Milner (BellSouth Milner Aff.) at para. 108.

⁸²² 47 C.F.R. § 52.15(c)(1). See BellSouth Reply at 75. See also BellSouth Milner Reply Aff. at para. 37.

⁸²³ 47 C.F.R. § 52.15(c)(2). See BellSouth Milner Aff. at paras. 108, 110-111. For example, BellSouth notes that, during situations where CO codes in its territory were rationed on a first-come, first-served basis, it treated all carriers in exactly the same manner, denying CO codes to certain carriers, including itself. BellSouth Milner Aff. at para. 110.

⁸²⁴ See Central Office Code (NXX) Assignment Guidelines (INC 95-0407-008) (issued July 1998). This document is available at <HTTP://www.atis.org/atis/clc/inc/inctdocs.htm>. See also 47 C.F.R. § 52.15(b).

⁸²⁵ 47 U.S.C. § 271(c)(2)(B)(x).

⁸²⁶ 47 C.F.R. §51.319; *Local Competition First Report and Order*, 11 FCC Rcd at 15723-15751.

267. BellSouth demonstrates that it is providing nondiscriminatory access to databases and associated signaling necessary for call routing and completion and thus satisfies the requirements of checklist item (x). BellSouth makes a *prima facie* showing that it provides requesting carriers nondiscriminatory access to: (1) signaling networks, including signaling links and signaling transfer points,⁸²⁷ (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS). None of the commenters allege that BellSouth has failed to meet its obligations with regard to nondiscriminatory access to databases and associated signaling.

268. Based upon our review of the SGAT and interconnection agreements, we conclude that BellSouth has a concrete and specific legal obligation to provide databases and signaling.⁸²⁸

269. Signaling Networks. BellSouth provides sufficient evidence to demonstrate that it meets the requirement set forth in the *Local Competition First Report and Order* requiring that it provide nondiscriminatory access to signaling networks, including signaling links and signaling transfer points. Signaling networks enable the competitive LEC the ability to send signals between its switches (including unbundled switching elements), between its switches and BellSouth's switches, and between its switches and those third party networks with which BellSouth's signaling network is connected.⁸²⁹ BellSouth provides access to its signaling network from switches that BellSouth uses for its own customers and in the same manner in which it obtains such access itself.⁸³⁰ BellSouth asserts that carriers that provide their own switching facilities are able to access BellSouth's signaling network for each of their switches via a signaling link between their switch and the BellSouth STP.⁸³¹ Competitive carriers are able to make this connection in the same manner as BellSouth connects one of its own switches to the STP.⁸³²

270. Call-Related Databases. BellSouth provides sufficient evidence to demonstrate

⁸²⁷ 47 C.F.R. § 51.319(e)(1); *Local Competition First Report and Order*, 11 FCC Rcd at 15738-15740.

⁸²⁸ See, e.g., BellSouth SGAT § X; AT&T Agreement Attach. 2, §§ 11-13.

⁸²⁹ 47 CFR §§ 51.319(e)(1), (e)(1)(iii), (e)(2)(iv); 47 CFR §§ 51.311, 51.313; *Local Competition First Report and Order*, 11 FCC Rcd at 15738-15751. Signaling links are essential to the provisioning of competitive local exchange service.

⁸³⁰ SGAT § X. 47 CFR § 51.319(e)(1)(ii). See BellSouth Varner Aff. at Appendix A, Volume 6, Tab Number 25, para. 179.

⁸³¹ SGAT § 18; BellSouth Milner Aff. at Appendix A, Volume 3, Tab Number 14, para. 115.

⁸³² *Id.*; 47 CFR § 51.319(e)(1)(iii).

that it meets the statutory requirement that it provide, or offer to provide, nondiscriminatory access to call-related databases that are necessary for call routing and completion. Consistent with the requirements explained in the *Local Competition Order*, BellSouth demonstrates that it provides access to each of the following: (1) line-information databases (*e.g.*, for calling cards); (2) toll-free databases (*i.e.*, 800, 888); and (3) Advanced Intelligent Network databases.⁸³³ Access to these call-related databases is necessary for competitive LECs to remain competitive in their ability to offer important call-related services to their customers. Moreover, competitive LECs would be greatly disadvantaged if they were required to develop immediately their own databases for these services. In affidavit testimony, BellSouth demonstrates that it offers access to each of these databases on an unbundled basis.⁸³⁴ BellSouth also asserts that it provides access to its call-related databases by means of physical access at the signaling transfer point linked to the unbundled database,⁸³⁵ and provides a requesting telecommunications carrier that has purchased its local switching capability to use BellSouth's service control point element in the same manner, and via the same signaling links, as BellSouth itself.⁸³⁶ BellSouth's affiants also assert that BellSouth allows a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to BellSouth's signaling system, to gain access to BellSouth's service control point in a manner that allows the requesting carrier to provide any call-related, database-supported services to customers served by the requesting telecommunications carrier's switch.⁸³⁷ Finally, BellSouth contends that it provides a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act.⁸³⁸

271. BellSouth is not yet required to implement long-term number portability in Louisiana.⁸³⁹ We do not require, therefore, that it demonstrate its ability to do so at this time.

⁸³³ 47 CFR § 51.319(e)(2); *Local Competition First Report and Order*, 11 FCC Rcd at 15741-15745.

⁸³⁴ See SGAT § X; BellSouth Varner Aff. paras. 172-176; see also BellSouth Milner Aff. paras. 121-124 (access to line-information databases); *id.* at paras. 128-133 (access to toll-free databases); and *id.* at paras. 135-139 (access to AIN database).

⁸³⁵ BellSouth Varner Aff. at para. 179. BellSouth Milner Aff. at para. 120. 47 CFR § 51.319(e)(2)(ii); *Local Competition First Report and Order*, 11 FCC Rcd at 15742.

⁸³⁶ BellSouth Milner Aff. at para. 127; 47 CFR § 51.319(e)(2)(iii).

⁸³⁷ BellSouth Milner Aff. at para. 126; 47 CFR § 51.319(e)(2)(iv).

⁸³⁸ BellSouth Milner Aff. at para. 123. Our rules require that access to call-related databases comply with section 222 of the Act. See 47 CFR § 51.319(e)(2)(vi).

⁸³⁹ Under the Commission's implementation schedule, LECs are to roll out long-term number portability in the 100 largest metropolitan statistical areas (MSAs) in five phases by December 31, 1998. See *In re Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7283, 7326-27,

Furthermore, we find no basis in the record to conclude that it will not meet its obligation to offer unbundled access to downstream number-portability databases in Louisiana once it does provide long-term number portability in that state. In any future application filed after BellSouth has implemented long term number portability in Louisiana, however, we will expect BellSouth to address this issue. We note that the Commission has before it a petition for reconsideration of its recent Long-Term Number Portability Cost-Recovery Order⁸⁴⁰ that raises issues regarding the treatment of downstream number-portability databases as unbundled network elements.⁸⁴¹ We will expect future applicants to demonstrate that they meet the requirements of any Commission order on this matter to meet this checklist item.

272. SMS. BellSouth provides evidence supporting its claim that, consistent with the Commission's rules and the *Local Competition First Report and Order*,⁸⁴² it provides or offers to provide nondiscriminatory access to service management systems.⁸⁴³ Access to these systems is important for competitive LECs, because the systems are used to create, modify, or update information in call-related databases that are necessary for call routing and completion. BellSouth provides requesting telecommunications carriers with the information necessary to enter correctly, or format for entry, the information relevant for input into the particular BOC SMS.⁸⁴⁴ BellSouth

7346-47 (1997) (*First Number Portability Reconsideration Order*), modifying First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8355, 8393-96, 8482-85 (1996). The implementation deadlines for New Orleans and Baton Rouge, the only two Louisiana MSAs among the nation's 100 largest, were June 30, 1998, and December 31, 1998, respectively. *First Number Portability Reconsideration Order*, 12 FCC Rcd at 7326-27. BellSouth has been granted an extension to October 31, 1998, for New Orleans. *See In re Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase III*, CC Docket No. 95-116, *Order*, DA 98-1265 (Network Servs. Div. rel. June 26, 1998).

⁸⁴⁰ *In re Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (1998).

⁸⁴¹ *See In re Telephone Number Portability*, CC Docket No. 95-116, Ameritech Petition for Expedited Reconsideration at 11-12 (filed July 29, 1998) (asking whether access to downstream number-portability databases should be provided under contract pursuant to sections 251(c)(3) and 252, or under federal tariff in light of the Long-Term Number Portability Cost-Recovery Order).

⁸⁴² 47 CFR § 51.319(e)(3); *Local Competition First Report and Order*, 11 FCC Rcd at 15746-15750.

⁸⁴³ SGAT § X. A SMS is defined as a computer database or system not part of the public switched network that, among other things: (1) interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and (2) provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call. 47 CFR § 51.319(e)(3)(i).

⁸⁴⁴ SGAT § X; BellSouth Milner Aff. at paras. 140-142. 47 CFR § 51.319(e)(3)(ii); *Local Competition First Report and Order*, 11 FCC Rcd at 15746-15747.

provides a requesting telecommunications carrier the same access to design, create, test, and deploy AIN-based services at the SMS, through a service creation environment, that BellSouth provides to itself.⁸⁴⁵ BellSouth provides a requesting telecommunications carrier access to its SMS in a manner that complies with section 222 of the Act.⁸⁴⁶

273. Nondiscriminatory Access to Signalling and Databases. BellSouth demonstrates that it provides nondiscriminatory access to signaling and call related databases. BellSouth asserts that it provides access to its signaling links, which in turn provide access to call related databases,⁸⁴⁷ through its EXACT interface⁸⁴⁸ or through manual processing.⁸⁴⁹ BellSouth further states that, as of June 1, 1998, it was providing nine facilities-based CLECs in its region access to its signaling service via interconnection with an interexchange carrier, and another ten CLECs receive access using a third-party signaling hub provider.⁸⁵⁰ No party in this proceeding addresses BellSouth's assertion. We conclude that BellSouth demonstrates through actual commercial usage that it is providing access to signalling and call related databases.

11. Checklist Item 11 -- Number Portability

a. Background

274. To meet section 271(c)(2)(B)(xi) of the Act, item (xi) of the competitive checklist, BellSouth must be in compliance with the number portability regulations the Commission has promulgated pursuant to section 251 of the Act.⁸⁵¹ Congress enacted the number portability provisions of section 251 because the inability of customers to retain their telephone numbers

⁸⁴⁵ SGAT § X; 47 CFR § 51.319(e)(3)(iii).

⁸⁴⁶ BellSouth Milner Aff. at para. 141. Our rules require that access to service management SMS comply with section 222 of the Act. *See* 47 CFR § 51.319(e)(3)(iv).

⁸⁴⁷ *See* BellSouth Varner Aff. at para. 118.

⁸⁴⁸ BellSouth Stacy Aff. at Ex. WNS-30.

⁸⁴⁹ BellSouth Varner Aff. at para. 116.

⁸⁵⁰ BellSouth Application at 55.

⁸⁵¹ *See* 47 U.S.C. § 271(c)(2)(B)(xi) (requiring that, “[u]ntil the date by which the Commission issues regulations pursuant to section 251 to require number portability,” a 271 applicant must provide “interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible”; requiring that after the Commission issues number portability regulations, a section 271 applicant must be in “full compliance with such regulations”).

when changing local service providers hampers the development of local competition.⁸⁵² Thus, Congress added section 251(b)(2)⁸⁵³ to the 1934 Act, which requires all LECs, “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”⁸⁵⁴ Congress defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another,”⁸⁵⁵ and the Commission has incorporated this definition into its rules.⁸⁵⁶ To prevent the cost of providing number portability from itself becoming a barrier to local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”⁸⁵⁷

275. Pursuant to these statutory provisions, the Commission requires local exchange carriers (LECs) to offer an interim form of number portability through remote call forwarding (RCF),⁸⁵⁸ flexible direct inward dialing (DID),⁸⁵⁹ or any other comparable and technically feasible

⁸⁵² See *In re Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 & nn. 4, 7, 9 (1998) (Third Number Portability Order).

⁸⁵³ See Telecommunications Act of 1996, sec. 101(a), § 251(b)(2), Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁸⁵⁴ 47 U.S.C. § 251(b)(2).

⁸⁵⁵ *Id.* § 153(3).

⁸⁵⁶ 47 C.F.R. § 52.21(k).

⁸⁵⁷ 47 U.S.C. § 251(e)(2). See *Third Number Portability Order*, 13 FCC Rcd at 11704 & n.12.

⁸⁵⁸ Under RCF, the carrier that originally served the called customer redirects the telephone calls by translating the dialed number to a new transparent number associated with the acquiring carrier’s switch, essentially placing a second telephone call to the customer’s new location. *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8362, 8499 (1996) (First Number Portability Order); BellSouth Varner Aff. at para. 182. See, e.g., SGAT § XI.C & Attach. G at para. D; Second BellSouth Louisiana Application App. B, Vol. 4, Tab 30, Agreement Between BellSouth and AT&T (AT&T Agreement), Attach. 8 at para. 2.1.

⁸⁵⁹ Under DID, the carrier that originally served the called customer re-routes the telephone calls over a dedicated facility to the acquiring carrier’s switch. *First Number Portability Order*, 11 FCC Rcd at 8362, 8499; BellSouth Varner Aff. para. 182. See, e.g., SGAT § XI.C & Attach. G at para. E.

method,⁸⁶⁰ and to gradually replace interim number portability with a more sophisticated long-term solution using a system of regional databases.⁸⁶¹ The Commission also has established guidelines for the states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,⁸⁶² and created a competitively neutral cost-recovery mechanism that the Commission will administer for long-term number portability.⁸⁶³ The decision of the U.S. Court of Appeals for the Eighth Circuit in *Iowa Utilities Board v. FCC* did not affect these pricing rules.⁸⁶⁴

b. Discussion

276. BellSouth does not demonstrate compliance with checklist item (xi). BellSouth is legally obligated itself to provide interim and long-term number portability,⁸⁶⁵ and has provided evidence that it is providing interim number portability and implementing long-term number portability. BellSouth fails, however, to make a *prima facie* case that it provides interim number portability so that “users of telecommunications services [can] retain, at the same location, existing telecommunications numbers *without impairment of quality, reliability, or convenience* when switching from one telecommunications carrier to another.”⁸⁶⁶

1. Interim Number Portability

277. Provision. The Commission’s rules require all LECs to provide interim number portability through “Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (DID), or any other comparable and technically feasible method, as soon as reasonably possible upon receipt

⁸⁶⁰ See *First Number Portability Order*, 11 FCC Rcd at 8356, 8409, 8411-12 (promulgating 47 C.F.R. § 52.7 regarding the provision of interim number portability) (later renumbered to 47 C.F.R. § 52.27).

⁸⁶¹ See 47 C.F.R. §§ 52.23(b)-(f); *First Number Portability Order*, 11 FCC Rcd at 8355-56, 8399-8404. For a description of the long-term method, see *Third Number Portability Order*, 13 FCC Rcd at 11708-12.

⁸⁶² See 47 C.F.R. § 52.29; *First Number Portability Order*, 11 FCC Rcd at 8417-24.

⁸⁶³ See 47 C.F.R. §§ 52.32-52.33; *Third Number Portability Order*, 13 FCC Rcd at 11706-07.

⁸⁶⁴ 120 F.3d 753 (8th Cir. 1997), cert. granted sub nom. *AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (1998). For further discussion of the Commission’s pricing authority over number portability, see paragraph 289, below.

⁸⁶⁵ See SGAT § XI; AT&T Agreement, Attach. 8.

⁸⁶⁶ 47 C.F.R. § 52.21(k) (emphasis added).

of a specific request from another telecommunications carrier.”⁸⁶⁷ The plain language of the rule indicates that LECs must provide *any* technically feasible method of interim number portability that is comparable to RCF and DID; the references to RCF and DID were merely illustrative. Thus, to comply with our rules, LECs must furnish, on a transitional basis, any method of number portability comparable to RCF and DID that a competing carrier requests, if such method is technically feasible. Subsequent to adoption of this rule, a number of state commissions have ordered carriers also to provide Route Index-Portability Hub (RI-PH),⁸⁶⁸ Directory Number-Route Index (DN-RI),⁸⁶⁹ and Local Exchange Routing Guide (LERG) Reassignment⁸⁷⁰ methods of interim number portability, based on findings of technical feasibility.⁸⁷¹ We conclude that

⁸⁶⁷ 47 C.F.R. § 52.27.

⁸⁶⁸ Under RI-PH, the call is first routed to the terminating switch of the carrier that originally served the called customer. The original carrier’s terminating switch adds to the dialed telephone number a prefix that identifies the acquiring carrier to which the call will be re-routed. This number is transmitted to a tandem switch of the original carrier that is connected to the acquiring carrier. The original carrier’s tandem switch strips the prefix from the number and routes the call to the acquiring carrier’s switch, which terminates the call. *First Number Portability Order*, 11 FCC Rcd at 8362, 8500 & n.42; BellSouth Milner Aff. at para. 150. See, e.g., AT&T Agreement, Attach. 8 at para. 2.2.1.

⁸⁶⁹ Under DN-RI, the call is first routed to the switch of the called customer’s original carrier. The original carrier re-routes the call to the acquiring carrier either through a direct trunk, or by attaching a prefix to the telephone number and using a tandem. *First Number Portability Order*, 11 FCC Rcd at 8362, 8500. See, e.g., AT&T Agreement, Attach. 8 at para. 2.2.2.

⁸⁷⁰ The LERG contains the information necessary for message routing, signaling system 7 (SS7) call set up, operator access routing, and call rating. See *In re Telephone Number Portability*, Notice of Proposed Rulemaking, 10 FCC Rcd 12350, 12354 n.13 (1995). Under the LERG Reassignment method of interim number portability, the original carrier and the acquiring carrier port all 10,000 telephone numbers in an NXX by arranging for the LERG administrator to change the LERG data and by updating their switch tables. See, e.g., AT&T Agreement, Attach. 8 at para. 2.3. Under the North American Numbering Plan, every telephone number takes the form (NPA) NXX-XXXX, where NPA, or “the numbering plan area,” represents the three digit area code, and NXX represents the next three digits of the telephone number. Thus, an NXX is a block of 10,000 numbers that share the same first three digits after the area code. See AIN PROGRAM, NATIONAL COMMUNICATIONS SYSTEM, LOCAL NUMBER PORTABILITY: AIN AND NS/EP IMPLICATIONS, §§ 2.0-2.5, 6.1 (July 1996).

⁸⁷¹ BellSouth has been required to provide LERG Reassignment at the NXX level and RI-PH in North Carolina. *In re Petition of AT&T for Arbitration of Interconnection with BellSouth*, Docket No. P-140, SUB 50, Recommended Arbitration Order at 34-35 (N.C. Utils. Comm’n Dec. 23, 1996), appeal pending *sub nom.* *BellSouth v. AT&T*, Case No. 5-97-CV371 (E.D.N.C. May 9, 1997).

Ameritech has been ordered to provide route indexing in Indiana. *In re Petition of AT&T Requesting Arbitration of Certain Terms, Conditions and Prices for Interconnection and Related Arrangements from Indiana Bell Tel. Co.*, Cause No. 40571-INT-01, slip. op. at 17-18 (Ind. Util. Reg. Comm’n Nov. 27, 1996), appeal pending *sub nom.* *Ameritech v. AT&T*, Case No. IP97-0662C (S.D. Ind. April 25, 1997).

Pacific Bell has been ordered to provide RI-PH in California. *In re Petition of AT&T for Arbitration to Establish an Interconnection Agreement with Pacific Bell*, Application 96-08-040, Arbitrator’s Report at 10-11

LERG Reassignment at the NXX level, RI-PH, and DN-RI are technically feasible methods of interim number portability comparable to RCF and DID.

278. BellSouth submits evidence that it is providing interim number portability. BellSouth states that it has resolved earlier problems with interim number portability,⁸⁷² and that as of June 1, 1998, it has ported 61,094 business and 911 residential telephone numbers regionwide.⁸⁷³ More specifically, BellSouth reports that four competitive LECs in Louisiana have

(Cal. Pub. Util. Comm'n Oct. 31, 1996), *aff'd*, Opinion at 24 (Dec. 9, 1996), *appeal pending sub nom.* Pacific Bell v. AT&T, Case No. C-97-0080S1 (N.D. Cal. Jan. 8, 1997).

Southwestern Bell has been ordered to provide RI-PH and DN-RI in Kansas and Missouri. *In re Petition by AT&T for Compulsory Arbitration with Southwestern Bell Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 97-AT&T-290-ARB, Arbitration Order at 68-70 (Kan. State Corp. Comm'n Feb. 6, 1997), *aff'd*, Commission Order at 10 (Mar. 10, 1997); *In re AT&T Petition for Arbitration to Establish an Interconnection Agreement with Southwestern Bell*, Case No. TO-97-40, Arbitration Order at 19-20 (Mo. Pub. Serv. Comm'n Dec. 11, 1996).

