

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
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In Re:)
)
Consideration of BellSouth) DOCKET NO.: 960786-TL
Telecommunications, Inc.'s Entry)
into InterLATA Services Pursuant to) FILED: JULY 17, 1997
Section 271 of the Federal)
Telecommunications Act of 1996.)

DIRECT TESTIMONY OF JULIA STROW
ON BEHALF OF INTERMEDIA COMMUNICATIONS INC.
JULY 17, 1997

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FPSC RECORDS REPORTING

1 Q: PLEASE STATE YOUR NAME, EMPLOYER, POSITION, AND
2 BUSINESS ADDRESS.

3 A: My name is Julia Strow. I am employed by Intermedia
4 Communications Inc. ("Intermedia") as Director,
5 Strategic Planning and Regulatory Policy. My business
6 address is 3625 Queen Palm Drive, Tampa, Florida
7 33619.

8 Q: WHAT ARE YOUR RESPONSIBILITIES IN THAT POSITION?

9 A: I am the primary interface between Intermedia and the
10 incumbent local exchange carriers ("ILECs"). In that
11 capacity, I am involved in interconnection
12 negotiations and arbitrations between Intermedia and
13 the ILECs. I am also primarily responsible for
14 strategic planning and the setting of Intermedia's
15 regulatory policy.

16 Q: PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND
17 AND PROFESSIONAL EXPERIENCE.

18 A: I graduated from University of Texas in 1981 with a
19 B.S. in Communications. I joined AT&T in 1983 as a
20 Sales Account Executive responsible for major market
21 accounts. I subsequently held several positions with
22 BellSouth's Marketing Department, with
23 responsibilities for Billing and Collection and Toll
24 Fraud Services. In 1987, I was promoted to Product
25 Manager for Billing Analysis Services, with
26 responsibility for the development and management of

1 BellSouth's toll fraud detection and deterrence
2 products. In 1988, I was promoted into the BellSouth
3 Federal Regulatory organization. During my tenure
4 there, I had responsibility for regulatory policy
5 development for various issues associated with Billing
6 and Collection Services, Access Services, and
7 Interconnection. In 1991, due to a restructuring of
8 the Federal Regulatory organization, my role was
9 expanded to include the development of state and
10 federal policy for the issues I mentioned above.
11 During my last two years in that organization, I
12 supported regulatory policy development for local
13 competition, interconnection, unbundling, and resale
14 issues for BellSouth. I joined Intermedia in April
15 1996 as Director of Strategic Planning and Regulatory
16 Policy.

17 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 **A:** The purpose of my testimony is to provide the Florida
19 Public Service Commission (the "Commission") with
20 information that could assist it in determining
21 BellSouth Telecommunications, Inc.'s ("BellSouth")
22 compliance with the relevant provisions of the
23 Telecommunications Act of 1996 (the "1996 Act") and
24 the regulations promulgated by the Federal
25 Communications Commission ("FCC") thereunder,
26 specifically those requirements which BellSouth must

1 satisfy to obtain in-region interLATA authorization.
2 In particular, I will demonstrate that BellSouth has
3 not met the requirements of either section
4 271(c)(1)(A) (hereinafter, "Track A") or section
5 271(c)(1)(B) (hereinafter, "Track B") of the 1996 Act.
6 Moreover, I will show that, regardless of the "track"
7 which BellSouth elects to pursue, BellSouth has not
8 met the 14-point "competitive checklist" consistent
9 with the requirements of section 271(c)(2)(B) and the
10 FCC regulations promulgated thereunder.

11 **Q: PLEASE SUMMARIZE YOUR TESTIMONY.**

12 **A:** Section 271 of the 1996 Act conditions Bell Operating
13 Company ("BOC") entry into in-region interLATA service
14 upon a demonstration that the BOC's local market is
15 open to competition. In particular, the 1996 Act
16 requires that before a BOC may be authorized to
17 provide in-region interLATA services, the FCC must
18 first find that a BOC (1) has fully implemented
19 approved access and interconnection agreements with
20 one or more facilities-based competing carriers
21 providing service to both business and residential
22 subscribers, or, in very limited circumstances, has an
23 approved or effective statement of generally available
24 terms and conditions ("SGAT"); (2) provides or
25 generally offers the 14 items on the "competitive
26 checklist"; (3) satisfies the requirements of section

1 272, including the establishment of a separate long
2 distance subsidiary and the satisfaction of
3 nondiscrimination conditions; and (4) has demonstrated
4 that in-region interLATA entry would be in the public
5 interest. Because this Commission's primary statutory
6 responsibility in this proceeding is to advise the FCC
7 on the issues associated with BellSouth's compliance
8 with the requirements of section 271(c), my testimony
9 focuses on the first two items.