GTE has been ordered to provide one or both forms of route indexing in Alabama, California, Florida, Indiana, South Carolina, Missouri, Texas and Virginia; and LERG Reassignment at the NXX level in Alabama, Florida, Missouri, and Texas. *In re Petition by AT&T for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Alabama and Contel of the South*, Docket 25704, Arbitration Report and Recommendation at 34-35 (Ala. Pub. Serv. Comm'n Jan. 31, 1997); *In re Petition of AT&T for Arbitration to Establish an Interconnection Agreement With GTE*, Application No. 96-08-041, Arbitrator's Report at 7-8 (Cal. Pub. Util. Comm'n Oct. 31, 1996), *aff'd*, Opinion Approving Arbitrated Agreement, Decision 97-01-022, at 5 (Jan. 13, 1997), *appeal pending sub nom.* GTE v. AT&T, Case No. C-97-1756S1 (N.D. Cal. Jan. 14, 1997); *In re Petitions by AT&T and MCI for arbitration of certain terms and conditions of a proposed agreement with GTE concerning interconnection*, Docket Nos. 960847-TP & 960980-TP, Final Order on Arbitration, Order No. PSC-97-0064-FOF-TP, at 119-22 (Fla. Pub. Serv. Comm'n issued Jan. 17, 1997); *In re Petition by AT&T Requesting Arbitration of Interconnection Terms, Conditions, and Prices from GTE North and Contel of the South*, Cause No. 40571-INT-02, slip. op. at 7 (Ind. Util. Reg. Comm'n Dec. 12, 1996) (applying to GTE terms of interconnection agreement between AT&T and Ameritech approved in *In re Petition by AT&T Requesting Arbitration of Certain Terms, Conditions and Prices for Interconnection and Related Arrangements from Indiana Bell Tel. Co.*, Cause No. 40571-INT-01, slip. op. at 17-18 (Ind. Util. Reg. Comm'n Nov. 27, 1996)); *In re AT&T Petition for Arbitration to Establish an Interconnection Agreement between AT&T and GTE*, Case No. TO-97-63, Arbitration Order at 46-47 (Mo. Pub. Serv. Comm'n Issued Dec. 10, 1996); *In re Petition of AT&T for Arbitration of an Interconnection Agreement with GTE*, Docket No. 96-375-C, Order on Arbitration, Order No. 97-211 at 9 (S.C. Pub. Serv. Comm'n Mar. 17, 1997); *Petition of AT&T for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and GTE*, Docket No. 16300, Arbitration Award at 66-67 (Tex. Pub. Util. Comm'n filed Dec. 12, 1996); *Petition of AT&T For arbitration of unresolved issues from interconnection negotiations with GTE*, Case No. PUC 960117, Order Resolving Non-Pricing Arbitration Issues at 10 (Va. State Corp. Comm'n Dec. 11, 1996).

⁸⁷² BellSouth Milner Aff. at para. 153.

⁸⁷³ BellSouth Application at 57; BellSouth Milner Aff. para. 151.

ported a total of 1,537 business telephone numbers and one residential telephone number.⁸⁷⁴ BellSouth's SGAT legally obligates it to provide number portability "with minimum impairment of functioning, quality, reliability, and convenience," and gives competitive LECs the option of obtaining interim number portability through either RCF or DID.⁸⁷⁵ The Louisiana Commission found that BellSouth's SGAT complies with checklist item (xi), on the grounds "that it offers, on an interim basis until an industry-wide permanent solution is adopted, number portability using remote call forwarding and direct inward dialing trunks."⁸⁷⁶ BellSouth states that it also offers the RI-PH, DN-RI, and LERG Reassignment methods of interim number portability through the *bona fide* request (BFR) process.⁸⁷⁷ BellSouth has already entered into an interconnection agreement with AT&T to provide RCF, RI-PH, DN-RI, and LERG Reassignment methods of interim number portability in Louisiana.⁸⁷⁸

279. BellSouth does not demonstrate, however, that it is adequately coordinating unbundled loops with its provision of number portability. Consequently, it fails to demonstrate that it provides interim number portability so that "users of telecommunications services [can] retain, at the same location, existing telecommunications numbers *without impairment of quality, reliability, or convenience* when switching from one telecommunications carrier to another."⁸⁷⁹ As discussed above in connection with checklist item (iv) on unbundled local loops, a BOC must provide unbundled access to loops on a nondiscriminatory basis.⁸⁸⁰ To meet this standard, a BOC must be able to deliver within a reasonable timeframe and with a minimum of service disruption, unbundled loops of the same quality as the loops the BOC uses to provide service to its own customers.⁸⁸¹ In the context of checklist item (xi), we interpret this to mean that the BOC must demonstrate that it can coordinate number portability with loop crossovers in a reasonable amount of time and with minimum service disruption.

⁸⁷⁴ BellSouth Application at 57; BellSouth Wright Aff. at para. 46.

⁸⁷⁵ See SGAT § XI.C & Attach. G.

⁸⁷⁶ *In re: Consideration and Review of BellSouth's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. U-22252, Order U-22252-A, at 13 (La. Pub. Serv. Comm'n issued Sept. 5, 1997), reprinted in Second BellSouth Louisiana Application App. C-1, Vol. 13, Tab 136.

⁸⁷⁷ BellSouth Application at 56.

⁸⁷⁸ See AT&T Agreement, Attach. 8 at para. 2; BellSouth Application at 56; BellSouth Milner Aff. para. 150.

⁸⁷⁹ 47 C.F.R. § 52.21(k) (emphasis added).

⁸⁸⁰ See *supra* para. 185.

⁸⁸¹ *Id.*

280. BellSouth asserts that it has solved earlier problems with coordinated cutovers,⁸⁸² and coordinates number portability and loop cutovers “to the extent that it is technically feasible to do so.”⁸⁸³ BellSouth states that, to minimize service disruption and prevent calls from being misdirected, it does not provide number portability simultaneously with loop cutovers.⁸⁸⁴ Instead, it performs the loop cutover first, and then ports the number.⁸⁸⁵ Until BellSouth completes the interim number portability work, the customer will be unable to receive telephone calls because the calls will not be forwarded to the new switch from the switch that previously served the customer. Thus, when a competitive LEC requests a coordinated cutover with interim number portability for a customer previously served by BellSouth, the customer will be without incoming service from the time BellSouth disconnects the customer’s loop from the original switch to the time BellSouth has both reconnected the loop to the new switch and completed provisioning the interim number portability.

281. In support of its claim that it meets this checklist item, BellSouth cites a study it recently conducted that suggests on average it reconnects loops to the competitive LEC switch approximately four minutes after it disconnects the loop from its own switch, and that provisioning interim number portability takes on average 39 seconds.⁸⁸⁶ But as the Department of Justice points out, BellSouth does not make clear the period between the completion of the loop cutover and the start of the interim number portability provisioning.⁸⁸⁷ Without such evidence, the Commission cannot determine the delay involved in providing interim number portability with unbundled loops. Consequently, BellSouth has not indicated how long the customer is without service, including how long the customer is without the ability to receive calls, and thus has not demonstrated whether it is coordinating cutovers with interim number portability on a nondiscriminatory basis. BellSouth also provides performance data designed to show that it offers nondiscriminatory access to unbundled loops. This data, however, is not disaggregated to show performance for loops with number portability separately from loops

⁸⁸² BellSouth Milner Aff. para. 73.

⁸⁸³ BellSouth Application at 56; BellSouth Varner Aff. para. 183.

⁸⁸⁴ BellSouth Application at 57; BellSouth Milner Aff. paras. 74, 157.

⁸⁸⁵ BellSouth Application at 56-57; BellSouth Milner Aff. paras. 74, 159.

⁸⁸⁶ BellSouth Application at 57; BellSouth Varner Aff. para. 187; BellSouth Milner Aff. paras. 74, 158. We note that BellSouth did not provide the underlying data for the study until it filed its reply. *See* BellSouth Milner Reply Aff. para. 35 & Ex. WKM-1.

⁸⁸⁷ Department of Justice Evaluation at 33, n.66.

without number portability.⁸⁸⁸

282. BellSouth states in its reply comments that it did not attempt to demonstrate the overall time it takes from the beginning of the cutover to the completion of the interim number portability provisioning because some competitive LECs require both the loop cutover and interim number portability but others require just the loop or just interim number portability.⁸⁸⁹ This suggests, however, only that BellSouth should disaggregate the data so that it can demonstrate the time it takes to complete each type of order. BellSouth also states that the interval between completion of the cutover and the start of the interim number portability provisioning is likely only a matter of seconds, and that both it and the competitive LEC share responsibility for this gap.⁸⁹⁰ If this is indeed the case, the interval should not be significant, and we see no reason for BellSouth to omit this additional data. Consequently, we see the overall time it takes from the start of the cutover to the completion of the interim number portability provisioning as a relevant statistic.

283. Thus, one method for BellSouth to demonstrate in future applications that it is providing nondiscriminatory access to interim number portability is to indicate the average coordinated customer conversion intervals for loop cutovers coordinated with interim number portability. BellSouth could further demonstrate nondiscriminatory access by providing performance data on the average completion intervals for interim number portability ordered without unbundled loops and the average completion intervals for interim number portability ordered in conjunction with unbundled loops. Such information would give the Commission a means for determining the time that the customer is without service, as well as the overall time it takes to complete orders for interim number portability. This would, in turn, assist the Commission in determining whether number portability is available in a nondiscriminatory manner that does not hamper competition.

284. We do not find probative e.spire's contentions that BellSouth is having difficulty in New Orleans coordinating loops with interim number portability. e.spire states that one of the most prevalent loop cutover problems it is experiencing is BellSouth's failure to coordinate successfully the number portability functionality.⁸⁹¹ e.spire does not quantify the number

⁸⁸⁸ See, e.g., BellSouth Stacy Perf. Aff. Ex. WNS-3, May 1998 Reports, Provisioning, Report: Order Completion Interval Distribution & Average Interval (Dispatch) n.1 and accompanying text; *id.* at Report: Coordinated Customer Conversions n.1 and accompanying text (stating that the average coordinated customer interval is 5.8 minutes for all unbundled loops, but that separate data is unavailable for orders of loops with number portability). *See also supra* paragraph 196.

⁸⁸⁹ See BellSouth Milner Reply Aff. at para. 35.

⁸⁹⁰ See *id.*

⁸⁹¹ e.spire Comments at 23.

portability problems, however. It provides merely anecdotal evidence that two of its New Orleans customers that ported lead numbers with hunt groups⁸⁹² could receive calls only on the lead lines.⁸⁹³ Such anecdotal evidence provides us no basis for evaluating whether the specified number portability problems are isolated instances or something more systemic. Similarly, we do not find probative MCI's anecdotes of problems with coordinated cutovers in Atlanta,⁸⁹⁴ especially given that BellSouth states in its reply that it has resolved problems in Georgia.⁸⁹⁵ If BellSouth had made its *prima facie* case that it coordinates loop cutovers with interim number portability, the allegations of e.spire and MCI would have been insufficient to rebut that *prima facie* case.

285. BellSouth also does not sufficiently demonstrate that competing carriers can access BellSouth's operations support systems to order and provision interim number portability efficiently. As the Commission stated in the *Ameritech Michigan Order*, a BOC must demonstrate that it "will provide nondiscriminatory access to OSS to support the provision of number portability."⁸⁹⁶ According to BellSouth, competitive LECs can currently order interim number portability manually or through EDI.⁸⁹⁷ BellSouth also states that competitive LECs can

⁸⁹² A "hunt group" is a series of telephone lines organized so that if the first line is busy the next line is hunted until a free line is found. HARRY NEWTON, NEWTON'S TELECOM DICTIONARY 296 (11th ed. 1996).

⁸⁹³ See e.spire Comments at 24.

⁸⁹⁴ See MCI Comments at 63; MCI Comments, Ex. A, Declaration of Marcel Henry, (Henry Aff.) at para. 61 (describing examples in which an Atlanta retail customer that had pushed its cutover back one week lost service for several hours when BellSouth disconnected that customer's lines six days prematurely, and in which another customer lost service when BellSouth initiated at 2:30 p.m. a cutover scheduled for 5:00 p.m. after the close of business).

⁸⁹⁵ See BellSouth Reply at 77-78.

⁸⁹⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20723.

⁸⁹⁷ Second BellSouth Louisiana Application App. A, Vol. 5, Tab 22, Affidavit of William N. Stacy (BellSouth Stacy OSS Aff.) at paras. 86, 90-91, 103. AT&T's comments alleged that it was unable to transmit electronic or faxed orders to port numbers for additional lines to existing AT&T Digital Link (ADL) customers. AT&T Comments at 5, 38, 39, 61; AT&T Comments App., Vol. II, Tab D, Affidavit of Jay M. Bradbury (AT&T Bradbury Aff.) at paras. 89-109; AT&T Comments App., Vol. VII, Tab H, Affidavit of Donna Hassebrock (AT&T Hassebrock Aff.) at paras. 36-48. AT&T's ADL service enables PBX customers in Louisiana to place outbound local calls through a dedicated, high-capacity link to an AT&T toll switch. AT&T Comments at 5. AT&T also alleged that BellSouth was unable to electronically or manually disconnect interim number portability arrangements when ADL customers stop service at a particular location. AT&T Comments at 5, 61; AT&T Hassebrock Aff. paras. 54-55.

use electronic interfaces for interim number portability maintenance⁸⁹⁸ and billing.⁸⁹⁹ As discussed in our section on checklist item (ii), however, BellSouth does not demonstrate that it offers competing carriers nondiscriminatory access to its operations support systems.⁹⁰⁰ Thus, we find that BellSouth does not meet its burden of demonstrating that it is providing nondiscriminatory access to its operations support systems for the provision of interim number portability.

286. We do not find probative AT&T's conclusory allegations that BellSouth has impeded the provision of RI-PH based interim number portability to AT&T customers by revoking its prior commitment to provision RI-PH in six-month intervals, and refusing to test for features conflicts or billing problems.⁹⁰¹ AT&T provides no specific evidence, such as correspondence with BellSouth, to support its assertions. Without more, we cannot draw any conclusions regarding AT&T's allegations, especially in the face of BellSouth's contentions that it met AT&T's deadlines in the only two requests for RI-PH that fit AT&T's description.⁹⁰²

287. Cost Recovery. Section 52.29 establishes two competitive neutrality guidelines. It requires that any state mechanism for the pricing of interim number portability not "(a) [g]ive one telecommunications carrier an appreciable, incremental cost advantage over another telecommunications carrier, when competing for a specific subscriber ... or (b) [h]ave a disparate effect on the ability of competing telecommunications carriers to earn a normal return on their investment."⁹⁰³ The Commission has interpreted these guidelines as prohibiting the assessment of

⁸⁹⁸ BellSouth Stacy OSS Aff. para. 164.

⁸⁹⁹ *Id.* at para. 183; Second BellSouth Louisiana Application App. A, Vol. 4, Tab 19, Affidavit of David Scolland (BellSouth Scolland Aff.) at para. 10.

⁹⁰⁰ See, e.g., *supra* para. 91.

⁹⁰¹ AT&T Comments at 61; AT&T Bradbury Aff. para. 60 & n.35; AT&T Hassebrock Aff. para. 48 & n.13. This dispute apparently centers around BellSouth's provision of RI-PH in Florida, as AT&T has not yet ordered RI-PH for its customers in Louisiana. See BellSouth Reply at 77 (arguing that it believes AT&T's allegations are referring to the provision of RI-PH in Florida). The provision of RI-PH in Florida is relevant to our analysis of BellSouth's showing on checklist item (xi) because a LEC is obligated to provide technically feasible methods of interim number portability that a competing carrier requests, as discussed in paragraph 277, and regionwide data is applicable to determining OSS-related issues, as discussed in paragraph 86. See also *Ameritech Michigan Order*, 12 FCC Rcd at 20626 (stating that regionwide nature of Ameritech's OSS made regionwide evidence relevant for OSS-related issues in Ameritech's section 271 application for Michigan); *BellSouth South Carolina Order*, 13 FCC Rcd at 594-95 (stating that regionwide nature of BellSouth's OSS made regionwide evidence relevant for OSS-related issues in BellSouth's section 271 application for South Carolina).

⁹⁰² BellSouth Reply at 77; BellSouth Milner Reply Aff. paras. 7-8.

⁹⁰³ 47 C.F.R. § 52.29.

all the incremental costs of providing interim number portability on competitive LECs.⁹⁰⁴ The Commission has also stated that the carrier forwarding a call under an interim number portability arrangement and the carrier terminating the call shall share the terminating access revenue generated in completing a call to a ported number.⁹⁰⁵

288. BellSouth states that it offers RCF and DID at nondiscriminatory rates,⁹⁰⁶ and that the Louisiana Commission has approved these rates as consistent with the 1996 Act.⁹⁰⁷ BellSouth also states that the rates for RI-PH, DN-RI, and LERG Reassignment will be set through the BFR process.⁹⁰⁸ BellSouth's SGAT provides for the carriers to share terminating access revenues.⁹⁰⁹ According to MCI and Sprint, however, BellSouth is shifting all the incremental costs of interim number portability to the competitive LEC, in violation of the Commission's competitive neutrality guidelines.⁹¹⁰ Sprint also states that BellSouth is not sharing terminating access revenue from calls to customers who have switched carriers through interim number portability.⁹¹¹ In its reply brief, BellSouth responds to the pricing allegations by contending that the statutory definition of number portability does not encompass interim measures, and that the pricing of

⁹⁰⁴ See *First Number Portability Order*, 11 FCC Rcd at 8423 (stating that assessing all the incremental costs on the competitive carrier would not be competitively neutral, and thus would violate section 251(e)(2)). See also *MCI v. U S WEST*, No. C97-15086, slip. op. at 22-23 (W.D. Wash. filed July 21, 1998) (rejecting U S WEST argument that the Washington Utilities and Transportation Commission erred by allocating the costs of number portability between MCI and U S WEST based on the number of local numbers each carrier has, rather than on the number of calls forwarded, as proposed by U S WEST, noting that the Commission specifically rejected the kind of plan proposed by U S WEST).

⁹⁰⁵ *First Number Portability Order*, 11 FCC Rcd at 8424. See also *U S WEST v. MFS*, No. C97-222WD, 1998 WL 350588, at *4 (W.D. Wash. Jan. 7, 1998) (upholding Washington Utilities and Transportation Commission decision to divide between MFS and U S WEST the switched access charges for long-distance calls delivered to the ported numbers of each carrier, on the grounds that Commission regulations require carriers to share the switched access revenues received for a ported call).

⁹⁰⁶ BellSouth Application at 56, 57. See SGAT Attach. A at 13-14 (setting out rates for RCF and DID).

⁹⁰⁷ BellSouth Application at 57; BellSouth Varner Aff. para. 186.

⁹⁰⁸ BellSouth Application at 56; BellSouth Varner Aff. para. 186.

⁹⁰⁹ SGAT, Attach. G at para. K.

⁹¹⁰ MCI Comments at 83; MCI Comments, Ex. D, Declaration of Don Wood (MCI Wood Aff.) at paras. 154-158; Sprint Comments at 54-55. Similarly, AT&T contends that BellSouth is billing its customers exorbitant non-cost based charges when porting fewer than twenty numbers at a time through DID. AT&T Comments at 61; AT&T Hassebrock Aff. paras. 49-53 & n.15.

⁹¹¹ Sprint Comments at 54-56.

interim number portability is beyond the Commission's jurisdiction.⁹¹²

289. Notwithstanding BellSouth's assertions to the contrary, the Commission has pricing authority over both interim- and long-term number portability. As the U.S. Court of Appeals for the Eighth Circuit observed, Congress specifically authorized the Commission to issue regulations under section 251(e),⁹¹³ which states that carriers shall bear the costs of number portability "as determined by the Commission."⁹¹⁴ Furthermore, "the 1996 Act contemplates a dynamic, not static, definition of technically feasible number portability" that includes both interim and long-term methods.⁹¹⁵ It appears on the present record that BellSouth is engaging in, and the Louisiana Commission has approved, practices that may not comply with the FCC's pricing rules and competitive neutrality guidelines, such as assessing all the incremental costs of interim number portability on the competitive LEC, and not sharing the terminating access revenue from calls to ported numbers. In any future application for in-region interLATA authority under section 271, BellSouth must demonstrate that it is complying with the Commission's rules on the pricing of interim number portability.⁹¹⁶

2. Long-Term Number Portability

290. Implementation. On the present record, we find that BellSouth is implementing long-term number portability in compliance with the Commission's rules and regulations. Under

⁹¹² BellSouth Reply at 77; BellSouth Varner Reply Aff. para. 46.

⁹¹³ See *Iowa Utils. Bd. v. FCC*, 120 F.3d at 792, 794 & n.10, 795 & n.12, 802 n.23, 806, cert. granted on other grounds sub nom. *AT&T Corp. v. Iowa Utils. Bd.*, 118 S. Ct. 879 (1998). See, e.g., *First Number Portability Order*, 11 FCC Rcd at 8417-24 (adopting "guidelines that the states must follow in mandating cost recovery mechanisms for currently available number portability methods"); *Third Number Portability Order*, 13 FCC Rcd at 11706-07 (promulgating long-term number portability cost recovery rules).

⁹¹⁴ 47 U.S.C. § 251(e)(2).

⁹¹⁵ *First Number Portability Order*, 11 FCC Rcd at 8409-12, 8415, 8417. See also *AT&T v. Southwestern Bell Telephone Company*, No. A-97-CA-029-SS, slip. op. at 8-9 (W.D. Tex. filed Aug. 19, 1998) (noting the dynamic definition of number portability, and referring to the FCC the issue of whether route indexing is a comparable and technically feasible method of interim number portability because of "(i) the open-ended and ever changing obligation of incumbent LECs to provide number portability, and (ii) the explicit and unambiguous statutory mandate that the FCC implement the number portability requirement") (citing 47 U.S.C. § 251(b)(2)).

⁹¹⁶ We note that the Commission has before it several petitions for reconsideration regarding the interim number portability pricing provisions of the *First Number Portability Order*. See *Telephone Number Portability*, CC Docket No. 95-116, GTE Petition for Reconsideration at 18-21 (filed Aug. 26, 1996) (discussing terminating access revenue); MCI Petition for Clarification at 3-5 (filed Aug. 26, 1996) (same); AT&T Opposition to Petitions for Reconsideration at 23-24 (filed Sept. 27, 1996) (discussing treatment of incremental costs).

the Commission's implementation schedule, LECs are to roll out long-term number portability in the 100 largest metropolitan statistical areas (MSAs) in five phases by December 31, 1998, and thereafter in switches outside the 100 largest MSAs within six months of a request by a telecommunications carrier.⁹¹⁷ New Orleans and Baton Rouge are the only two Louisiana MSAs among the nation's 100 largest, and fall within phases III and V of the Commission's implementation schedule, respectively.⁹¹⁸ The deadline for phase III was June 30, 1998,⁹¹⁹ but BellSouth was granted an extension to October 31, 1998.⁹²⁰ The deadline for phase V is December 31, 1998.⁹²¹ Thus, BellSouth is required to provide long-term number portability in New Orleans by October 31, 1998, and in Baton Rouge by December 31, 1998.

291. BellSouth states that it is implementing long-term number portability consistent with the standards of the FCC, the Louisiana Commission, and industry groups.⁹²² BellSouth also states that competitive LECs can order long-term number portability manually or through EDI.⁹²³ Mere assertions that a BOC is complying with its long-term number portability implementation obligations, however, are not sufficient to meet checklist item (xi). As the Commission stated in the *Ameritech Michigan Order*, an applicant must "provid[e] adequate documentation that it has undertaken reasonable and timely steps to meet its obligations" with respect to long-term number portability.⁹²⁴ The Commission

would expect to review a detailed implementation plan addressing, at minimum, the

⁹¹⁷ See 47 C.F.R. 52.23(b). See also 47 C.F.R. Part 52, App.; *First Number Portability Order*, 11 FCC Rcd. at 8355, 8393-96, 8482-85, modified, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7283, 7326-27, 7346-47 (1997) (*First Number Portability Reconsideration Order*), further recon. pending, appeals pending *sub nom. Bell Atlantic NYNEX Mobile Inc. v. FCC*, No. 97-9551 (10th Cir. filed May 30, 1997), *U S WEST Inc. v. FCC*, No. 97-9518 (10th Cir. filed April 24, 1997).

⁹¹⁸ 47 C.F.R. Part 52, App.

⁹¹⁹ *Id.*

⁹²⁰ See *Telephone Number Portability, Petitions for Extension of the Deployment Schedule for Long-Term Database Methods for Local Number Portability, Phase III*, CC Docket No. 95-116, Order, DA 98-1265, at paras. 10-26 (Network Servs. Div. rel. June 26, 1998) (extending BellSouth's Phase III deadline to October 31 from June 30).

⁹²¹ 47 C.F.R. Part 52, App.

⁹²² BellSouth Application at 57-58.

⁹²³ BellSouth Stacy OSS Aff. at paras. 86, 90-91, 103.

⁹²⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20723.

BOC's schedule for intra- and inter-company testing of a long-term number portability method, the current status of the switch request process, an identification of the particular switches for which the BOC is obligated to deploy number portability, the status of deployment in requested switches, and the schedule under which the BOC plans to provide commercial roll-out of a long-term number portability method in specified central offices in the relevant state.⁹²⁵

292. As a condition of the time extensions BellSouth has received, it has been filing periodic status reports on its implementation of long-term number portability. These reports were not designed to demonstrate compliance with checklist item (xi), and focus primarily on areas other than Louisiana. Nonetheless, BellSouth attaches them as exhibits to its brief to demonstrate compliance with its long-term number portability implementation obligations.⁹²⁶ From these reports it is possible to glean evidence, albeit sparse, that indicates the status in New Orleans and Baton Rouge of: intra- and inter-company testing;⁹²⁷ the switch request process;⁹²⁸ deployment in requested switches,⁹²⁹ and the roll-out in specified central offices.⁹³⁰ In light of the fact that BellSouth is not yet obligated to provide long-term number portability in Louisiana, we find this evidence sufficient at this time to meet its obligations under checklist item (xi). In the future, however, we encourage section 271 applicants to provide more detailed information that more clearly addresses the items indicated in the *Ameritech Michigan Order*, and that does so specifically for the state that is the subject of the application.

293. AT&T alleges that BellSouth is refusing to let carriers test the EDI electronic

⁹²⁵ *Id.*

⁹²⁶ See Second BellSouth Louisiana Application App. A, Vol. 3, Tab 13, Affidavit of Douglas W. McDougal (BellSouth McDougal Aff.) & Exs. DWM-1, DWM-2.

⁹²⁷ BellSouth McDougal Aff., Ex. DWM-1, Petition to Extend Implementation Schedule at 6 (stating that intercompany testing for all phases is being planned within the Southeast region, and that 30 days is a minimum interval necessary for such testing).

⁹²⁸ BellSouth McDougal Aff. at para. 5 (stating that BellSouth has submitted to each state Commission a list of requestable switches for each scheduled MSA).

⁹²⁹ BellSouth McDougal Aff., Ex. DWM-1, Petition to Extend Implementation Schedule at 4 (stating that all service control points and related software have been installed, and querying has begun, in New Orleans).

⁹³⁰ BellSouth McDougal Aff., Ex. DWM-2, June 8, 1998, LNP Status Report at 4 (stating that BellSouth would implement number portability in New Orleans by October 31, 1998); Ex. DWM-1, May 8, 1998, LNP Status Report at 5, 6 (implying that BellSouth would implement number portability in Baton Rouge by December 31, 1998).

ordering interface before the change to long-term number portability.⁹³¹ Although meetings with BellSouth and AT&T suggest that this dispute centers around the provision of EDI to order long-term number portability in Georgia, the record is not clear.⁹³² As we said in our section on checklist item (ii), we expect BellSouth to demonstrate in any future application that it has implemented its operations support systems so that carriers can order number portability in a way that they have a meaningful opportunity to compete.⁹³³ That includes orders for long-term number portability with and without unbundled loops.

294. Cost Recovery. In the *Third Number Portability Order*, we promulgated rules allowing incumbent LECs to recover their long-term number portability costs in two federally tariffed charges: (1) a monthly end-user charge to take effect no earlier than February 1, 1999, that lasts no longer than five years, and (2) an inter-carrier charge for query-services that incumbent LECs provide other carriers.⁹³⁴ As discussed above, BellSouth's long-term number portability implementation deadlines have not arrived. Furthermore, BellSouth has recently filed its long-term number portability query tariff, which is the subject of a pending Commission tariff investigation,⁹³⁵ and any end-user charge it tariffs with the Commission will take effect no earlier than February 1999. In any future application for in-region interLATA authority under section 271, BellSouth must demonstrate that it is complying with the Commission's rules on the pricing of long-term number portability.⁹³⁶

12. Checklist Item 12 -- Local Dialing Parity

a. Background

⁹³¹ AT&T Comments at 6, 61; AT&T Bradbury Aff. at paras. 62-63; AT&T Hassebrock Aff. at paras. 56-58.

⁹³² See BellSouth Reply at 78-79 (casting the dispute as one centering around EDI in Atlanta).

⁹³³ See *supra* paragraph 144.

⁹³⁴ See 47 C.F.R. § 52.33.

⁹³⁵ See *BellSouth Telecommunications Inc. F.C.C. Tariff No. 1 for Provision of Local Number Portability Database Services*, CCB/CPD 98-49, Memorandum Opinion and Order, DA 98-1695 (Competitive Pricing Div. rel. Aug. 26, 1998).

⁹³⁶ We note that the Commission and the Common Carrier Bureau have before them several issues regarding the pricing of long-term number portability. See, e.g., Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Public Notice, Report No. 2291 (Aug. 11, 1998); *Third Number Portability Order*, 13 FCC Rcd at 11740 (delegating authority to the Common Carrier Bureau to determine appropriate methods for apportioning joint costs among portability and non-portability services).

295. Section 271(c)(2)(B)(xii) requires a BOC to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3)."⁹³⁷ Section 251(b)(3) imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory services, directory assistance, and directory listing, with no unreasonable dialing delays."⁹³⁸ Section 153(15) of the Act defines "dialing parity" to mean that:

. . . a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).⁹³⁹

b. Discussion

296. BellSouth demonstrates that it provides nondiscriminatory access to such services as are necessary to allow a requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3), and thus satisfies the requirements of checklist item (xii). BellSouth makes a *prima facie* showing that customers of competing carriers are able to dial the same number of digits that BellSouth's customers dial to complete a local telephone call, and that these customers otherwise do not suffer inferior quality such as unreasonable dialing delays

⁹³⁷ 47 U.S.C. § 271(c)(2)(B)(xii). Section 271(c)(2)(B)(xii), by its terms, only requires the BOC to provide nondiscriminatory access to the services or information necessary to allow the requesting carrier to implement "local dialing parity" in accordance with the requirements of section 251(b)(3). Because it is the Commission's view that section 251(b)(3), by its terms, does not limit the duty to provide dialing parity to any particular form of dialing parity (i.e., international, interstate, intrastate, local, or toll), the Commission in August 1996 adopted rules to implement broad guidelines and minimum nationwide standards to achieve dialing parity. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, 11 FCC Rcd 19407 (1996) (*Local Competition Second Report and Order*), *aff'd in part and vacated in part sub nom. People of the State of Cal. v. FCC*, 124 F.3d 934 (8th Cir. 1997), *petition for cert. granted, AT &T Corp. v. Iowa Util. Bd.*, 118 S. Ct. 879 (Jan. 26, 1998). The Eighth U.S. Circuit Court of Appeals vacated the Commission's dialing parity rules, "but only to the extent that they apply to intraLATA telecommunications." 124 F.3d at 943. As noted, the Supreme Court has granted review of this Eighth Circuit decision.

⁹³⁸ 47 U.S.C. § 251(b)(3).

⁹³⁹ *Id.* at § 153(15).

compared to BellSouth customers.⁹⁴⁰

297. BellSouth demonstrates through its statements and appropriate supporting evidence that it has met its burden of proof on satisfaction of this checklist item. BellSouth is legally obligated to provide local dialing parity pursuant to its SGAT and interconnection agreements.⁹⁴¹ BellSouth states that "in its territory it does not impose any requirement or technical constraint that requires CLEC customers to dial any greater number of digits than BellSouth customers to complete the same call, or causes CLEC's local service customers to experience inferior quality regarding post-dial delay, call completion rate, and transmission quality as compared to BellSouth local service customers."⁹⁴² BellSouth further states that "it is not aware of any complaints from CLECs or their customers regarding dialing parity."⁹⁴³ We note that no commenters allege that BellSouth fails to satisfy this checklist item. We find that this checklist item has been satisfied.

13. Checklist Item 13 -- Reciprocal Compensation.

a. Background.

298. Section 271(c)(2)(B)(xiii) of the Act (checklist item (xiii)) requires that a BOC's access and interconnection includes "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."⁹⁴⁴ In turn, section 252(d)(2)(A) states that "a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs

⁹⁴⁰ See 47 C.F.R. § 51.207 (same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

⁹⁴¹ SGAT § XII.A; AT&T Agreement at 24.3.1.1.

⁹⁴² BellSouth Application at 58-59. See also BellSouth Varner Aff. at para. 190 (noting that "CLEC customers will not have to dial any greater number of digits than BellSouth customers to complete the same call" unless the CLEC imposes such a requirement); BellSouth Milner Aff. at para. 161 ("[t]he interconnection of the BellSouth network and the network of the CLEC will be seamless from a customer perspective").

⁹⁴³ BellSouth Application at 59; BellSouth Milner Aff. at para. 161.

⁹⁴⁴ 47 U.S.C. § 271(c)(2)(B)(xiii).

of terminating such calls.⁹⁴⁵

b. Discussion.

299. We conclude that BellSouth demonstrates that its access and interconnection include reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2), and thus, satisfies the requirements of checklist item (xiii). BellSouth makes a *prima facie* showing that it (1) has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and (2) is making all required payments in a timely fashion.⁹⁴⁶

300. Reciprocal compensation arrangements in accordance with section 252(d)(2). BellSouth provides sufficient evidence to demonstrate that it satisfies the requirement of the statute that it have in place reciprocal compensation arrangements in accordance with section 252(d)(2). BellSouth demonstrates that it has a concrete legal obligation to pay reciprocal compensation.⁹⁴⁷ Section XIII.A. of the SGAT states: "BellSouth provides for the mutual and reciprocal recovery of the costs of transporting and terminating local calls on its and competitive LEC networks."⁹⁴⁸ BellSouth's charges for transport and termination of calls on its network are set out in Attachment A." SGAT Attachment A incorporates prices that were adopted as part of the Louisiana Commission's *Pricing Order*.⁹⁴⁹

301. With regard to BellSouth's reciprocal compensation arrangements with interconnectors purchasing switching and transport UNEs, we are not persuaded by AT&T's argument that such arrangements fail to meet checklist item (xiii) because BellSouth allegedly fails to provide sufficient billing information.⁹⁵⁰ Competitive LECs' reciprocal compensation rates are based on BellSouth's reciprocal compensation rates.⁹⁵¹ BellSouth's reciprocal compensation rates

⁹⁴⁵ *Id.* § 252(d)(2)(A).

⁹⁴⁶ With regard to the second requirement, we note that section 271(c)(2)(A)(i) requires a showing that a BOC "is providing access and interconnection pursuant to one or more agreements . . . or . . . is generally offering access and interconnection pursuant to [an SGAT]," (emphasis added). 47 U.S.C. § 271(c)(2)(A)(i).

⁹⁴⁷ See, e.g., MCI Agreement at Att. IV, § 2.2.

⁹⁴⁸ See, e.g., MCI Agreement at Att. IV, § 2.2.1 ("The Parties shall bill each other reciprocal compensation at the rates set forth for Local Interconnection in this Agreement and the Order of the LPSC."), Att. I, § 7.1, Table 1.

⁹⁴⁹ BellSouth Varner Aff. at para. 195.

⁹⁵⁰ See AT&T Comments at 52.

⁹⁵¹ See, e.g., SGAT § XIII.A.; MCI Agreement at Att. IV, § 2.2.

for competitive LECs purchasing UNEs are composed of a collection of UNE rates.⁹⁵² BellSouth argues that, because it does not demand payment for competitive LEC usage of the UNEs used to terminate traffic, no net payments are due to the competitive LECs because, it asserts, the reciprocal compensation rates owed to competitive LECs are equal to the sum of corresponding UNE rates that BellSouth would charge the competitive LEC.⁹⁵³ We agree that, if BellSouth does not, in fact, assess such UNE charges on competitive LECs and the sum of such charges is identical to the reciprocal compensation rate, reciprocal compensation payments owed to the competitive LEC would be offset by UNE payments owed to BellSouth and, thus, in this particular instance, this financial arrangement would affect the requirements of checklist item (xiii). As discussed above, BellSouth has stated these conditions to be true, and no party has presented evidence to the contrary. In reaching this conclusion, we take no position on whether reciprocal compensation rates should always be equivalent to the rates for corresponding UNEs. AT&T's argument that this arrangement does not provide it with information necessary to bill reciprocal compensation to third-parties for whom BellSouth transits traffic⁹⁵⁴ to the terminating competitive LEC concerns checklist item (vi), provision of local switching, not checklist item (xiii), and is discussed in section (VI)(C)(6), above.

302. Timely remuneration. BellSouth provides sufficient evidence to demonstrate that it satisfies the requirement of the statute that it make all required reciprocal compensation payments in a timely fashion, with the exception of payments for traffic delivered to Internet Service Providers (ISPs), discussed below. BellSouth states that it "has honored and will continue to honor all of its reciprocal compensation agreements."⁹⁵⁵

303. At this time, we do not conclude that BellSouth is failing to make required reciprocal compensation payments in Louisiana on a timely basis. The general issue of a LEC's obligation to pay reciprocal compensation for traffic delivered to ISPs is pending in a number of

⁹⁵² See, e.g., SGAT § XIII.A., Att. A; MCI Agreement at Att. IV, § 2.2.

⁹⁵³ BellSouth Application at 59-60, Varner Aff. at para. 192. We are not persuaded at this time by AT&T's claim that BellSouth is not legally obligated to this arrangement. See AT&T Comments at 52. BellSouth states that further negotiations were held regarding this matter and that AT&T agreed to the arrangement that BellSouth describes. BellSouth Varner Reply Aff. at 30. Further, we believe that BellSouth's statements in this proceeding are sufficiently legally binding.

⁹⁵⁴ AT&T Comments at 52. Because no payments are due, BellSouth does not provide terminating switch usage information to the terminating competitive LEC. BellSouth Varner Aff. at para. 192.

⁹⁵⁵ BellSouth Varner Reply Aff. at para. 28.

proceedings.⁹⁵⁶ Neither this Commission nor the Louisiana Commission have reached a final determination on this matter. We do not, at this time, consider BellSouth's unwillingness to pay reciprocal compensation for traffic that is delivered to ISPs located within the same local calling area as the originating BellSouth end user⁹⁵⁷ in assessing whether BellSouth satisfies this checklist item.⁹⁵⁸ Any future grant of in-region interLATA authority under section 271 will be conditioned on compliance with forthcoming decisions relating to Internet traffic in Louisiana.⁹⁵⁹

304. We are not persuaded by e.spire's claims that BellSouth is refusing to pay it reciprocal compensation fees for non-ISP-bound traffic.⁹⁶⁰ e.spire does not provide evidence that it terminates the majority of non-ISP-bound traffic that it exchanges with BellSouth. Thus, e.spire does not prove that it is, in fact, owed net reciprocal compensation payments for non-ISP bound traffic, *i.e.*, that BellSouth owes it more reciprocal compensation payments for non-ISP bound traffic than it owes BellSouth for such traffic.⁹⁶¹

⁹⁵⁶ See, e.g., Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53,922 (1996), Petition for Partial Reconsideration and Clarification of MFS Communications Company, Inc. at 28; Connect Communications Corp. v. Southwestern Bell Tel. Co., Docket No. 98-167-C (Ark. Comm'n); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, R.95-04-04 (Cal. Comm'n); Complaint of MFS Intelenet of California, Inc. against Pacific Bell and Request for Temporary Restraining Order and Preliminary Injunction, Docket No. 97-09-032 (Cal. Comm'n); Complaint of Time Warner Communications of Indiana, L.P. Against Indiana Bell Tel. Co., Inc., d/b/a Ameritech Indiana, For Violation of the Terms of the Interconnection Agreement, Cause no. 41097 (Indiana Comm'n); Complaint of MFS Intelenet of Mass., Inc. Against New England Tel. and Tel. Co. for Breach of Interconnection Terms and Request for Relief, Docket No. 97-116 (Mass. Comm'n). See also GTE Telephone Operating Cos., GTOC Tariff FCC No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, *Order Designating Issues for Investigation*, DA 98-1667 (Com. Car. Bur., rel. August 20, 1998).

⁹⁵⁷ See BellSouth Application at 60.

⁹⁵⁸ See, e.g., AT&T Comments at 68-69; Hyperion Comments at 3-7; Intermedia Comments at 24-26; MCI Comments at 62-63; AT&T Reply at 32-33; Intermedia Reply at 11-12. ALTS also notes that BellSouth is refusing to comply with North Carolina and Florida Commission orders requiring BellSouth to pay reciprocal compensation for such traffic. ALTS Comments at 18-19. For this reason, ALTS argues that this Commission should find BellSouth fails to meet checklist item (xiii). *Id.* We note that the Louisiana Commission has not issued any orders on this issue.

⁹⁵⁹ We note that BellSouth states that it "will comply with all binding regulatory decisions in this area, as it does in all others." BellSouth Application at 60.

⁹⁶⁰ e.spire Comments at 27-28; e.spire Reply at 13.

⁹⁶¹ We need not evaluate e.spire's claim that BellSouth has denied e.spire its contractual right to incorporate more favorable provisions from other agreements. See e.spire Comments at 28 n.46; BellSouth Varner Reply Aff. at para. 28.

305. Radiofone, a provider of cellular and paging service in Louisiana, argues that BellSouth does not meet checklist item (xiii) because it refuses to pay Radiofone reciprocal compensation pursuant to 51.717(b) of our rules.⁹⁶² This contention is not relevant under the competitive checklist.⁹⁶³ Section 271(c)(1)(A) requires BOCs to enter into binding agreements to "provide access and interconnection to . . . one or more unaffiliated competing providers of telephone exchange service" (emphasis added) and specifically excludes cellular service from consideration as "telephone exchange service" for such purposes.⁹⁶⁴ The Commission has previously concluded that Radiofone's other service offering, paging service, is not "telephone exchange service."⁹⁶⁵ Section 271(c)(2)(A)(i) requires access and interconnection to be provided pursuant to one or more agreements described in section 271(c)(1)(A)⁹⁶⁶ while section 271(c)(2)(A)(ii) requires "such access and interconnection" to meet the requirements of the competitive checklist.⁹⁶⁷ Thus, under the competitive checklist, we are to evaluate only access and interconnection offered to unaffiliated competing providers of telephone exchange service, not access and interconnection offered to cellular and paging service providers. We therefore conclude that Radiofone's argument is irrelevant to checklist item (xiii).

14. Checklist Item 14 -- Resale.

a. Background.

⁹⁶² Radiofone Reply at 3-5. Radiofone's initial comments discussed this issue only with regard to the public interest. Radiofone Comments at 1-2. "From the date that a CMRS provider makes a request under paragraph (a) until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the preexisting arrangement." 47 C.F.R. § 51.717(b).

⁹⁶³ We note, however, that Radiofone's claim may be relevant to our public interest analysis. PCIA also makes arguments regarding paging interconnection directed to public interest considerations. See PCIA Comments at 9-11.

⁹⁶⁴ The final sentence of section 271(c)(1)(A) states: "For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.) shall not be considered to be telephone exchange services." 47 U.S.C. § 271(c)(1)(A). We observed in the *First BellSouth Louisiana Order* that, although part 22 of the Commission's rules no longer exists (and did not exist at the time of passage of the 1996 Act), Congress intended the language in section 271(c)(1)(A) -- "subpart K of part 22 of the Commission's regulations (47 C.F.R. 22901 et seq.)" -- to include the Commission's current cellular service regulations. See *First BellSouth Louisiana Order*, 13 FCC Rcd at 6289 n.257.

⁹⁶⁵ *Local Competition Second Report and Order*, 11 FCC Rcd at 19538 n.700.

⁹⁶⁶ 47 U.S.C. § 271(c)(2)(A)(i).

⁹⁶⁷ 47 U.S.C. § 271(c)(2)(A)(ii).

306. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make "telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."⁹⁶⁸ Section 251(c)(4)(A) requires incumbent LECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."⁹⁶⁹ Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on resale, with the exception that "a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."⁹⁷⁰ Section 252(d)(3) sets forth the basis for determining "wholesale rates" as the "retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."⁹⁷¹

307. In the *Local Competition First Report and Order*, the Commission established several rules regarding the scope of the resale requirement and permissible restrictions on resale that a LEC may impose.⁹⁷² Most significantly, resale restrictions are presumed to be unreasonable unless the LEC "proves to the state commission that the restriction is reasonable and non-discriminatory."⁹⁷³ In the *BellSouth South Carolina Order* and *First BellSouth Louisiana Order*, the Commission determined that BellSouth failed to comply with checklist item (xiv) by, *inter alia*, refusing to offer contract service arrangements (CSAs) at a wholesale discount.⁹⁷⁴

308. Finally, in accordance with sections section 271(c)(2)(B)(ii) and section

⁹⁶⁸ 47 U.S.C. § 271(c)(2)(B)(xiv).

⁹⁶⁹ 47 U.S.C. § 251(c)(4)(A).

⁹⁷⁰ 47 U.S.C. § 251(c)(4)(B).

⁹⁷¹ 47 U.S.C. § 252(d)(3).

⁹⁷² See, e.g., 47 C.F.R. §§ 51.613-51.617. The Eighth Circuit acknowledged the Commission's authority to promulgate such rules, and specifically upheld the sections of the Commission's rules concerning resale of promotions and discounts, in *Iowa Utilities Board. Iowa Utils. Bd.*, 120 F.3d at 818-19.

⁹⁷³ See 47 C.F.R. § 51.613(b).

⁹⁷⁴ *BellSouth South Carolina Order* 13 FCC Rcd at 658-63; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6283-89. Contract service arrangements are contractual agreements made between a carrier and a specific, typically high-volume, customer, tailored to that customer's individual needs. Contract service arrangements may include volume and term arrangements, special service arrangements, customized telecommunications service agreements, and master service agreements.

271(c)(2)(B)(xiv), a BOC must demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.⁹⁷⁵

b. Discussion.

309. We conclude that, but for deficiencies in its OSS systems described above,⁹⁷⁶ BellSouth demonstrates that it makes telecommunication services available for resale in accordance with sections 251(c)(4) and 252(d)(3). Thus, but for these deficiencies, BellSouth satisfies the requirements of checklist item (xiv). BellSouth makes a *prima facie* showing that it (1) offers for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers and (2) offers such telecommunications services for resale without unreasonable or discriminatory conditions or limitations. BellSouth, however, fails to make a *prima facie* showing that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.

310. Availability of wholesale rates. BellSouth provides sufficient evidence to demonstrate that it has a concrete legal obligation to make available telecommunications services at wholesale rates, as required by the statute. Section XIV of BellSouth's SGAT provides that "telecommunications services that BellSouth provides at retail to subscribers that are not telecommunications carriers"⁹⁷⁷ are available at discount levels ordered by the Louisiana Commission.⁹⁷⁸ BellSouth's interconnection agreements have similar provisions.⁹⁷⁹

311. Since the issuance of the *First BellSouth Louisiana Order*, BellSouth has amended

⁹⁷⁵ See Section (VI)(C)(2)(a), *supra*.

⁹⁷⁶ *Id.*

⁹⁷⁷ SGAT § XIV.A. The sole exceptions to this are retail promotions offered for 90 days or less, an exception permitted under this Commission's rules. SGAT § XIV.B.1. *See* 47 C.F.R. § 51.613(a)(2). We note, however, that Section 51.613(a)(2)(ii) provides that exempted short-term promotions may not involve "rates that will be in effect" for more than 90 days. 47 C.F.R. § 51.613(a)(2)(i). We also note that such short-term promotions are not to be used to evade the wholesale rate obligation, such as through sequential 90-day offerings. 47 C.F.R. § 51.613(a)(2)(ii). Such offerings are subject to resale at their short-term promotional rate pursuant to section 251(b)(1) of the Act. 47 U.S.C. § 251(b)(1); *Local Competition First Report and Order* 11 FCC Rcd at 15970 n.2250; SGAT § XIV.B.1.

⁹⁷⁸ Currently, the wholesale discount applicable to CSAs is 20.72 percent, which is taken off the tariffed intrastate rate. SGAT § XIV.B., Att. H.

⁹⁷⁹ *See, e.g.*, AT&T Agreement § 23.1; MCI Agreement at Att. 2, § 1.1.

its SGAT to state that wholesale discounts apply to CSAs.⁹⁸⁰ The currently applicable wholesale discount for CSAs is 20.72 percent, but may change at "such time as a CSA-specific wholesale discount is determined."⁹⁸¹ BellSouth states that it will agree to contract language similar to the SGAT CSA resale language with interested CLECs.⁹⁸² Moreover, we note that BellSouth permits competing carriers to substitute the resale terms and conditions contained in the SGAT for that carrier's interconnection agreement.⁹⁸³

312. Furthermore, we are not persuaded by KMC's claims that BellSouth should not be considered in compliance with checklist item (xiv) unless it allows parties to amend their agreements to include the CSA wholesale discount provision without accepting an entirely new resale agreement.⁹⁸⁴ We note that Section 24.0 of KMC's agreement requires it to elect an entire resale provision of another agreement if it seeks to amend its preexisting agreement.⁹⁸⁵ Moreover, KMC is entitled to select the entire resale provision from BellSouth's SGAT, which, as discussed above, we have found to meet the requirements of checklist item (xiii). We observe, however, that our conclusions regarding KMC's rights under its agreement might be affected by the pending Supreme Court review of *Iowa Utilities Board*.⁹⁸⁶

313. Likewise, we disagree with MCI's claim that BellSouth's application is "premature" until the Louisiana Commission determines the wholesale discount applicable to CSAs consistent with section 252(d)(3) because, according to MCI, until such time, competitors are unable to make business plans based on an uncertain level of wholesale discount.⁹⁸⁷ As discussed above, BellSouth's SGAT legally commits it to provide CSAs at some state-determined wholesale discount, in conformance with section 251(c)(4) and the *First BellSouth Louisiana Order*. We

⁹⁸⁰ SGAT § XIV.B.

⁹⁸¹ SGAT Att. H.

⁹⁸² BellSouth Application at 62.

⁹⁸³ BellSouth Varner Aff. at paras. 19-20.

⁹⁸⁴ KMC Reply at 5-6.

⁹⁸⁵ KMC Agreement § 24.0.

⁹⁸⁶ Among the issues on which the Supreme Court granted *certiorari* was the Eighth Circuit's decision to vacate 47 C.F.R. § 51.809, which allowed requesting carriers to "pick and choose" among individual provisions of other interconnection agreements that have previously been negotiated between an incumbent LEC and other requesting carriers without being required to accept the terms and conditions of the agreements in their entirety. See *Iowa Utils. Bd.*, FCC Petition for *Certiorari* at 10.

⁹⁸⁷ MCI Comments at 76.

are not persuaded at this time that the possibility that a state might change the level of the wholesale discount for certain offerings necessitates a finding that BellSouth fails to comply with 271(c)(2)(B)(xiv) of the Act.

314. Finally, we are not persuaded by TRA's argument that, because voice mail and other voice messaging services are "telecommunications services," BellSouth's refusal to offer these services for resale at wholesale rates constitutes a failure to meet checklist item (xiv).⁹⁸⁸ Checklist item (xiv) requires "telecommunications services," as defined by the 1996 Act, to be made available at wholesale rates.⁹⁸⁹ Contrary to the arguments of TRA, however, voice mail and voice messaging services are information services, not telecommunications services, and, thus, are not subject to this checklist provision. Prior to the enactment of the 1996 Act, the Commission classified voice messaging services as "enhanced" services.⁹⁹⁰ More recently, the Commission has determined that the definition of "information services" under the 1996 Act includes those services previously classified as "enhanced services"⁹⁹¹ and that "information services" are not also "telecommunications services" because the two definitions under the 1996 Act are mutually exclusive.⁹⁹² Accordingly, voice messaging services are not subject to the resale provision of checklist item (xiv) because they are not telecommunications services.

315. Resale conditions and limitations. BellSouth states that it "does not impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services in violation of section 251(c)(4) of the Act or the Commission's rules."⁹⁹³ As discussed below, we do not agree with arguments made by various parties claiming that particular BellSouth resale restrictions are unreasonable or discriminatory. Thus, we find there to be sufficient evidence that BellSouth is satisfying the requirement in checklist item (xiv) that it have a concrete

⁹⁸⁸ TRA Comments at 29.

⁹⁸⁹ 47 U.S.C. § 271(c)(2)(B)(xiv).

⁹⁹⁰ See *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Report and Order, 104 FCC 2d 958 (1986).

⁹⁹¹ *Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21955-58 (1996).

⁹⁹² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, FCC 98-67 (rel. April 10, 1998) at paras. 39, 44; *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8095-96 (1998).

⁹⁹³ BellSouth Varner Reply at para. 53.

legal obligation to offer its telecommunications services for resale in accordance with section 251(c)(4)(B) of the Act.

316. We find unpersuasive claims made by AT&T and Sprint that BellSouth does not comply with this checklist item because it limits the customers to whom a reseller may resell a CSA.⁹⁹⁴ BellSouth states that CSAs are available for resale to customers for whom the CSA was not originally designed so long as the resale customer is similarly situated.⁹⁹⁵ The Commission concluded in the *Local Competition First Report and Order* that "the substance and specificity of rules concerning which discount and promotion restrictions may be applied to resellers in marketing their services to end users is a decision best left to state commissions, which are more familiar with the particular business practices of their incumbent LECs and local market conditions."⁹⁹⁶ We see no reason at this time to change this conclusion. We further note, however, that limiting the resale of CSAs to similarly situated customers, on a general basis, may be a reasonable and non-discriminatory resale restriction because it is sufficiently narrowly tailored. CSA offerings, by their nature, are priced to a specific set of customer needs, sometimes based on a competitive bidding process. To this extent, it is reasonable to assume that BellSouth's ability to offer a particular CSA at a given price will be dependent on certain end user characteristics.

317. We are also unpersuaded by arguments made by AT&T and Sprint that BellSouth unlawfully prohibits resellers from aggregating traffic of multiple customers to meet CSA volume minimums.⁹⁹⁷ We note that certain groups of end users might constitute an aggregation that is similarly situated to the original CSA customer and, thus, BellSouth would be obligated to allow the reseller to aggregate the volume of such end users under the CSA. As discussed above, the Commission determined in the *Local Competition First Report and Order* that the matter of resale restrictions attached to promotions and discounts is best left to state commissions. The Commission created an exception to this determination, however, by concluding that it is presumptively unreasonable for incumbent LECs to require individual customers of a reseller to comply with incumbent LEC high-volume discount minimum usage requirements so long as the reseller, in aggregate, under the relevant tariff, meets the minimal level of demand.⁹⁹⁸ Thus, a CSA resale restriction simply forbidding volume aggregation, without economic justification, is

⁹⁹⁴ AT&T Comments at 72-73; Sprint Comments at 40-42.

⁹⁹⁵ BellSouth Reply at 82-83, BellSouth Varner Reply Aff. at para. 51.

⁹⁹⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15971.

⁹⁹⁷ AT&T Comments at 71; Sprint Comments at 41.

⁹⁹⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15971.

presumptively unreasonable. There may be, however, reasonable and non-discriminatory economic justifications for certain narrowly-tailored volume aggregation restrictions such as, for example, geographic limitations on the location of lines, when economically relevant.⁹⁹⁹ These would constitute exceptions to our conclusion regarding volume aggregation. Because we have not been presented with sufficient evidence regarding the specific nature and rationale of any BellSouth volume aggregation prohibitions, we do not conclude at this time that BellSouth imposes unreasonable volume aggregation prohibitions. In future applications, however, to the extent that concrete examples of BellSouth volume aggregation prohibitions, *i.e.*, imposition of discriminatory conditions in order that an aggregation of customers be deemed similarly situated, are duly brought to our attention, we will require an affirmative showing by BellSouth that such restrictions are reasonable. Failure to make CSAs available for resale to aggregations of customers similarly situated to the original CSA end user would unreasonably and discriminatorily limit the benefits of volume discounts to BellSouth end users.

318. In addition, we disagree with TRA's claim that it is discriminatory for BellSouth to impose customer change charges when an end user switches from BellSouth to a reseller but does not pay a reseller such charges when an end user switches from a reseller to BellSouth.¹⁰⁰⁰ Based on the record in this proceeding, we conclude that this asymmetry is not discriminatory. BellSouth does, in fact, incur costs in changing billing responsibility, while continuing to provide wholesale service, but resellers do not incur such charges because the reseller no longer provides wholesale or retail service to the end user.¹⁰⁰¹ We note that BellSouth does, however, charge an end user that returns to BellSouth the same subscriber change charge (another type of charge) that it applies to the reseller when the customer initially switched to its service.¹⁰⁰² We find this practice to be nondiscriminatory and reasonable, but do not comment on the appropriateness of

⁹⁹⁹ We note that not all geographic limitations on the location of lines are economically relevant. In the *Texas Preemption Order*, for example, the Commission concluded that Southwestern Bell Telephone's (SWBT's) continuous property restriction on the resale of centrex service violated section 251(c)(4) of the Act because it was not shown to be reasonable. *The Public Utility Commission of Texas, et al. Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3563-64 (1997), *petition for recon. pending, petition for review pending*, City of Abilene, Texas v. FCC, No. 97-1633 (D.C. Cir. filed Oct. 14, 1997) (*Texas Preemption Order*). Indeed, the underlying facts supported a conclusion that such a restriction was unreasonable. See, e.g., *Texas Preemption Order* 13 FCC Rcd at 3562 (noting claims that SWBT did not enforce a continuous property restriction on its own centrex customers).

¹⁰⁰⁰ TRA Comments at 28-29.

¹⁰⁰¹ See BellSouth Varner Reply Aff. at para. 44.

¹⁰⁰² BellSouth Reply at 85.

the level of such charge as such charges are generally a matter of state jurisdiction.¹⁰⁰³

319. Although BellSouth demonstrates that it makes its telecommunications services available for resale on terms and conditions consistent with our rules, it fails to demonstrate that its operations support systems provide access to resold services on a nondiscriminatory basis. We identify in Section V.C.2.(a). above the specific deficiencies of BellSouth's operations support systems with respect to the resale of services. We, therefore, conclude that BellSouth fails to demonstrate that it meets the requirements of this checklist item.

VII. SECTION 272

A. Background

320. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that "the requested authorization will be carried out in accordance with the requirements of section 272,"¹⁰⁰⁴ which sets forth structural, transactional, and other requirements. The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.¹⁰⁰⁵ In the *Ameritech Michigan Order*, the Commission stated that compliance with section 272 is "of crucial importance, because the structural and nondiscrimination safeguards of section 272 seek to ensure that competitors of the BOCs will have nondiscriminatory access to essential inputs on terms that do not favor the BOC's affiliate."¹⁰⁰⁶ The Commission stated that these safeguards "discourage, and facilitate detection of, improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate."¹⁰⁰⁷

¹⁰⁰³ We note, however, that an excessive charge could be a barrier to effective competition.

¹⁰⁰⁴ 47 U.S.C. § 271(d)(3)(B).

¹⁰⁰⁵ See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), recon. pending. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), aff'd sub nom. *Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), recon. pending.

¹⁰⁰⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

¹⁰⁰⁷ *Id.*

321. The Commission also explained in the *Ameritech Michigan Order* that section 271(d)(3)(B) requires "a predictive judgment regarding the future behavior of the BOC."¹⁰⁰⁸ The Commission stated that, in making this judgment, "the past and present behavior of the BOC applicant" would be "highly relevant" because that behavior provides "the best indicator of whether [the applicant] will carry out the requested authorization in compliance with the requirements of section 272."¹⁰⁰⁹ Thus, we will examine BellSouth's asserted compliance with section 272 and evidence of violations of section 272 as indicators of BellSouth's future behavior.

B. Discussion

322. Although BellSouth makes a *prima facie* showing for many of the requirements of section 272, we find that BellSouth does not demonstrate that it will comply fully with several of the requirements of section 272 because BellSouth fails to disclose all of the transactions between the BOC, BellSouth Telecommunications, Inc., and its section 272 affiliate, BellSouth Long Distance, and does not demonstrate that it is providing OSS on a nondiscriminatory basis to other carriers. Therefore, BellSouth's request for in-region interLATA authorization does not satisfy the requirement of section 271(d)(3)(B) that such a request would be carried out in accordance with the requirements of section 272. These findings constitute an independent ground for denying BellSouth's application. We examine these deficiencies in BellSouth's Application in greater detail below. Nevertheless, we are encouraged by BellSouth's substantial efforts to institute policies, procedures, training and controls to ensure compliance with section 272's requirements.

1. Structural Separation, Transactional, and Accounting Requirements of Section 272

323. Section 272(a) -- Separate Affiliate. BellSouth does not make a *prima facie* showing or meet the burden of persuasion that it will comply with section 272(a), which requires BOCs and their local exchange carrier affiliates that are subject to the requirements of section 251(c) to provide manufacturing activities and certain competitive services through separate affiliates.¹⁰¹⁰ Specifically, the Commission concluded in the *Non-Accounting Safeguards Order* that section 272 allows a BOC to engage in manufacturing activities, origination of certain interLATA telecommunications services, and the provision of interLATA information services, so long as the BOC does so through an affiliate that is separate from any operating company entity

¹⁰⁰⁸ *Id.*

¹⁰⁰⁹ *Id.*

¹⁰¹⁰ 47 U.S.C. § 272(a).

that is subject to section 251(c), and so long as the affiliate meets the requirements of section 272(b).¹⁰¹¹ Because, as explained below, BellSouth does not meet the requirement of section 272(b)(5), we find that BellSouth fails to satisfy the requirement of section 272(a).

324. BellSouth has established a section 272 affiliate, BellSouth Long Distance (BSLD), which will provide in-region interLATA services once section 271 approval is obtained.¹⁰¹² BSLD is a Delaware corporation, which is the wholly-owned sole subsidiary of BellSouth Long Distance Holdings, Inc. which is itself a wholly-owned subsidiary of BellSouth Corp., the parent corporation of BellSouth Telecommunications, Inc. (BST).¹⁰¹³ BellSouth states that BST and BSLD are separate entities and neither entity owns the stock of the other.¹⁰¹⁴ BellSouth states that it may reorganize, merge, or otherwise change the form of BSLD or create or acquire additional interexchange subsidiaries.¹⁰¹⁵ In this event, we expect, as BellSouth represents, that any such subsidiaries designated as section 272 affiliates will meet all of the requirements of section 272, including disclosure of past transactions pursuant to the requirement in section 272(b)(5), and other applicable state and federal regulations.¹⁰¹⁶

325. Section 272(b)(1) -- Operate Independently. BellSouth makes a *prima facie* showing and meets the burden of persuasion that it will comply with section 272(b)(1), which requires that the section 272 separate affiliate "operate independently from the Bell operating company."¹⁰¹⁷ The Commission has interpreted section 272(b)(1) to impose four important restrictions: (1) no joint BOC-affiliate ownership of switching and transmission facilities; (2) no joint ownership of the land and buildings on which such facilities are located; (3) no provision by the BOC (or other non-section 272 affiliate) of operation, installation, or maintenance services with respect to the section 272 affiliate's facilities; and (4) no provision by the section 272 affiliate of operation, installation, or maintenance services with respect to the BOC's facilities.¹⁰¹⁸

¹⁰¹¹ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21913.

¹⁰¹² BellSouth Application at 66.

¹⁰¹³ Second BellSouth Louisiana Application App. A, Vol. 7, Tab 26, Affidavit of Lynn A. Wentworth (BellSouth Wentworth Aff.) at para. 7. BSLD was incorporated on Mar. 13, 1996. *Id.* at Exhibit 1.

¹⁰¹⁴ Second BellSouth Louisiana Application App. A, Vol. 1, Tab 4, Affidavit of Guy L. Cochran (BellSouth Cochran Aff.) at para. 8; BellSouth Wentworth Aff. at para. 7.

¹⁰¹⁵ BellSouth Wentworth Aff. at para. 9.

¹⁰¹⁶ *Id.*

¹⁰¹⁷ 47 U.S.C. § 272(b)(1); 47 C.F.R. § 53.203(a).

¹⁰¹⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21981-21982.

326. BellSouth states in its Application that, so long as BSLD is subject to the requirements of section 272, it will operate in a manner that satisfies both section 272 and the Commission's implementing regulations, including the Commission's "operate independently" requirement.¹⁰¹⁹ BellSouth commits that BST and BSLD will not jointly own telecommunications transmission or switching facilities or the land and buildings on which such facilities are located while subject to this restriction under section 272.¹⁰²⁰ BellSouth also asserts that BST employees will not operate, install, or maintain BSLD's facilities, as long as they are prohibited from doing so by section 272.¹⁰²¹ Correspondingly, BellSouth states that BSLD has not provided, is not providing, and will not provide operating, installation, and maintenance services to BST in connection with BST's facilities, subject to the sophisticated equipment exception set forth in the *Non-Accounting Safeguards Order*.¹⁰²²

327. We do not find persuasive Sprint's assertions that BellSouth does not intend to comply fully with this requirement. Sprint contends that BellSouth interprets the "operate independently" requirement to require only that the BOC and the section 272 affiliate not perform operating, installation, and maintenance activities on each other's switching and transmission equipment, rather than applying this restriction to all facilities, as Sprint believes, the *Non-Accounting Safeguards Order* requires.¹⁰²³ We find this argument unpersuasive because the Commission expressly limited the operation, installation, and maintenance restriction to switching and transmission facilities in the *Non-Accounting Safeguards Order*.¹⁰²⁴

328. Section 272(b)(2) -- Books, Records, and Accounts. Based on our review of the record evidence, we conclude that BellSouth makes a *prima facie* showing and demonstrates that it will comply with the section 272(b)(2) requirement that the section 272 separate affiliate "shall maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by the Bell operating company of

¹⁰¹⁹ BellSouth Application at 66; BellSouth Cochran Aff. at para. 9; BellSouth Wentworth Aff. at para. 10.

¹⁰²⁰ BellSouth Application at 66; BellSouth Cochran Aff. at para. 10; BellSouth Wentworth Aff. at para. 10(a).

¹⁰²¹ BellSouth Cochran Aff. at para. 10; BellSouth Wentworth Aff. at para. 10(b).

¹⁰²² BellSouth Application at 66; BellSouth Wentworth Aff. at para. 10(b).

¹⁰²³ Sprint Comments at 64.

¹⁰²⁴ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21982 (modifying the term "facilities" with "transmission and switching"). *See also* Bell Atlantic Reply at 28.

which it is an affiliate.¹⁰²⁵ In the *Accounting Safeguards Order*, the Commission determined that the section 272 affiliates must maintain their books, records, and accounts in accordance with Generally Accepted Accounting Principles ("GAAP").¹⁰²⁶ Because BellSouth demonstrates that BSLD uses a different chart of accounts than the BOC and that BSLD uses separate accounting software maintained at a separate location, BellSouth provides sufficient assurances that BSLD's books, accounts, and financial records are separate from BST's books and records.¹⁰²⁷ BellSouth asserts, and no commenter disputes, that BSLD maintains its books, records, and accounts in accordance with GAAP.¹⁰²⁸ To support its assertion, BSLD states that a regular audit program ensures GAAP compliance and provides evidence of its internal controls.¹⁰²⁹ We find that this evidence provides sufficient assurances that BSLD maintains its books, accounts, and records in accordance with GAAP.

329. Section 272(b)(3) -- Separate Officers, Directors and Employees. We conclude that BellSouth makes a *prima facie* showing and establishes that it will comply with section 272(b)(3), which states that the section 272 separate affiliate "shall have separate officers, directors, and employees from the Bell operating company of which it is an affiliate."¹⁰³⁰ In the *Ameritech Michigan Order*, the Commission emphasized that section 272(b)(3) requires the BOC and its section 272 affiliate to have independent management. The Commission concluded that the BOC and its affiliate must appoint a board of directors if the corporations are wholly-owned subsidiaries of the same parent corporation, and applicable state law imputes the responsibilities of

¹⁰²⁵ 47 U.S.C. § 272(b)(2).

¹⁰²⁶ *Accounting Safeguards Order*, 11 FCC Rcd at 17617-17618. GAAP is that common set of accounting concepts, standards, procedures, and conventions that are recognized by the accounting profession as a whole and upon which most enterprises base their external financial statements and reports. GAAP is incorporated into the Commission's Uniform System of Accounts to the extent that regulatory considerations allow. *See* 47 C.F.R. § 32.1.

¹⁰²⁷ BellSouth Application at 66. In Exhibit II of the Wentworth Affidavit, BellSouth provides BSLD's chart of accounts, which is distinct from the chart of accounts used by the BOC. BST uses the Uniform System of Accounts in Part 32. *See* BellSouth Cochran Aff. at paras. 12-14.

¹⁰²⁸ BellSouth Application at 66; *see* BellSouth Wentworth Aff. at para. 11.

¹⁰²⁹ *See* BellSouth Wentworth Aff. at para. 11 (describing BSLD's financial staff, corporate policies and instructions, and audit program that ensures GAAP compliance); *see also* BellSouth Corporation, Form 10-K Annual Report, 48 (Feb. 2, 1998) (indicating that independent accountants audited BellSouth Corporation's consolidated financial statements).

¹⁰³⁰ 47 U.S.C. § 272(b)(3); 47 C.F.R. § 53.203(c).

directors for the wholly-owned subsidiary to the shareholders of the parent corporation.¹⁰³¹

330. BellSouth states that BSLD has separate officers, directors, and employees from BST who will not serve simultaneously as officers, directors, or employees of BST.¹⁰³² We find unpersuasive AT&T's assertion that BellSouth fails to meet the "separate officers, directors, and employees" requirement in section 272(b)(3) because BellSouth does not adequately explain the reporting structure of its officers.¹⁰³³ We disagree with Sprint's contention that having one director for BSLD is insufficient to satisfy the requirement of section 272(b)(3) because one director cannot provide the collective oversight and consideration for the effective realization of the Board of Director's substantial responsibilities.¹⁰³⁴ Neither the statute nor our implementing regulations require a BOC to outline the reporting structure of its affiliate's Board of Directors, or establish a minimum number of Board members. BellSouth demonstrates that BSLD and BST have and will have separate officers as required by section 272(b)(3).

331. Section 272(b)(4) -- Credit Arrangements. BellSouth makes a *prima facie* showing and demonstrates that it will comply with the requirements of section 272(b)(4) that the section 272 separate affiliate "may not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the Bell operating company."¹⁰³⁵ In the *Non-Accounting Safeguards Order*, the Commission interpreted the provision to prohibit a BOC, the parent of a BOC, or a non-section 272 affiliate of a BOC from co-signing a contract or other instrument with its section 272 affiliate that would permit a creditor recourse to the BOC's assets in the event of default by the section 272 affiliate.¹⁰³⁶ BellSouth states in its Application that creditors of BSLD do not and will not have recourse to the assets of BST.¹⁰³⁷ In addition, BellSouth states that BSLD does not and will not make available to any creditor recourse to BST's assets indirectly through a non-section 272 BellSouth affiliate.¹⁰³⁸ Thus, BellSouth has

¹⁰³¹ *Ameritech Michigan Order*, 12 FCC Rcd at 20729, 20731-32.

¹⁰³² BellSouth Application at 66; BellSouth Wentworth Aff. at para. 12; BellSouth Cochran Aff. at para. 19. In addition, according to BellSouth, BST and BSLD will maintain separate payrolls and administrative operating systems and will continue to do so for as long as required under section 272. BellSouth Cochran Aff. at para. 19.

¹⁰³³ AT&T Comments at 84. *But see* Bell Atlantic Reply at 26-27.

¹⁰³⁴ Sprint Comments at 62-63.

¹⁰³⁵ 47 U.S.C. § 272(b)(4); 47 C.F.R. § 53.203(d).

¹⁰³⁶ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21995.

¹⁰³⁷ BellSouth Application at 66; BellSouth Wentworth Aff. at para. 13; BellSouth Cochran Aff. at para. 20.

¹⁰³⁸ BellSouth Wentworth Aff. at para. 13; BellSouth Cochran Aff. at para. 20.

adequately demonstrated that it meets the requirements of section 272(b)(4).

332. Section 272(b)(5) -- Affiliate Transactions. Section 272(b)(5) encompasses two requirements regarding transactions between a BOC and its section 272 affiliate: (1) that affiliate transactions be publicly disclosed, and (2) that affiliate transactions be conducted on an arm's-length basis. We conclude that BellSouth does not make a *prima facie* showing and does not meet the burden of persuasion that it will comply with either requirement of section 272(b)(5).

333. BellSouth does not demonstrate that it will comply with the public disclosure requirement of section 272(b)(5), which requires all transactions between the BOC and its section 272 affiliate to be "reduced to writing and available for public inspection." The section 272(b)(5) public disclosure requirement consists of three components. First, the section 272 affiliate must provide, at a minimum, a detailed written description of the asset transferred or the service provided in the transaction, and post the terms and conditions of the transaction on the company's home page on the Internet within 10 days of the transaction.¹⁰³⁹ Second, the descriptions "should be sufficiently detailed to allow us to evaluate compliance with our accounting rules."¹⁰⁴⁰ Finally, the descriptions must be made available for public inspection at the BOC's principal place of business, and must include a statement certifying the truth and accuracy of such disclosures.¹⁰⁴¹

334. In the *Ameritech Michigan Order*, the Commission concluded that Ameritech failed to demonstrate that it would carry out the requested authorization in accordance with section 272(b)(5) because of its failure to disclose publicly the rates for all of the transactions between the BOC and its section 272 affiliate.¹⁰⁴² The Commission explained that "a statement of the valuation method used, without the details of the actual rate, does not provide the specificity we required in the *Accounting Safeguards Order*."¹⁰⁴³ Moreover, it appeared that Ameritech and ACI had not publicly disclosed all of their transactions.¹⁰⁴⁴ Finally, the Commission stated that BOCs were obligated to comply with the requirements of section 272 as of the date of its

¹⁰³⁹ *Accounting Safeguards Order*, 11 FCC Rcd at 17593-94.

¹⁰⁴⁰ *Id.* at 17593-94. See also Letter from Kenneth P. Moran, Chief, Accounting and Audits Division, FCC, to Maury Talbot, Executive Director, Federal Regulatory, BellSouth Corporation (Apr. 17, 1997).

¹⁰⁴¹ *Id.* at 17593-94.

¹⁰⁴² *Ameritech Michigan Order*, 12 FCC Rcd at 20734.

¹⁰⁴³ *Id.*

¹⁰⁴⁴ *Id.*

enactment.¹⁰⁴⁵

335. We find that BellSouth does not provide adequate assurances or demonstrate that it makes publicly available all transactions between BST and BSLS as required by section 272(b)(5) and the Commission's rules, and therefore we are not convinced that the requested authorization will be carried out in accordance with section 272(b)(5). Our review of BellSouth's Automated Reporting Management Information System ("ARMIS") filings, its cost allocation manuals ("CAMs"), and its CAM audit workpapers revealed significant discrepancies between these filings and BellSouth's section 272(b)(5) Internet disclosures.¹⁰⁴⁶ During our review, we found that BellSouth failed to disclose fully all transactions between BST and BSLS.¹⁰⁴⁷ These discrepancies, along with the lack of a definitive statement in BellSouth's Application to the effect that all transactions are disclosed, which is necessary to make a *prima facie* showing, suggest that BellSouth has failed to disclose all transactions between BST and BSLS as required by section 272(b)(5) and our rules. Failing to disclose fully the details of the transactions between the BOC and its section 272 affiliate is contrary to section 272(b)(5) because it impairs our ability to evaluate compliance with our accounting safeguards and deprives unaffiliated parties of the information necessary to take advantage of the same rates, terms, and conditions enjoyed by the BOC's section 272 affiliate.

336. We further conclude that BellSouth has not disclosed sufficient details of the

¹⁰⁴⁵ We stated that "[a]lthough BOCs need not comply with the requirements we adopted in the *Accounting Safeguards Order* prior to the effective date of that order, BOCs were still obligated to comply with the statute as of the date it was enacted." *Ameritech Michigan Order*, 12 FCC Rcd at 20736.

¹⁰⁴⁶ Our comparison of BellSouth's ARMIS and CAM filings with its Internet disclosures reveals discrepancies in the number, type, and dollar value of affiliate transactions between BST and BSLS. In its ARMIS filings for 1997 and 1998, BellSouth reported \$ 8,369,000 worth of services provided by BST to BSLS. SOURCE: ARMIS 43-02 USOA Report, Table I-2. BellSouth's Internet disclosures, however, reveal affiliate transactions between BST and BSLS valued at only \$ 7,760,200.

BellSouth's CAM filings reveal similar discrepancies. In its November 1996 CAM filing, BellSouth noted that BST provides BSLS with three services, Telecommunications Services, Joint Marketing, and Post Sales Activities. Only the Joint Marketing Services, however, are disclosed in the "past transactions" section of BellSouth's Internet site. In its December 1997 CAM filing, BellSouth noted that BST provides BSLS with Telecommunications Services, Customer Billing Services, Fraud Management Services, Joint Marketing, Product and Network Testing, Project Management, Trouble Reporting, and Use/Maintenance of General Computers. BellSouth's Internet site, however, discloses only four such services, Customer Billing Services, Fraud Management Services, Product and Network Testing, and Joint Marketing.

¹⁰⁴⁷ On its Internet site, BellSouth states: "At such time as BSLS is subject to the requirements of Section 272, this site will contain the postings required by the statute and applicable regulations." See BellSouth Wentworth Aff. at Exhibit 4; but see AT&T McFarland Aff. at paras. 30, 35 (criticizing lack of affirmative statement that all transactions have been disclosed).

transactions posted on its Internet site in order to satisfy section 272(b)(5). Many of BellSouth's Internet postings do not contain the information needed by third parties to determine whether to use similar services offered by BST.¹⁰⁴⁸ For example, many of BellSouth's descriptions are overly broad because such descriptions fail to state the substance, rates, terms, and conditions of the transactions between BST and BSLD.¹⁰⁴⁹ BellSouth's failure to disclose the rates charged for certain services makes it impossible for an unaffiliated third party to make informed purchasing decisions, and falls short of providing the information needed to assure compliance with our accounting rules.¹⁰⁵⁰

337. We disagree with BellSouth that our rules require a BOC to disclose only summaries of its transactions with a section 272 affiliate.¹⁰⁵¹ In the *Accounting Safeguards Order*, we stated that the section 272 affiliate must "provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction,"¹⁰⁵² and that such description "should be sufficiently detailed to allow us to evaluate compliance with our accounting rules."¹⁰⁵³ In the *Ameritech Michigan Order*, we stressed that section 272(b)(5) requires BOCs to disclose the rates, terms, and conditions of all transactions between the BOC and its section 272 affiliate.¹⁰⁵⁴ In order to demonstrate compliance with the public disclosure requirement of section 272(b)(5) in future applications, BellSouth should disclose sufficient detail for all transactions between BST and BSLD taking place after February 8, 1996. The final contract price alone is not sufficient for evaluating compliance. Instead, such disclosures should include a description of the rates, terms, and conditions of all transactions, as well as the frequency of recurring transactions and the approximate date of completed transactions. For asset transfers, BellSouth should disclose the appropriate quantity and, if relevant, the quality of the transferred assets. For affiliate transactions involving services, BellSouth should disclose the number and type of personnel

¹⁰⁴⁸ On its Internet site, BellSouth divides the transactions between BST and BSLD into "past transactions" and "current transactions." See BellSouth Wentworth Aff. at para. 14. BellSouth acknowledges that it discloses only summaries of "past transactions" valued at \$ 7,760,200. See BellSouth Wentworth Reply Aff. at para. 4.

¹⁰⁴⁹ See AT&T McFarland Aff. at paras. 25-28, 34, 36-40 (stating that posted agreements contain inadequate information about rates, terms, and conditions); see also AT&T Reply at 39; MCI Comments at 66 (citing inadequate information in BellSouth's Wentworth Aff. at Exhibit IV).

¹⁰⁵⁰ *Ameritech Michigan Order*, 12 FCC Rcd at 20734.

¹⁰⁵¹ BellSouth Wentworth Reply Aff. at para. 4.

¹⁰⁵² *Accounting Safeguards Order*, 11 FCC Rcd 17593-94.

¹⁰⁵³ *Id.* In addition, we explained that the summary descriptions BOCs provide in their CAMs are not sufficiently detailed to satisfy section 272(b). *Id.*

¹⁰⁵⁴ *Ameritech Michigan Order*, 12 FCC Rcd at 20734, 20736.

assigned to the project, the level of expertise of such personnel,¹⁰⁵⁵ any special equipment used to provide the service, and the length of time required to complete the transaction. BellSouth should also state whether the hourly rate is a fully-loaded rate,¹⁰⁵⁶ and whether or not that rate includes the cost of materials and all direct or indirect miscellaneous and overhead costs, so that we can evaluate compliance with our accounting safeguards. BellSouth should consistently report its transactions in its Internet disclosures, the information available at its principal place of business, and its various accounting disclosures. Finally, because we are concerned that BellSouth's Internet posting procedures may not be sufficient, BellSouth should clearly state its Internet posting procedures, including the anticipated duration of its posting, on its Internet site and in any future section 271 application.¹⁰⁵⁷

338. We disagree with AT&T that BellSouth is required to disclose publicly all transactions between the section 272 affiliate and other nonregulated affiliates in its section 271 application.¹⁰⁵⁸ Our rules require only public disclosures of transactions between the BOC and its section 272 affiliate.¹⁰⁵⁹ Instead, we view transactions between BSLS and BellSouth's other nonregulated affiliates as the proper subject of the biennial audits, which require a thorough examination of all affiliate transactions in order to evaluate compliance with the statute and our rules. We therefore decline to expand BellSouth's disclosure obligations in the manner suggested by AT&T.

339. Because BellSouth has failed to disclose all transactions between BST and BSLS, we cannot evaluate fully BSLS's compliance with the second requirement of section 272(b)(5) to

¹⁰⁵⁵ Besides the number and type of personnel and their associated levels of expertise, a competitor would also have to know the number of hours required for each labor category as well as the associated hourly rate.

¹⁰⁵⁶ Typically, an "hourly rate" only includes wages or salaries, which does not comprise the entire labor cost picture. In contrast, a "fully-loaded" rate typically includes, in addition to the hourly rate, fringe costs including, but not limited to, pensions, worker's compensation, insurance, Social Security and other payroll taxes, as well as any other employee-related costs.

¹⁰⁵⁷ The record suggests that BellSouth failed to meet the 10-day requirement for posting transactions on its Internet site and inexplicably removed \$ 2.4 million of transactions from its Internet site. *See* AT&T McFarland Aff. at paras. 47-48; *but see* BellSouth Wentworth Reply Aff. at para. 6 ("No transaction has been removed from the website.").

¹⁰⁵⁸ AT&T argues that BellSouth must disclose the nature, timing, and subject matter of BSLS's with other BellSouth affiliates in order to demonstrate that BellSouth is not using a chain of affiliates to cross-subsidize its long distance affiliate. AT&T McFarland Aff. at paras. 51-53.

¹⁰⁵⁹ Bell Atlantic Reply at 27; BellSouth Reply at 94; *see also* BellSouth Cochran Reply Aff. at para. 11 (stating that BST has not transferred to any affiliate any network facilities that are required to be unbundled pursuant to section 251(c)(3)).

"conduct all transactions with the Bell operating company of which it is an affiliate on an arm's length basis."¹⁰⁶⁰ In the *Accounting Safeguards Order*, we concluded that a BOC would satisfy the arm's length requirement by following our Part 32 affiliate transactions rules.¹⁰⁶¹ The affiliate transactions rules protect ratepayers and prevent improper cross-subsidization by requiring incumbent LECs, including the BOCs, to record the costs of transactions between the carrier and its nonregulated affiliates in accordance with a specific hierarchy of valuation methodologies.¹⁰⁶² We do note, however, that BellSouth has provided evidence of internal controls and procedures, such as its training programs and company memoranda, that appear to show that BST and BSLD comply with the requirement to conduct transactions on an arm's length basis.¹⁰⁶³ Although we agree with AT&T that, under these facts, mere paper promises to comply are insufficient, we find that BSLD appears to have provided information indicating compliance with the arm's length requirement for those transactions disclosed on its Internet site. BellSouth's corporate policies, employee training, and internal compliance program appear to indicate that such affiliate transactions are occurring at arm's length.¹⁰⁶⁴

340. Section 272(c)(2) -- Accounting Principles. Because BellSouth has failed to disclose all transactions between BST and BSLD, we cannot fully evaluate BST's compliance with section 272(c)(2), which states that "[i]n its dealings with its separate affiliate, a BOC "shall account for all transactions with an affiliate described in subsection (a) in accordance with accounting principles designated or approved by the Commission."¹⁰⁶⁵ In the *Accounting Safeguards Order*, we concluded that the existing affiliate transactions rules, with certain

¹⁰⁶⁰ See *Ameritech Michigan Order*, 12 FCC Rcd at 20735 (stating that failure to fully disclose the extent of the BOC's transactions with its section 272 affiliate prevents the Commission from evaluating the BOC's compliance efforts); *see also* MCI Comments at 66 (arguing that partial disclosures provide no assurances that transactions between BST and BSLD are conducted on an arm's length basis).

¹⁰⁶¹ *Accounting Safeguards Order*, 11 FCC Rcd at 17592, 17605-08.

¹⁰⁶² *See* 47 C.F.R. § 32.27.

¹⁰⁶³ For example, the "Competitive Alert" provided in the Betz Affidavit indicates that BellSouth is capable of internally identifying and correcting compliance problems. *See* Second BellSouth Louisiana Application App. A, Vol. 1, Tab. 3, Affidavit Dennis M. Betz (BellSouth Betz Aff.) at Exhibit DMB-3; *see also* BellSouth Reply at 95; *but see* AT&T McFarland Aff. at paras. 54-63 (relying on the "Competitive Alert" to show insufficiency of internal controls).

¹⁰⁶⁴ BellSouth Application at 66 (citing BellSouth Cochran Aff. at para. 21; BellSouth Wentworth Aff. at paras. 14-15). To ensure compliance with the affiliate transactions and cost allocation rules, BellSouth states that it is taking additional steps to train all BST Finance employees on these accounting rules. BellSouth Cochran Aff. at para. 25.

¹⁰⁶⁵ 47 U.S.C. § 272(c)(2).

modifications, generally satisfy the requirement under section 272(c)(2).¹⁰⁶⁶ For those transactions that BellSouth has disclosed, we find that BellSouth has made a *prima facie* showing that BST accounts for such transactions are in accordance with our accounting rules. BellSouth's ARMIS and CAM information, internal corporate accounting policies, employee training, and internal compliance program appear to indicate that the BOC is accounting for all transactions with its section 272 affiliate in accordance with our accounting rules.¹⁰⁶⁷ We disagree, however, with BellSouth's claims that its ARMIS data conclusively proves that all transactions between the BOC and its section 272 affiliate are conducted on an arm's length basis, and that all such affiliate transactions are audited for compliance.¹⁰⁶⁸ Although our rules require an independent audit of a BOC's CAM and ARMIS filings, the independent audit involves testing only a sample of a BOC's affiliate transactions for compliance with our accounting safeguards.¹⁰⁶⁹ We likewise disagree with AT&T regarding the significance we should attribute to BellSouth's past accounting compliance problems that have been redressed and corrected.¹⁰⁷⁰ For future section 271 applications, BellSouth should provide descriptions of corporate policies, evidence of internal training on the accounting requirements, complete disclosures of all transactions between the BOC and its section 272 affiliate, and an explanation of the appropriate valuation methodologies applied for such transactions.

2. Nondiscrimination Safeguards of Section 272

341. Section 272(c)(1) -- Nondiscrimination. We conclude that BellSouth does not adequately demonstrate that it will comply with the nondiscrimination requirement of section

¹⁰⁶⁶ See *Accounting Safeguards Order*, 11 FCC Rcd at 17586.

¹⁰⁶⁷ BellSouth Application at 66 (citing BellSouth Cochran Aff. at para. 21; BellSouth Wentworth Aff. at paras. 14-15).

¹⁰⁶⁸ See BellSouth Cochran Aff. at para. 16, Exhibit III. The ARMIS 43-03 Joint Cost Report provided in Exhibit III shows that BST allocated its regulated and nonregulated costs in a manner consistent with the Commission's Part 64 cost allocation rules, but it does not show that its affiliate transactions occur at arm's length.

¹⁰⁶⁹ See 47 C.F.R. § 69.904; see also Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, *Report and Order*, 2 FCC Rcd 1298, paras. 254-58 (1987) ("Joint Cost Order"), *Order on Reconsideration*, 2 FCC Rcd 6283, paras. 183-86 (1987) ("Joint Cost Reconsideration Order"), *Order on Further Reconsideration*, 3 FCC Rcd 6701 (1988) ("Joint Cost Further Reconsideration Order"), aff'd sub nom. *Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990).

¹⁰⁷⁰ See AT&T McFarland Aff. at paras. 69-74 (citing In the Matter of BellSouth Operating Companies, *Order to Show Cause*, 10 FCC Rcd 5637 (1995)). AT&T did not acknowledge the subsequent consent decree in which BellSouth agreed to correct past recordkeeping and accounting deficiencies and to establish procedures to prevent deficiencies from recurring in the future. See The BellSouth Telephone Operating Companies, *Consent Decree Order*, 11 FCC Rcd 14803 (1996).

272(c)(1) which requires that a BOC in its dealings with its section 272 affiliate "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards."¹⁰⁷¹ In the *Non-Accounting Safeguards Order*, the Commission interpreted this section to require a BOC to "provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions."¹⁰⁷² The Commission determined that "any discrimination with respect to a BOC's procurement of goods, services, facilities, or information between its section 272 affiliate and an unaffiliated entity establishes a *prima facie* case of discrimination under section 272(c)(1)."¹⁰⁷³

342. The Commission also concluded that section 272(c)(1) extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate, including those that are not telecommunications-related,¹⁰⁷⁴ and administrative and support services.¹⁰⁷⁵ Furthermore, the Commission interpreted the term "facilities" in section 272(c)(1) to include, among other things, the seven unbundled network elements described in the *Local Competition First Report and Order*.¹⁰⁷⁶ In addition, the Commission concluded in the *Non-Accounting Safeguards Order* that, if a BOC transfers ownership of its Official Services Network¹⁰⁷⁷ to its section 272 affiliates, it must do so in a nondiscriminatory manner in accordance with section 272(c)(1), among other statutory provisions.¹⁰⁷⁸

343. BellSouth states that, subject to the joint marketing authority granted by section 272(g), BST does and will make available to unaffiliated entities any goods, services, facilities,

¹⁰⁷¹ 47 U.S.C. § 272(c)(1).

¹⁰⁷² *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22000-01.

¹⁰⁷³ *Id.* at 22015.

¹⁰⁷⁴ *Id.* at 22003-04.

¹⁰⁷⁵ *Id.* at 22007-08.

¹⁰⁷⁶ *Id.* at 22008; *Local Competition First Report and Order*, 11 FCC Rcd at 16209-13.

¹⁰⁷⁷ Official Services Networks are interLATA networks that the BOCs were allowed to maintain for services in the management and operation of local exchange services under the Modification of Final Judgment (MFJ). These interLATA networks are used to perform official services, such as connecting directory assistance operators in different LATAAs with customers and monitoring and controlling trunks and switches. *See United States v. Western Electric*, 569 F.Supp. 1057, 1097-1101 (D.D.C.), aff'd., 464 U.S. 1013 (1983).

¹⁰⁷⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22008, 22034.

and information¹⁰⁷⁹ that BST provides or will provide to BSLD at the same rates, terms, and conditions.¹⁰⁸⁰ Despite this statement, we conclude that BellSouth does not make a *prima facie* showing or meet the burden of persuasion that it fully meets the requirements of section 272(c)(1) regarding nondiscriminatory provision of information. In particular, BellSouth is not disclosing all of the transactions that have occurred between BST and BSLD in accordance with section 272(b)(5); therefore, its affiliate has information about those transactions that unaffiliated entities do not have. In addition, BellSouth fails to provide nondiscriminatory access to its OSS and thereby discriminates in the provision of information to unaffiliated entities. BellSouth's specific non-compliance with the requirement for nondiscriminatory provision of these goods, services, facilities, and information is discussed *supra* in the relevant portions of this Order.¹⁰⁸¹

344. Despite BellSouth's failure to disclose all of its affiliate transactions and provide OSS on a nondiscriminatory basis, we find, based on the record, that BellSouth adequately demonstrates that BST does not and will not, for so long as the section 272 requirement applies, discriminate with regard to protection of confidential network or customer information.¹⁰⁸² AT&T argues that BellSouth will violate section 272(c)(1) because it will provide Customer Proprietary Network Information (CPNI) to its section 272 affiliate in a discriminatory fashion.¹⁰⁸³ AT&T advanced a similar argument in the CPNI proceeding, which the Commission expressly rejected.¹⁰⁸⁴ We do not revisit that issue in this Order.

345. BellSouth also adequately demonstrates that it implements the appropriate safeguards and employee training to comply with the nondiscrimination obligation in section 272(c)(1). BellSouth states that each BST officer has sent or is preparing to send personal correspondence to each employee in his or her organization concerning the requirements of

¹⁰⁷⁹ BellSouth notes that these goods, services, facilities, and information may include exchange access, interconnection, interoffice testing, end-to-end testing of BSLD equipment, collocation, UNEs, resold services, access to OSS, and administrative services. BellSouth Application at 68.

¹⁰⁸⁰ *Id.*; BellSouth Varner Aff. at para. 221.

¹⁰⁸¹ See discussion *supra* sections VI.C.2.a and VII.B.1.

¹⁰⁸² BellSouth Application at 68; BellSouth Varner Aff. at paras. 229, 231.

¹⁰⁸³ AT&T Comments at 85.

¹⁰⁸⁴ See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998), recon. pending; clarified, Order, DA 98-971 (Com. Car. Bur. rel. May 21, 1998).

Section 272 and the Commission's interpretation.¹⁰⁸⁵ BST has also established an "Ethics Hotline" which allows employees to report anonymously suspected violations of law, including these requirements.¹⁰⁸⁶ Correspondingly, BSLD conducts educational sessions, attended by every employee regarding the requirements of the Act.¹⁰⁸⁷ In addition, all BellSouth employees are bound by confidentiality requirements that constitute part of their employment obligations.¹⁰⁸⁸ Based upon BellSouth's training programs and safeguards, we find unpersuasive AT&T's and MCI's concerns¹⁰⁸⁹ that the one-third of BSLD's employees, who are former employees of BST, will serve as improper conduits of confidential information between BST and BSLD, and require additional internal safeguards to satisfy section 272(c)(1).¹⁰⁹⁰

346. Regarding network changes that will affect a competitor's ability to perform or provide service or BST's interoperability with other telecommunications carriers, we find that BellSouth adequately demonstrates that BST will continue to provide public notice on a nondiscriminatory basis in compliance with section 272(c)(1). BellSouth states that BST will not inform BSLD or any other affiliated or unaffiliated carrier about planned network changes until public notice has been given in accordance with Commission rules.¹⁰⁹¹ BellSouth also commits that BST will continue to participate in public standards-setting bodies and will not discriminate in favor of BSLD in the establishment of standards relating to interconnection or interoperability of public networks.¹⁰⁹² Moreover, BellSouth affirms that BST will not discriminate, for so long as the requirement is in place, between BSLD and unaffiliated interexchange carriers in the processing of PIC change orders.¹⁰⁹³

347. We also reject MCI's demands that BellSouth should affirmatively state in its Application if any portion of its Official Services Network will be made available to BSLD, on

¹⁰⁸⁵ BellSouth Betz Aff. at para. 16.

¹⁰⁸⁶ *Id.* at para. 17.

¹⁰⁸⁷ BellSouth Application at 67, 70; BellSouth Wentworth Aff. at para. 15.

¹⁰⁸⁸ BellSouth Application at 67.

¹⁰⁸⁹ AT&T Comments at 82-83; MCI Comments at 68-69.

¹⁰⁹⁰ See BellSouth Reply at 96.

¹⁰⁹¹ BellSouth Application at 68; BellSouth Varner Aff. at para. 230.

¹⁰⁹² BellSouth Varner Aff. at para. 227.

¹⁰⁹³ *Id.* at para. 233.

what terms, and through what processes.¹⁰⁹⁴ BellSouth states that it will comply with the Commission's prohibition in the *Non-Accounting Safeguards Order* against the BOC's use of its Official Services Network to provide interLATA services, with the exception of grandfathered and incidental interLATA services.¹⁰⁹⁵ BellSouth acknowledges that the *Non-Accounting Safeguards Order* prohibits the transfer of Official Services Networks to section 272 affiliates except on a nondiscriminatory basis and it commits to comply with these requirements.¹⁰⁹⁶ We find these commitments to be sufficient.

348. Section 272(e)(1) -- Fulfillment of Requests for Telephone Exchange and Exchange Access. We conclude that BellSouth does not make a *prima facie* showing and does not demonstrate that it will comply with section 272(e)(1), which requires a BOC and any BOC affiliate that is an incumbent LEC to "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates."¹⁰⁹⁷ In the *Non-Accounting Safeguards Order*, the Commission concluded that "the term 'requests' should be interpreted broadly, and that it includes, but is not limited to, initial installation request, subsequent requests for improvement, upgrades or modifications of service, or repair and maintenance of these services."¹⁰⁹⁸ The Commission also concluded that, "for equivalent requests, the response time a BOC provides to unaffiliated entities should be no greater than the response time it provides to itself or its affiliates."¹⁰⁹⁹ Furthermore, the Commission determined that, "the BOCs must make available to unaffiliated entities information regarding the service intervals in which the BOCs provide service to themselves or their affiliates."¹¹⁰⁰

349. BellSouth states that BST will fulfill any request from unaffiliated entities for installation and maintenance of telephone exchange and exchange access services within a period

¹⁰⁹⁴ MCI Comments at 67-68.

¹⁰⁹⁵ BellSouth Varner Aff. at para. 224.

¹⁰⁹⁶ *Id.* at para. 224. BellSouth Reply at 96.

¹⁰⁹⁷ 47 U.S.C. § 272(e)(1).

¹⁰⁹⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22018-19.

¹⁰⁹⁹ *Id.* at 22019.

¹¹⁰⁰ *Id.* at 22020. The Commission also proposed and sought comment on information disclosure requirements pursuant to section 272(e)(1) in the *Further Notice*. *Id.* at 22079-86.

no longer than the period in which it provides such services to BSLD.¹¹⁰¹ We find BellSouth's statement of compliance insufficient since it limits requests to installation and maintenance. Also, according to BellSouth, unaffiliated telecommunications carriers are able to transfer and receive the data necessary to perform maintenance and repair functions through its OSS functions, and repair dates are established for all carriers on a nondiscriminatory basis.¹¹⁰² Contrary to BellSouth's assertion, however, we have found that BellSouth fails to provide nondiscriminatory access to its OSS; therefore, we conclude that BellSouth does not adequately demonstrate that it will satisfy the requirement of section 272(e)(1).

350. We also decline to grant MCI's request that specific performance standards and reporting requirements be set forth in this Order. Though BellSouth promises to comply with Commission monitoring and reporting requirements,¹¹⁰³ MCI asserts that BellSouth has an obligation to set comprehensive performance standards and reporting requirements, in the absence of Commission requirements, in order to satisfy the nondiscrimination requirement in section 272(e)(1).¹¹⁰⁴ While we do not impose such an obligation here, we encourage BellSouth to submit in future applications specific performance standards for measuring its compliance with the requirements of section 272(e)(1).

351. Section 272(e)(2) -- Facilities, Services, or Information Concerning Exchange Access. We conclude that BellSouth does not make a *prima facie* showing and does not demonstrate that it will comply with the requirement in section 272(e)(2) that a BOC and any BOC affiliate that is an incumbent LEC "shall not provide any facilities, services, or information concerning its provision of exchange access to the affiliate described in subsection (a) unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions."¹¹⁰⁵ In the *Non-Accounting Safeguards Order*, the Commission concluded that "the term 'providers of interLATA services in that market' means any interLATA services provider authorized to provide interLATA service in the same state where the relevant section 272 affiliate is providing service."¹¹⁰⁶ The Commission also concluded that only telecommunications carriers are eligible to obtain facilities, services, or information pursuant to

¹¹⁰¹ BellSouth Application at 69; BellSouth Varner Aff. at paras. 235, 238-239.

¹¹⁰² BellSouth Varner Aff. at para. 240.

¹¹⁰³ BellSouth Application at 69; BellSouth Varner Aff. at para. 238.

¹¹⁰⁴ MCI Comments at 71-72.

¹¹⁰⁵ 47 U.S.C. § 272(e)(2).

¹¹⁰⁶ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22024.

section 272(e)(2).¹¹⁰⁷

352. BellSouth commits that BST will refuse to provide any facilities, services, or information concerning its provision of exchange access to BSLD unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions.¹¹⁰⁸ Nevertheless, despite this statement, we find that, because BellSouth is not providing nondiscriminatory access to its OSS which is used in the provision of exchange access, BellSouth has not made a *prima facie* showing and has not demonstrated that BST will provide facilities, services, or information concerning its provision of exchange access to BSLD on a nondiscriminatory basis as required by section 272(e)(2).

353. Section 272(e)(3) -- Amount for Access to Telephone Exchange and Exchange Access. BellSouth has made a *prima facie* showing and has adequately demonstrated that it will comply with section 272(e)(3), which requires a BOC and any BOC affiliate that is an incumbent LEC to "charge the affiliate described in subsection (a), or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service."¹¹⁰⁹ In the *Non-Accounting Safeguards Order*, the Commission determined that "a section 272 affiliate's purchase of telephone exchange service and exchange access at tariffed rates, or a BOC's imputation of tariffed rates, will ensure compliance with section 272(e)(3)."¹¹¹⁰ In the *Accounting Safeguards Order*, the Commission concluded that, "where a BOC charges different rates to different unaffiliated carriers for access to its telephone exchange service, the BOC must impute to its integrated operations the highest rate paid for such access by unaffiliated carriers."¹¹¹¹ The Commission further stated that the BOC may consider the comparability of the service provided and may take advantage of the same volume discount purchases offered to its interLATA affiliate and other unaffiliated carriers.¹¹¹²

354. BellSouth states that BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated

¹¹⁰⁷ *Id.* at 22023-24.

¹¹⁰⁸ BellSouth Application at 69; BellSouth Varner Aff. at para. 241.

¹¹⁰⁹ 47 U.S.C. § 272(e)(3).

¹¹¹⁰ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22028.

¹¹¹¹ *Accounting Safeguards Order*, 11 FCC Rcd at 17577.

¹¹¹² *Id.*

interexchange carrier for such service.¹¹¹³ BellSouth also states that where BST uses exchange access for the provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange carrier.¹¹¹⁴ Therefore, BellSouth has adequately demonstrated that it will comply with the requirement of section 272(e)(3).

355. Section 272(e)(4) -- Provision of InterLATA or IntraLATA Facilities or Services.

BellSouth has also made a *prima facie* showing and has adequately demonstrated that it will comply with the requirement in section 272(e)(4) that a BOC and any BOC affiliate that is an incumbent LEC "may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions, and so long as the costs are appropriately allocated."¹¹¹⁵ BellSouth commits that, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSID, BST will make such services or facilities available to all carriers at the same rates, terms, and conditions and will record any transactions between BST and BSID in the manner prescribed in the *Accounting Safeguards Order*.¹¹¹⁶

3. Joint Marketing Requirements of Section 272

356. Section 272(g)(1) -- Affiliate Sales of Telephone Exchange Services. We conclude that BellSouth does not make a *prima facie* showing and does not meet the burden of persuasion that it will comply with section 272(g)(1) in one respect. BellSouth demonstrates substantial compliance with section 272(g)(1) with the exception that BellSouth makes no mention of BSID's marketing of information services. Section 272(g)(1) states that "[a] Bell operating company affiliate required by this section may not market or sell telephone exchange services provided by the Bell operating company unless that company permits other entities offering the same or similar service to market and sell its telephone exchange services."¹¹¹⁷ In the *Non-Accounting Safeguards Order*, the Commission interpreted the term "same or similar service" to encompass information services, such that a section 272 affiliate may not market information services and BOC telephone exchange services unless the BOC permits other information service providers to market and sell telephone exchange services.¹¹¹⁸ BellSouth commits in its

¹¹¹³ BellSouth Application at 69; BellSouth Varner Aff. at para. 243.

¹¹¹⁴ *Id.*

¹¹¹⁵ 47 U.S.C. § 272(e)(4).

¹¹¹⁶ BellSouth Application at 70; BellSouth Varner Aff. at para. 245.

¹¹¹⁷ 47 U.S.C. § 272(g)(1).

¹¹¹⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22044.

Application that BSLD will not market or sell BST's telephone exchange service unless BST permits BSLD's competitors to do so as well.¹¹¹⁹ BellSouth, however, makes no mention of whether BSLD intends to market information services and whether BST will also permit other information service providers to market and sell telephone exchange services. We expect that BellSouth can remedy this by specifically addressing information services in future applications.

357. Section 272(g)(2) -- Bell Operating Company Sales of Affiliate Services. We conclude that BellSouth makes a *prima facie* showing and demonstrates, for purposes of this Order, that it will comply with section 272(g)(2), which requires that "[a] Bell operating company may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d)." In the *Non-Accounting Safeguards Order*, the Commission concluded that "BOCs must provide any customer who orders new local exchange service with the names and, if requested, the telephone numbers of all of the carriers offering interexchange services in its service area."¹¹²⁰ In the *BellSouth South Carolina Order*, the Commission determined that, during inbound calls, BOCs may mention their section 272 affiliate, apart from including that affiliate in a list of available interexchange carriers.¹¹²¹

358. We find unpersuasive Sprint's and AT&T's assertion that one of BellSouth's proposed marketing arrangements exceeds the boundaries of acceptable joint marketing.¹¹²² Regarding section 272(g)(2), BST states that it has not and will not market or sell BSLD's interLATA services in Louisiana until the Commission grants BellSouth in-region interLATA authority for that State.¹¹²³ BellSouth also declares that, when authorized to offer long distance service in Louisiana, BellSouth will use the same joint marketing/equal access approach set forth in the *BellSouth South Carolina Order*.¹¹²⁴ Accordingly, when BST markets BSLD long distance service during inbound calls, BST will offer to read, in random order, the names and, if requested, the telephone numbers of all available interexchange carriers.¹¹²⁵ Sprint and AT&T, however, argue that it would be inconsistent with section 272 for BSLD to provide sales tools to assist BST

¹¹¹⁹ BellSouth Application at 70; BellSouth Varner Aff. at para. 246.

¹¹²⁰ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22046-47.

¹¹²¹ *BellSouth South Carolina Order*, 13 FCC Rcd at 671-72.

¹¹²² Sprint Comments at 64; AT&T Reply at 40.

¹¹²³ BellSouth Varner Aff. at para. 247.

¹¹²⁴ BellSouth Application at 70.

¹¹²⁵ *Id.*; BellSouth Varner Aff. at paras. 248-251.

sales personnel in providing customers with information upon request about how BSLD's services compare with other providers' services.¹¹²⁶ We believe that BellSouth's provision of accurate information to consumers upon request about the services available to them is a form of acceptable joint marketing. Should BellSouth misrepresent BSLD's services or mislead consumers with false information, interexchange carriers have alternative methods of seeking recourse through the Commission and through private litigation.

359. Section 272(g)(3) -- Joint Marketing and Sale of Services. We find that BellSouth makes a *prima facie* showing and adequately demonstrates that it will comply with section 272(g)(3), which states that "[t]he joint marketing and sale of services permitted under this subsection shall not be considered to violate the nondiscrimination provisions of subsection (c)."¹¹²⁷ In the *Non-Accounting Safeguards Order*, the Commission determined that activities such as customer inquiries, sales functions, and ordering are permitted under section 272(g)(3), because they involve only the marketing and sales of a section 272 affiliate's services, and therefore are exempt from the nondiscrimination requirements in section 272(c).¹¹²⁸ The Commission found, however, that planning, design, and development appear to be beyond the scope of the section 272(g) exception to the BOC's nondiscrimination obligations, and thus are subject to the nondiscrimination provisions contained in section 272(c).¹¹²⁹

360. BellSouth states that, to the extent BST engages in product development with BSLS, it will do so on a nondiscriminatory basis with unaffiliated entities so long as it is required to do so under section 272.¹¹³⁰ We note that AT&T is concerned that BellSouth's joint marketing plans involve the development and creation of packages of services offered on an integrated basis,¹¹³¹ and that BellSouth has not shown that it will make these services available on a nondiscriminatory basis.¹¹³² We expect, however, as BellSouth commits in good faith, that to the extent BST is involved with planning, design, and development activities for BSLS, BST will make these services available to other entities on a nondiscriminatory basis pursuant to section

¹¹²⁶ Sprint Comments at 64; AT&T Reply at 40. *See also* BellSouth Wentworth Aff. Exhibit 4, "Trial Marketing and Sales Agreement."

¹¹²⁷ 47 U.S.C. § 272(g)(3).

¹¹²⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 22048.

¹¹²⁹ *Id.*

¹¹³⁰ BellSouth Application at 68; BellSouth Varner Aff. at para. 226.

¹¹³¹ BellSouth Cochran Aff. at para. 30.

¹¹³² AT&T Comments at 85-87.

272(c)(1).

VIII. PUBLIC INTEREST

361. In order to provide guidance for future applications, we take this opportunity to address certain issues relating to our public interest inquiry. BellSouth asserts that entry into a particular in-region, interLATA market is consistent with the public interest requirement whenever a BOC has implemented the competitive checklist. BellSouth also asserts that our responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market.¹¹³³ Both of these arguments were considered and rejected in the *Ameritech Michigan Order*,¹¹³⁴ and BellSouth has given us no reason to revisit the prior determinations on these issues here. Therefore, we reaffirm the Commission's earlier decision that section 271 relief may be granted only when: (1) the competitive checklist has been satisfied; and (2) the Commission has independently determined that such relief is in the public interest. We also reaffirm the decision that the Commission should consider whether approval of a section 271 application will foster competition in all relevant telecommunications markets (including the relevant local exchange service market), rather than just in the in-region, interLATA market.

362. We note that the Commission stated in the *Ameritech Michigan Order* that we have broad discretion to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with the public interest.¹¹³⁵ In the *Ameritech Michigan Order* the Commission also stated that, in making a case-by-case determination of whether the public interest would be served by granting a section 271 application, it would consider and balance a variety of factors in each case, and that, unlike the requirements of the competitive checklist, the presence or absence of any one factor would not dictate the outcome of the public interest inquiry.¹¹³⁶

363. For example, evidence that a BOC has agreed to performance monitoring (including performance standards and reporting requirements) in its interconnection agreements with new entrants would be probative evidence that a BOC will continue to cooperate with new

¹¹³³ See *BellSouth Application* at 73-75.

¹¹³⁴ See *Ameritech Michigan Order*, 12 FCC Rcd at 20745, 20747.

¹¹³⁵ *Id.* at 20743-47.

¹¹³⁶ *Id.* at 20747-50. We again stress that such factors are not preconditions to BOC entry into the in-region, interLATA market, and that our consideration of such factors does not "limit or extend the terms used in the competitive checklist," contrary to section 271(d)(4). *Id.* at 20747.

entrants, even after it is authorized to provide in-region, interLATA services. Performance monitoring serves two key purposes. First, it provides a mechanism by which to gauge a BOC's present compliance with its obligation to provide access and interconnection to new entrants in a nondiscriminatory manner. Second, performance monitoring establishes a benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service rendered to new entrants, once a BOC is authorized to enter the in-region, interLATA services market.¹¹³⁷

364. We would be particularly interested in whether such performance monitoring includes appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards. That is, as part of our public interest inquiry, we would inquire whether the BOC has agreed to private and self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.¹¹³⁸

365. In sum, when conducting a public interest analysis of a section 271 application, we will balance a number of factors in order to determine whether entry by a BOC to provide in-region, interLATA telecommunications services will serve the public interest, convenience and necessity. In taking this approach, we recognize that Congress specifically chose to include the public interest requirement of section 271 in addition to the checklist requirements.¹¹³⁹ At the same time, we hope that a BOC which has satisfied all of the other statutory requirements for entry under section 271 and ensured continued compliance with these requirements would also be able to satisfy the public interest requirement.

366. In the preceding sections of this Order, we concluded that BellSouth has not implemented fully the competitive checklist, and has not demonstrated that its authorization will be carried out in accordance with section 272. We, therefore, must deny BellSouth's application for authorization to provide in-region, interLATA telecommunications services in Louisiana. As a

¹¹³⁷ *Id.* at 20748-49.

¹¹³⁸ *Id.* at 20749.

¹¹³⁹ The Senate rejected, by a vote of 68-31, an amendment that would have added the following language to S. 652, which was the source of the public interest requirement in section 271: "Full implementation of the checklist found in subsection (b)(2) shall be deemed in full satisfaction of the public interest, convenience, and necessity requirement of this subparagraph." 141 Cong. Rec. S7971, S8043 (June 8, 1995).

result, we need not reach the further question of whether the requested authorization is otherwise consistent with the public interest, convenience and necessity, as required by section 271(d)(3)(C).

IX. PROCEDURAL MATTERS

367. AT&T filed a Motion to Strike asking that the Commission strike from the record or disregard certain material in BellSouth's Reply and the supporting Reply Affidavits. In support of its request, AT&T asserts that this material covers periods after the Application was filed, is not directly responsive to the Comments, or should have been filed with the original Application.¹¹⁴⁰ BellSouth opposes the Motion, arguing that the material involved was properly filed as part of its Reply.¹¹⁴¹

368. The special procedures the Commission has adopted for the processing of section 271 Applications are vitally important in light of the highly compressed time frame involved.¹¹⁴² Despite this, we decline to grant AT&T's Motion to Strike in the special circumstances of this proceeding, even though some of the material cited by AT&T appears to have been improperly filed by BellSouth in the reply phase. We believe that consideration of this material will permit us to provide BellSouth and the other BOCs with more complete guidance concerning their statutory obligations under section 271. In this regard, we emphasize that we do not rely on any of the material cited by AT&T in its Motion to Strike when we conclude that BellSouth has demonstrated compliance with a particular checklist item. Thus, interested parties are not harmed by this approach since they will have a full opportunity to address this material in the context of a future application. We emphasize that this approach is limited to the unique circumstances of the present *Order* and note that section 271 applicants should be careful to follow our procedural requirements in future proceedings or risk having the Commission "start the 90-day review process anew or accord such material no weight in making our determination."¹¹⁴³

X. CONCLUSION

¹¹⁴⁰ Motion of AT&T Corp. to Strike Portions of BellSouth's Reply Evidence (filed Sept. 17, 1998) (AT&T Motion to Strike).

¹¹⁴¹ BellSouth's Opposition to Motion of AT&T Corp. to Strike Responsive Evidence (filed Sept. 28, 1998).

¹¹⁴² In particular, the Commission has emphasized that a section 271 Application must be complete when filed and that material filed in replies must be directly responsive to issues raised in the comments. *Ameritech Michigan Order*, 12 FCC Rcd at 20570-20573; *BellSouth South Carolina Order*, 13 FCC Rcd at 561; Public Notice, "Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act" (released Sept. 19, 1997) (*Sept. 19, 1997 Public Notice*).

¹¹⁴³ *Sept. 19, 1997 Public Notice*.

369. For the foregoing reasons, we deny BellSouth's application for authorization under section 271 of the Act to provide in-region, interLATA services in the state of Louisiana. We find that BellSouth does not satisfy the competitive checklist in section 271(c)(2)(B) and section 272.

XI. ORDERING CLAUSES

370. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 271, BellSouth's application to provide in-region, interLATA service in the State of Louisiana filed on July 9, 1998 IS DENIED.

371. IT IS FURTHER ORDERED that AT&T Corp.'s Motion to Strike Portions of BellSouth's Reply Evidence filed on September 17, 1998, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX

**BellSouth Corporation's 271 Application for Service in Louisiana
CC Docket No. 97-231
List of Commenters**

Comments

Alliance for Public Technology
American Council on Education, National Association of College and University Business Officers, and Management Education Alliance
Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corp. (AT&T)
Competition Policy Institute (CPI)
Competitive Telecommunications Association (CompTel)
Cox Communications, Inc. (Cox)
e.spire Communications, Inc.
Excel Telecommunications, Inc.
Hyperion Telecommunications, Inc. (Hyperion)
Intermedia Communications, Inc. (Intermedia)
Keep America Connected!
KMC Telecom Inc. (KMC)
Robert E. Litan and Roger G. Noll
Louisiana Public Service Commission
MCI Telecommunications Corporation (MCI)
OmniCall, Inc.
Paging and Messaging Alliance of the Personal Communications Industry Association (PCIA)
Radiofone, Inc.
Sprint Communications Company L.P. (Sprint)
State Communications, Inc.
Telecommunications Resellers Association (TRA)
Time Warner Telecom
Triangle Coalition for Science and Technology Education
U S WEST Communications, Inc.
WorldCom, Inc. (WorldCom)

Reply Comments

Ameritech
Association for Local Telecommunications Services (ALTS)
AT&T Corp. (AT&T)
Bell Atlantic
BellSouth Corporation
Competitive Telecommunications Association (CompTel)
Consumer Federation of America
e.spire Communications, Inc.
Hyperion Telecommunications, Inc. (Hyperion)
Intermedia Communications, Inc. (Intermedia)
KMC Telecom Inc. (KMC)
MCI Telecommunications Corporation (MCI)
Radiofone, Inc.
Sprint Communications Company L.P. (Sprint)
Telecommunications Resellers Association (TRA)
WorldCom, Inc. (WorldCom)

Separate Statement of Chairman Kennard on the FCC's Review of BellSouth's Second Application to Provide In-Region, InterLATA Services in the State of Louisiana

Today the Commission reaffirms the fundamental commitment of the Telecommunications Act of 1996 Act -- to bring consumer choice to all telecommunications markets, including both local and long distance. Section 251 established specific market-opening obligations for all incumbent local telephone companies. Section 271 removes prohibitions against the local Bell Operating Companies providing long distance once those companies meet a 14-point checklist of market-opening requirements and show they will serve the public interest.

The Act envisions a "win-win" for consumers -- more choice in local service and more choice in long distance. The Act does not seek merely to provide more choice in long distance at the expense of maintaining the status quo in local service -- that would be "win-lose."

Unfortunately, were we to grant the application before us today, it would still be a "win-lose" result, not "win-win." BellSouth has not yet fully opened its market to competition.

In today's order we review all 14 points of the checklist, this time in the context of BellSouth's second application to provide long distance service in Louisiana. This is by far the most thorough analysis of a section 271 application that the Commission has ever conducted. In today's analysis we can see the fruits of the efforts on the part of the Commission and of all of the stakeholders who have participated in our informal dialogue. This dialogue has produced an improved application and a better process. I commend the efforts of Bell South and other Bell Operating Companies, competitive local exchange carriers, state commissions, and others, that have contributed to the success of this process.

I also commend BellSouth for the progress it has made toward satisfying the statutory requirements. BellSouth has satisfied six checklist items and part of a seventh. As to the remaining items that BellSouth did not meet in this application, I believe BellSouth can and will remedy the deficiencies we identify in our Order. While the deficiencies that remain are significant, they are not insurmountable.

There are two major areas BellSouth must improve: operations support systems (OSS) and access to combinations of network elements. We previously identified these areas in our order addressing BellSouth's first application to provide long distance service in Louisiana. OSS is critical to competition. Through OSS, competitors purchasing interconnection, unbundled elements, and resold services know what services and facilities they can order, place orders, obtain confirmation of the orders and delivery dates, and receive delivery of the services. If its OSS does not work, a BOC is unable to provide interconnection, access to elements, or resold services in the non-discriminatory manner required by the Act.

Our concerns here are not new. When we denied BellSouth's first application for long distance entry in Louisiana, we noted that its OSS satisfactorily processed orders to move a customer from BellSouth to a competitor only about half the time in the best cases (and sometimes as low as 25%), while the "flow-through" rate for customers choosing BellSouth's services was over 80%, and well over 90% in the case of residential customers. We clearly stated before that if BellSouth's OSS worked effectively only when customers wanted BellSouth's service, but not when they wanted to switch to a competitor, we could not conclude the market was open to competition. BellSouth did not show improvement in these numbers in its second application and, in fact, actual performance has worsened.

Likewise, BellSouth's previous application demonstrated that when BellSouth seeks to sign up new customers using its OSS, it can integrate the pre-ordering phase (when information concerning the customer's name, location, and services are identified and collected) and the ordering phase (when the order is actually placed) by electronically transferring the pre-ordering information with, essentially, the push of a button that places the order. This integration is efficient and eliminates errors that could arise if the data must be transferred manually, rather than electronically. By contrast, BellSouth's OSS does not provide its competitors with the ability to perform an integrated transfer of data from the pre-ordering to ordering phase. This slows down a competing carrier and increases the risk of errors being committed that BellSouth can avoid when signing up customers for itself. Although we noted in our previous order that BellSouth would have to correct this discriminatory condition, it has not done so in its second application.

The second major area of concern relates to BellSouth's obligation to provide competing carriers access to combinations of network elements through collocation on reasonable and non-discriminatory terms and conditions. In the past, BellSouth has failed to state the terms and conditions on which it will provide such access, and we have therefore been unable to find that BellSouth satisfies this requirement. In the current application, BellSouth again fails to state the terms and conditions of access, and thus again has deprived us of a basis on which to analyze its compliance with this obligation.

While today's order identifies other areas of concern, it also identifies six checklist items that are fully satisfied and other items that would be satisfied but for the problems with BellSouth's OSS. I strongly encourage BellSouth to concentrate on the remaining deficiencies, because I fully believe they can and will be overcome. Indeed, we will not require BellSouth to resubmit its filing on the checklist items it already has satisfied, other than to certify in any subsequent application that those items show no deterioration. BellSouth has advanced the ball considerably; the next time it takes the field, it should be able to start from where we leave off today, by focusing on the deficiencies we identify today, rather than having to start all over again.

As soon as BellSouth demonstrates that it has turned its attention to these issues in a meaningful way, the people of Louisiana will see a whole new world of choice in local and long

distance service open up before them.

October 13, 1998

SEPARATE STATEMENT OF COMMISSIONER MICHAEL K. POWELL

Re: *Application of BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana (CC Docket No. 98-121).*

In this *Order*, we deny BellSouth's third application to provide in-region interLATA service pursuant to section 271 of the Act. I commend BellSouth for taking a number of steps toward meeting the prerequisites for entry established by Congress under section 271. Indeed, BellSouth has successfully satisfied nearly half of the items identified in section 271's "competitive checklist" and additional items would be satisfied but for deficiencies in BellSouth's OSS. Unfortunately, however, the instant application suffers from some of the same important deficiencies we identified in BellSouth's South Carolina and initial Louisiana applications, and thus we are compelled by the statute to reject it.

Although BellSouth's performance has been less than perfect in satisfying the statute, neither is this *Order* perfect, despite the valiant efforts of our talented but overworked Common Carrier Bureau. In particular, I wish we were able, in this *Order*, to give even more guidance to BellSouth and the other Bell Operating Companies (BOCs) regarding how they may satisfy the requirements of section 271. Rather than dwell on how I wish we could improve the *Order*, however, I write separately to highlight the bases upon which I vigorously support it.

First and foremost, I applaud our decision in this *Order* to discuss every element of the competitive checklist, as well as the public interest. I believe this decision constitutes a significant step toward achievement of Congress' goal of simultaneously opening the BOCs' local exchange markets to competition while promoting long distance competition through BOC entry into that market. Further, based on our internal discussions during the final stages of preparing this *Order*, it is my expectation that Commission staff will continue to work closely with BellSouth to clarify further the guidance we have provided in this and previous orders. I sincerely hope that BellSouth will take advantage of such guidance before filing another section 271 application; the company's success in satisfying several elements of the checklist indicates that it has the wherewithal and good faith to satisfy the statutory requirements and thereby obtain long distance approval.

Second, I am very pleased that we will allow BellSouth and future BOC applicants to certify that they remain in compliance with checklist items they have satisfied in previous applications. In implementing this new certification option, the Commission must, of course, be

careful to remain receptive to entirely new arguments raised in subsequent applications that parties had no reasonable opportunity to raise previously. I believe, however, that it is entirely appropriate for us to signal that we are strongly disinclined to revisit ground satisfactorily covered in previous applications. This approach will put more pressure on parties commenting on BOC applications to level all available criticisms in the first application for any particular state. This approach also will enable BOCs to focus their energies on quickly satisfying the remaining statutory requirements and thereby expedite the local market-opening process by which BOCs may obtain approval to provide in-region long distance service.

Third, I support this *Order* because it makes clear that the evidentiary standards governing our review of section 271 applications are intended to prevent the perfect from becoming the enemy of the good with respect to the showings BOCs must make to obtain interLATA approval. As the *Order* highlights, BOCs need only prove each statutory requirement by a preponderance of the evidence, rather than some higher burden. The *Order* makes clear, moreover, that a BOC is not restricted to using only the types of evidence that we have identified as helpful in reviewing an application if a BOC can persuade us that other types of evidence demonstrate nondiscriminatory treatment and other aspects of the statutory requirements.

Fourth, I support this *Order* because it evidences at least some reluctance to allow our public interest review of section 271 applications to sweep too broadly. I believe this review should be disciplined both by the statute's express prohibition against limiting and extending the terms of the competitive checklist, 47 U.S.C. § 271(d)(4), and by the likelihood that it will serve the public interest to grant the application of any BOC that can satisfy every element of the checklist. I believe this likelihood is significant, in part, because of the continued rigor with which this Commission and many state commissions have implemented the checklist. This rigor makes me increasingly skeptical that in many cases we would need, in essence, to require BOCs to satisfy public interest factors in addition to the checklist to achieve the broad aims of section 271.

In sum, this *Order* and the work leading up to it evidence a significant improvement in the section 271 process from a year ago. While I would have preferred that we give even more detailed guidance as to the next steps BellSouth must take in order to obtain section 271 approval, I acknowledge the limitations imposed by the ninety-day statutory time frame, and I recognize how far the Commission has come from the arms-length, generally reactive approach that characterized our early implementation of section 271. That approach, in my view, robbed both applicants and other interested parties of a meaningful opportunity to help the Commission translate complex and as-yet-uninterpreted statutory provisions into workable directives that interested parties can understand and follow.¹¹⁴⁴

¹¹⁴⁴ Despite criticism to the contrary, it is my understanding that the process by which Commission staff have provided informal guidance to BOCs and other interested parties is both public and consistent with past

Regardless whether one believes the Commission's actions in this area have been "too regulatory" or not, it is indisputable that BOCs, new entrants, members of Congress, state commissions, consumer groups *all* have been clamoring for this Commission to give *more* guidance -- not less -- as to the meaning of section 271's requirements. All sides cry out for the Commission to take steps to carry out Congress' vision of promoting long distance competition while simultaneously opening local markets. To ignore these pleas, and to ignore the express directions of Congress to implement the statute, is less deregulation than derogation of duty. Thus, I am pleased that the Commission is well on its way to answering the call for more guidance.

By working with both BOCs and competing carriers over the past year to provide guidance on the statutory requirements before and after section 271 application proceedings, we have brought ourselves closer than ever to defining what BOCs must do to satisfy the statute. I believe this progress is considerable, especially in light of the intricate and conflicting evidence presented in section 271 proceedings, as well as the inherent difficulties of coaxing incumbent local and long distance providers to open their respective markets to competitors. Clearly, we have much more to do in this regard. But I have every confidence that we can reach the light at the end of the tunnel if we remain true to our commitment to work with the industry and other regulators to achieve our collective goal of bringing more competition to local and long distance markets.

Change is good. But it is also messy. I praise my colleagues, the industry and especially the Commission's staff for their tremendous contributions in hashing through some of the messiest issues raised by our implementation of the 1996 Act in this and other section 271 proceedings. We have found a promising path. Now we must redouble our efforts to push forward along that path. It is my firm belief that, by working with the entire industry to help BOCs understand what they must do to satisfy section 271, we will succeed in delivering on the promise of increased local and long distance competition that the Act holds for the industry and for the American public.

Commission practice. The Commission issued a public notice in January inviting all interested parties to meet informally with staff regarding section 271 issues, just as Commission staff have historically provided informal staff guidance to parties in other areas, such as broadcast. Further, to ensure disclosure of the substance of the collaborative meetings, Commission staff have informed participants in each meeting about information and ideas that have been discussed in previous meetings with other parties. Regardless of what is discussed in these meetings, the Commission will decide each application on its merits, within the ninety-day statutory period and based solely on the record that is developed during the ninety days. All of the facts on which the Commission will rely in making this decision will be in the public record for comment by interested parties.

October 13, 1998

**Separate Statement of
Commissioner Gloria Tristani**

In re: Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana. Memorandum Opinion and Order. CC Docket No. 98-121.

Today's Order sets out a clear road map for BOCs to receive approval to offer long distance service in their regions. I am pleased that the Order carefully and thoroughly addresses virtually all items on the 271 checklist. I hope BellSouth will use this Order as a blueprint for a future long distance application that I can support.

It should be evident from today's Order that most of our findings break no new ground. Instead, the Order relies primarily on earlier Commission pronouncements, all of which were available to BellSouth before it filed the current application. In that respect, it is disappointing that BellSouth elected to file another long distance application without heeding all of the specific guidance contained in our prior decisions, particularly the Orders responding to BellSouth's two previous 271 applications.

Nonetheless, I am pleased that BellSouth complies with six of the fourteen checklist items (plus two additional items that are acceptable but for OSS deficiencies). BellSouth has demonstrated a willingness to work with Commission staff informally and to open its markets in a number of respects. I also credit BellSouth with focusing attention on the emerging question of PCS as a competitor to wireline service. I expect we will hear more about that issue in future 271 applications.

Finally, I commend the staff of the Common Carrier Bureau for their thoughtful and tireless work in this proceeding. Their dedication to their work is essential to fulfilling Congress's vision of competitive local markets.

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October 13, 1998

**Separate Statement
of
Commissioner Susan Ness,
Concurring in Part**

Re: *Application of BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in Louisiana*

I strongly support today's decision. It shows, once again, that the Commission remains committed to enforcing the law as Congress wrote it. We seek to enable Bell company participation in the long distance market, but only after they have first fulfilled their responsibility to open their local markets.

To open the local telephone marketplace, as required by the Telecommunications Act, is proving to be a very complex and difficult challenge. Incumbents must do things that they have never done before, and which are against their short-term self-interest to do. But, upon those Bell companies who meet this challenge, we will not hesitate to bestow the reward of long distance entry, as Congress directed. (Other incumbent telephone companies are also subject to market-opening responsibilities, but their entry into long distance is not conditioned the way it is for the Bell companies.)

The evidence before us reflects both that considerable progress has been made, and that more work remains to be done, to open the local telephone marketplace in Louisiana. I hope that BellSouth will act on the detailed guidance we have provided, and file again only when it has fully addressed all of the problems that have been identified. And I hope that it will not be long before at least one of the Bell companies presents us with a Section 271 application that demonstrates *full* compliance with all the statutory standards.

Track A Analysis: I respectfully concur in, rather than approve, one portion of the order. It concerns the following question: is Section 271(c)(1)(A) -- often referred to as "Track A" -- fulfilled when facilities-based competitors are providing telephone exchange service "predominantly over their own telephone exchange service facilities" *in the aggregate*, but are using only resale of incumbent services to serve *residential subscribers*. Although the majority does not make a determination on this issue (and I am glad it does not), the order strongly hints that the majority would resolve this question in the affirmative. If so, I would disagree.

In particular, I wish to disassociate myself from the two sentences at the beginning of Para. 48.

My own view is that Congress intended Track A to be fulfilled only when both residential and business subscribers, as two separate classes, are served by competitive providers of local exchange service whose offerings to each separate class are delivered exclusively or predominantly over a competitor's own telephone exchange service facilities. This is the reading most consistent with the language of the law, and with the legislative history.

The words chosen by Congress indicate a strong desire for facilities-based competition in both the business *and* residential markets. Of course, colleagues that I respect deeply, as well as the Justice Department, apparently read it differently than I do, so I do not maintain that the language is unambiguous. But the legislative history confirms what I believe to be the most natural reading.

Tracks A and B were added to the statute by the House Commerce Committee, which described facilities-based-competition as "the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition."¹¹⁴⁵ Given the preexisting (*i.e.*, before the Telecommunications Act) presence of facilities-based competition in a number of *business* markets, the foregoing statement makes no sense unless Track A is read to require facilities-based *residential* competition as well. This is further shown by the Conference Report's express reliance on the House Report for the belief "that meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes."¹¹⁴⁶ The Conferees went on to observe that "[s]ome of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing *the sort of local residential competition that has consistently been contemplated*."¹¹⁴⁷ For these reasons, I believe that we can best effectuate Congress's intentions, and achieve Congress's purposes, by construing Track A to require a showing that residential subscribers are in fact receiving telephone exchange service from a competitive local exchange carrier that is providing service "predominantly over [its] own telephone exchange service facilities."¹¹⁴⁸

The Track A issue is not decisional in this case, so there is no need for a full-blown discussion of the legislative text, the statutory structure, legislative history, and congressional purpose of this provision. Nonetheless, I want to mention four considerations that attenuate the difficulties that

¹¹⁴⁵ H.R. Rep. No. 104-204, pt. 1, at 77, *reprinted in* 1996 U.S.C.C.A.N. 10, 42.

¹¹⁴⁶ H.R. Conf. Rep. No. 104-458, at 148 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 160, *citing* H.R. Rep. No. 104-204, pt. 1, at 77, *reprinted in* 1996 U.S.C.C.A.N. 10, 42.

¹¹⁴⁷ H.R. Conf. Rep. No. 104-458, at 148 (1996), *reprinted in* 1996 U.S.C.C.A.N. 124, 160.

¹¹⁴⁸ A full review and persuasive analysis of the relevant legislative history is offered in Tim Sloan's "Creating Better Incentives Through Regulation: Section 271 of the Communications Act of 1934 and the Promotion of Local Exchange Competition," 50 Fed. Comm L.J. 309, 322-355 (1998).

might be said to result for the Bell companies from my interpretation. First, "unbundled network elements" obtained from the incumbent count as the competitive entrant's "own" facilities,¹¹⁴⁹ making it easier to establish that facilities-based competition has emerged. Second, when markets are truly open, it is likely that entry -- including facilities-based offerings to the residential market -- will quickly follow. Third, the statute does not require that any particular number (or percentage) of residential consumers be served by facilities-based competition; the legislative history indicates that only "incidental, insignificant" competition should be overlooked.¹¹⁵⁰ Fourth, concerns that Track A consigns the Bell companies to a form of unending "purgatory" are addressed by the "escape hatches" provided in Track B.¹¹⁵¹

CPNI: On another matter, I want to note my continuing disagreement with the Commission's ruling on the shared use by a Bell operating company and its Section 272 affiliate of "customer proprietary network information," cited in Para. 344. Nonetheless, I treat that ruling as being in effect and do not object to the determination that BellSouth is complying with it.

Finally, I want to express my gratitude toward, and confidence in, the very able staff of the Common Carrier Bureau, which has worked so diligently not only on this order but also on the intense multi-party dialogue that has provided all interested parties with detailed guidance on the measures necessary to satisfy the requirements of Section 271. I deeply respect the expertise and diligence of the public servants who have spent countless hours working through the issues with the incumbents, with the new entrants, and with the Commissioners. I hope and expect that this process will soon produce its intended results.

¹¹⁴⁹ *Ameritech Michigan Order*, 12 FCC Rcd. 20543, 20594-98 (1997).

¹¹⁵⁰ H.R. Rep. No. 104-204, pt. 1, at 77, reprinted in 1996 U.S.C.C.A.N. 10, 42.

¹¹⁵¹ See 47 U.S.C. 271(c)(1)(B)(i)&(ii).

October 13, 1998

CONCURRING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance Inc., for Provision of In-Region, InterLATA Services in Louisiana; CC Docket No. 98-121.

I concur in today's decision to deny BellSouth's 271 application to provide long distance service in Louisiana. BellSouth has made substantial progress in Louisiana since its earlier application, but I am still troubled by the absence of an unambiguous facilities-based competitor for residential customers, a requirement under Section 271. I commend my colleagues and the FCC staff for their hard and sincere work on this proceeding, but I write separately to express my concern with the Commission's framework for analyzing such 271 applications and to disapprove explicitly of several aspects of this decision.¹¹⁵²

Introduction

Less than one month ago, Hurricane Georges moved across the Gulf of Mexico menacingly towards Louisiana. Hundreds of thousands of people were evacuated from homes and businesses. Faced with impending disaster, the people of Louisiana prepared themselves. They have survived, endured, and triumphed over worse.

Natural disasters have never broken the spirit of Louisiana. There may, however, lurk a

¹¹⁵² For months preceding this application, BellSouth, other RBOCs, and other parties met behind closed doors with the Common Carrier Bureau under a carefully orchestrated schedule to discuss various aspects of the 271 application process. Meetings were also held between various parties and the Department of Justice. Not all parties, however, were invited to these meetings. Efforts by some outside parties to receive copies of documents generated from these meetings have not been successful. Oral summaries of these meetings have been provided to this office, but no written documents. There is no public record of exactly what was said and what, if anything, was promised in any of these meetings.

The government employees involved in these meetings have unquestionably had only the best of intentions to inform and to resolve issues. I do not question their intentions, motivations, or integrity. As a Commissioner in this Section 271 proceeding, however, I am placed in an awkward position of forming an opinion based on a public record that does not include a review of a series of highly-publicized private meetings with various parties and Commission staff and DOJ staff to discuss specific aspects of possible applications. These meetings involved senior corporate personnel to discuss specific aspects of potential 271 applications that went far beyond simple information gathering. I do not know whether this application, the DOJ recommendation, or the Commission staff recommendation were in any way altered as the result of information -- not part of the public record today -- that may have been conveyed at these meetings. I simply must assume that there was no such effect.

greater challenge than mere hurricanes: excessive regulation. For most of the twentieth century, the unnatural forces of government regulation have distorted telecommunications markets across all 50 states, including Louisiana.

Government regulation, at both the federal and state levels, not natural market forces, prohibited competition. Government regulation, not natural market forces, compelled monopolists to set prices only coincidentally related to costs. Government regulation, not the natural progress of science and engineering, dictated the direction of technological change and innovation, and more often the lack of it. Government regulation, not consumers and competing businesses, set the standards for markets.

The dark humor of the former Soviet Union often involved three characters: a well-intentioned central planner in Moscow who dictated official prices in a certain market, and two individuals actually in that market desperately trying to conduct a transaction. In later versions of this humor, the centralized planner even had sophisticated computer models. According to Soviet economics, regulation and central planning were vastly superior to competition and markets. Under Soviet economics, planners were smarter than everyone else, and they knew what was best for everyone; accordingly, the planners allocated resources and set prices. Inevitably, in the Soviet humor, the two individuals would be forced to ignore the official prices and the official rules and would use a form of barter to make a transaction.

The Telecommunications Act of 1996

The Telecommunications Act of 1996 said that excessive regulation, like Soviet economics, belonged in the ash heap of history. Competition would replace excessive regulation. Market solutions would replace central planning solutions. Technology would evolve as demanded by consumers not dictated by regulators.

Sections 251 through 253 are the core provisions of the 1996 Act that enable competition in local telephony. Section 251 lists the legal rights and obligations of telecommunications carriers in a competitive market; Section 252 describes the State-administered processes to reach commercial agreements on terms and conditions for the legal rights and obligations under Section 251; and Section 253 provides means to remove regulatory barriers to providing telecommunications services.

There are countless markets in the United States for different goods and services. For only a relatively small number of these markets are there detailed laws and regulations that restrict entry, exit, and behavior in the market. In these highly structured markets, excessive regulations effectively restrict the market to one source, and indeed practically cause the market to cease to function. Sadly, for many decades, telecommunications markets were among these overregulated markets.

Yet the vast majority of American markets operate effortlessly and competitively with few if any regulations specific to that market. Excessive regulation in markets is the exception in the United States, not the rule.

Competitive markets in the United States and elsewhere work best with clear and consistent property rights and rules. Where property rights are respected, and the legal system treats transactions in a consistent manner, businesses can freely enter and leave markets. Once in markets, businesses vie for customers, customers can freely choose among them, and everyone understands how disputes are likely to be resolved. Mountains of detailed regulations are not needed to allow such competitive markets to function; indeed, they would only get in the way.

Sections 251 through 253, if properly interpreted, could provide for clearly understood legal rights and obligations, clear bases for the easy entry and exit of businesses from markets, the free choice by consumers among competitors, simple and predictable dispute resolution procedures, and all with a minimum of regulations. All of these results from Sections 251 and 253 could have provided for greater certainty in local telecommunications markets, not certainty about market outcomes or market prices, but greater certainty about the contours of legal rights, obligations, processes, and dispute resolutions.

Sections 251 through 253 have not emerged as they might. I believe that the Commission has focused too much of its time, energy and resources on the competitive checklist under Section 271 to the detriment of the general LEC requirements of Section 251.

Some of the Commission's language implementing Section 251 has been tied up in courts. Rather than refining language on the rights and obligations of telecommunications carriers under 251 in areas clearly permitted by the Courts, the Commission has allowed Section 251 regulations to languish in a limbo of uncertainty ostensibly awaiting final court resolution. In the meantime, the uncertainty has had chilling effects, not only on local telecommunications markets directly, but on the clear interpretation of Commission authority under other Sections of the law. Section 253, for example, which outlaws barriers to market entry, has largely remained dormant.

The implementation of Section 252 by the States, has proceeded apace even without clear resolution of federal rights and obligations under Section 251. Indeed, it is the States that have handled the interconnection agreements and the disputes that have derived from them.

Section 271 and Overregulation Through the Competitive Checklist

Section 271 contains two central provisions for allowing Regional Bell Operating Companies ("RBOCs") to offer interLATA service. One requires the presence of a facilities-based competitor for both business and residential customers. The second requires compliance with the "Competitive Checklist," which is a listing of some, but not all, Section 251 obligations

for an incumbent local exchange carrier. There are few if any requirements in the Competitive Checklist that are not in Section 251. The Commission cannot under Section 271 use the Competitive Checklist to impose on an RBOC conditions that are not required of all incumbent LECs under Section 251.

The Commission in this Order, however, appears to be imposing on BellSouth, ostensibly under the guise of the Competitive Checklist, specifications that are neither statutory under Section 251, nor requirements that have been formally adopted by the Commission in a regulatory proceeding under Section 251.

In this Order, the majority focuses much of its attention on deficiencies related to BellSouth's operations support systems ("OSS"). In evaluating OSS, the majority looks to specific performance measures to determine if a BOC is meeting the requirements for OSS. Indeed, much of its analysis of compliance with the competitive checklist focuses on performance data relating to OSS functions; however, the Commission has not yet imposed such performance criteria under Section 251.¹¹⁵³

I hope that, in the not too distant future, this Commission will, based on the Commission's earlier Section 251 Order and subsequent Court decisions, revisit Section 251 and clarify the regulatory rights and obligations of carriers under that section, not just the RBOCs that apply under Section 271. Such a proceeding would both add a much needed degree of clarity and certainty to the interpretation of Section 251, and a measure of transparency and certainty to the proper application of Section 271. Added benefits of clarifying Section 251 would be greater certainty in the application of Section 252 by the States and Section 253 by the Commission.

I believe that the approach the Commission has taken with respect to OSS is far too regulatory. The Commission initiated its OSS performance measures proceeding under Sections 251(c)(3) and (c)(4) of the Act. In light of the Eighth Circuit's decision in *Iowa Utilities v. FCC*,¹¹⁵⁴ it does not appear that the Commission has general authority to adopt any rules or regulations regarding performance measures or standards for OSS under Section 251.¹¹⁵⁵

¹¹⁵³ See *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, Notice of Proposed Rulemaking, 13 FCC Rcd 12817 (1998).

¹¹⁵⁴ *Iowa Utilities v. FCC*, 120 F.2d 753 (8th Cir. 1997), *writ of mandamus issued sub nom. Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. 1998), *petition for cert. granted Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, 97-1141* (U.S. Jan. 26, 1998).

¹¹⁵⁵ The Eighth Circuit expressly held that the Commission's authority to prescribe and enforce regulations to implement section 251 is confined to six areas; section 251(c)(3) is not one of those enumerated sections and it is not clear that any of the six would provide sufficient authority for these OSS measurements and reporting

Moreover, the Eighth Circuit held that section 251(d)(1) "operates primarily as a time constraint, directing the Commission to complete expeditiously its rulemaking regarding [] the areas in section 251."¹¹⁵⁶ It has been more than more than two years since the Telecommunications Act of 1996 passed. Any further rulemaking under Section 251 should be to clarify existing rights and obligations, not to create novel new ones.

Nor do I believe the Commission should be able to impose such performance measures under Section 271. I am not convinced that such performance measures are lawful under Section 271 because they would implicitly expand the checklist beyond the 14 specific criteria. Moreover, OSS requirements imposed only on RBOCs may be a discriminatory burden on one type of ILECs. Even if these performance criteria could lawfully be imposed under Section 271, I am not convinced that the benefits of such criteria would exceed their harm. Individual companies can and have negotiated performance requirements for interconnection agreements under Section 252. These performance requirements may vary not only by State, but by agreement within each State. By imposing a single set of federal performance criteria, we would substantially remove by government coercion the ability of private parties to negotiate the specific performance standards or measures that they may seek.

States, not the FCC nor the DOJ, are in the best position to determine the detailed, day-to-day, compliance with Section 251, and thus with the Competitive Checklist.¹¹⁵⁷ It is the States, not the FCC nor the DOJ, that review all agreements under Section 252 implementing and resolving disputes under Section 251. And the statutory language of Section 271 states that the

requirements.

¹¹⁵⁶ *Iowa Utilities v. FCC*, 120 F.3d at 794. Section 251(d)(1) instructs the Commission that "[w]ithin 6 months of the date of enactment" it "shall complete all action necessary to establish regulations to implement the requirements of this section [251]". 47 USC section 251(d)(1).

¹¹⁵⁷ I give substantial weight to the findings and recommendations of the Department of Justice. Given the intellectual firepower and experience of that agency in examining the competitive effects of changes in markets, I expected to find such an analysis that DOJ is uniquely qualified to provide. I am somewhat surprised that DOJ has chosen instead to provide yet another opinion -- after the FCC has already received such opinions from the State of Louisiana and many private parties -- on BellSouth's technical compliance in Louisiana with the specific details of the Competitive Check List. The DOJ review of compliance is all the more surprising given that DOJ does not appear to have contacted, subsequent to the BellSouth application, the State of Louisiana which has the primary jurisdiction to monitor the implementation of Section 251 requirements under Section 252. I am not suggesting, however, that DOJ or any federal agency should be in close contact or coordinating with any State officials prior to an RBOC application under Section 271. Such contact and coordination may inadvertently taint the record of the application.

FCC must consult with States only on compliance with the Competitive Check List.¹¹⁵⁸

Uncertainty

The current approach in which the Commission adopts standards or even reporting measurements under each Section 271 application that are not required of incumbent local exchange carriers under Section 251 adds enormous uncertainty to the Section 271 process. Neither applicants, States, the Department of Justice, nor third parties can have any certainty of how the Competitive Check List will be interpreted in such a Section 271 process. Flexible rules under Section 271 invite suggestions for even greater flexibility in interpretations, and even arbitrariness to the extent that different Section 271 applications could be held to different standards, much less to the same standard applied to all incumbent carriers under Section 251.

Facilities-Based Competition

The core of a Section 271 review should be the presence of a facilities-based competitor for both business *and* residential customers. Section 271 requires that, under Track A, at least one competitor must serve business subscribers "predominantly over their own telephone exchange service facilities," and at least one competitor must serve residential subscribers "predominantly over their own telephone exchange service facilities."¹¹⁵⁹ In contrast, the majority concludes that:

[R]eading the statutory language to require that there must be facilities-based service to both classes of subscribers to meet Track A could produce anomalous results, . . . In particular, if all other requirements of section 271 have been satisfied, it does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors' service to residential customers is wholly through resale.¹¹⁶⁰

¹¹⁵⁸ Subsequent to the application, I met with Members of the Louisiana Public Service Commission and other Members of the government of the State of Louisiana to discuss the BellSouth application.

¹¹⁵⁹ 47 USCA Section 271(c)(1)(A).

¹¹⁶⁰ BellSouth Order at para. 48. As a Congressional staffer, I witnessed the drafting, deliberating, and negotiating of much of the language of the 1996 Act including Section 271. I have no doubt about either Congressional intent or the plain meaning of the statutory language of Section 271. I am disturbed that a government agency's interpretation of Section 271 is consistent with neither.

The majority's reading, however, ignores Congress' strong desire for facilities-based competition in both the business *and* residential markets, instead overemphasizing the FCC's ability to "regulate competition" with the competitive checklist.

Compliance with the checklist should indeed be a mere formality that any incumbent LEC could meet. Indeed, an incumbent LEC that is not in compliance with the Competitive Check List is by definition not in compliance with Section 251, part of the core of the Telecommunications Act of 1996.

Surely, an incumbent LEC that is not in compliance with Section 251 must also be out of compliance with the implementation of Section 251 by the States under Section 252. The State of Louisiana does not reach that conclusion for BellSouth, nor, according to the PSC, have any parties lodged formal complaints at the PSC against BellSouth for non-compliance with any aspect of Section 252. Perhaps, alternatively, the Louisiana PSC has misapplied Section 252 to the benefit of BellSouth and the detriment of other parties. But no party has lodged such a complaint with the FCC under Section 253. As a formal matter, we have no record under Sections 251 through 253 -- other than objections raised only within the narrow confines of this specific Section 271 application -- of BellSouth's non-compliance with the Competitive Checklist.

The hallmark of the Telecommunications Act of 1996 is competition, not regulation, and the hallmark of Section 271 should also be competition, not regulation. The statutory language clearly provides for such a finding. The central issue should not be more regulations as a means of measuring compliance with regulations but rather the presence of competition as a means of measuring compliance with the law. *Where competition has failed to take hold, compliance with regulations is suspect. Conversely, where competition exists, existing regulatory obligations must be sufficient.*

It is a paradox of the majority's interpretation of facilities-based competition, taken to its logical conclusion, that sufficient competition may already exist in Louisiana but that BellSouth nonetheless is not in compliance with the competitive check list. I would find such a conclusion troubling; I am disappointed that the majority does not actually try to apply their interpretation of the requirement for facilities-based competition and reach the issue of whether the competition in Louisiana is sufficient to meet that test.

Public Interest Standards

Finally, I note that the majority raises the possibility that the "public interest" would be served if a BOC has agreed to performance monitoring, including performance standards, reporting requirements, and self-executing enforcement mechanisms. I believe that even the implication that such measures and enforcement mechanisms would be favored may add criteria to

the checklist beyond the 14 specific criteria in violation of the statute.

The bulk of the application, and the bulk of outside comments, focus on the Section 271 checklist. Views on compliance or noncompliance with the checklist are based almost entirely on measures of regulation rather than measures of competition. The public interest is always best served by focusing on competition, not further regulation.

Conclusion

The long-suffering People of Louisiana have now witnessed two BellSouth applications. They have seen proceedings within their State, and they have watched endless boxes of paper move back and forth to Washington as if on a merry-go-round. There is a remedy. Some will prescribe more paper, more proceedings, and more regulations, all monitored in great detail from Washington.

There is a simpler remedy: no more paper, just some simple competition in Louisiana. More regulations cannot create competition. It is coming despite and not because of all of the paperwork. I look forward to that day.