10 As will become evident in this proceeding,
11 BellSouth has not satisfied the preconditions of
12 section 271(c)(1)(A) or section 271(c)(1)(B) of the
13 1996 Act. More particularly, BellSouth can *qualify*
14 only for Track A consideration, not Track B because
15 BellSouth has received, at the very least, several
16 requests for access and interconnection within the
17 meaning of section 271(c)(1)(B). Although BellSouth
18 may seek in-region interLATA authorization under Track
19 A, the facts in this case will demonstrate that
20 BellSouth does not meet the requirements of Track A
21 because no operational facilities-based competing
22 provider or providers of telephone exchange now serve,
23 individually or collectively, residential and business
24 customers in Florida. Moreover, BellSouth has not
25 shown that it has satisfied the competitive checklist
26 requirements in a manner that will enable its

1 competitors to fully compete, at parity, with
2 BellSouth.

3 DEMONSTRATION OF COMPLIANCE WITH EITHER "TRACK A"

4 OR "TRACK B"

5 Q: HAS BELLSOUTH MET THE REQUIREMENTS OF SECTION
6 271(c)(1)(B) OF THE 1996 ACT?

7 A: No, BellSouth has not met the requirements of section
8 271(c)(1)(B) of the 1996 Act. Therefore, BellSouth
9 may not obtain in-region interLATA authorization under
10 Track B.

11 Q: PLEASE EXPLAIN.

12 A: Section 271(c)(1)(B) of the 1996 Act permits a BOC to
13 seek entry under Track B if "no such provider" has
14 requested the access and interconnection described in
15 "section 271(c)(1)(A)" three months prior to the date
16 on which a BOC may apply to the FCC for in-region
17 interLATA authority, and the BOC's SGAT has been
18 approved or permitted to take effect by the relevant
19 state regulatory commission. See 47 U.S.C. §
20 271(c)(1)(B). Thus, Track B requires a two-prong
21 demonstration. The phrase "no such provider," as used
22 in section 271(c)(1)(B) refers to a potential
23 competing provider of the telephone exchange service
24 described in section 271(c)(1)(A). Because several
25 potential competing providers of telephone exchange
26 service to residential and business customers have, at

1 least three months prior to the date on which
2 BellSouth may seek in-region interLATA authorization,
3 requested the access and interconnection described in
4 section 271(c)(1)(A), BellSouth is precluded from
5 pursuing in-region interLATA authority under Track B.
6 BellSouth itself has stated in its response to the
7 Staff's interrogatories that there are 62 competing
8 providers who have entered into interconnection
9 agreements with BellSouth. Indeed, Intermedia has a
10 fully executed interconnection agreement with
11 BellSouth, which, as explained below has not been
12 fully implemented. Because the first prong of the
13 test has not been met, the Commission need not reach
14 a conclusion with respect to the second prong of Track
15 B.

16 **Q: PLEASE EXPLAIN THE BASIS OF YOUR ASSERTION THAT**
17 **BELLSOUTH DOES NOT QUALIFY FOR TRACK B.**

18 **A:** Our assertion that BellSouth does not qualify for
19 Track B at this time is based on the plain language of
20 section 271(c)(1)(B), the legislative history of the
21 1996 Act, the recommendations of the Department of
22 Justice ("DOJ"), and the FCC's recent decision
23 rejecting SBC Communications' application for
24 intraLATA authority.

1 In its *Memorandum Opinion and Order*,¹ the FCC
2 rejected SBC Communications, Inc.'s ("SBC") request
3 for interLATA authorization under Track B. The FCC
4 concluded, among other things, that SBC may not obtain
5 authorization to provide in-region interLATA services
6 in Oklahoma pursuant to section 271(c)(1)(B) of the
7 1996 Act at this time because "SBC has received, at
8 the very least, several requests for access and
9 interconnection within the meaning of section
10 271(c)(1)(B)." *Memorandum Opinion and Order*, at 2 ¶
11 1.

12 In arriving at this conclusion, the FCC found
13 that, in order to decide whether SBC's application may
14 proceed under Track B, the FCC must determine whether
15 SBC has received a "qualifying request" for access and
16 interconnection. The FCC concluded that a "qualifying
17 request" under section 271(c)(1)(B) is "a request for
18 negotiation to obtain access and interconnection that,
19 if implemented, would satisfy the requirements of
20 section 271(c)(1)(A)." *Memorandum Opinion and Order*,
21 at 17 ¶ 27. In analyzing the standard for evaluating

22 ¹ *Application by SBC Communications, Inc. Pursuant to*
23 *Section 271 of the Communications Act of 1934, as*
24 *Amended, to Provide In-Region, InterLATA Services in*
25 *Oklahoma, Memorandum Opinion and Order, CC Docket No.*
26 *97-121 (rel. June 26, 1997) ("Memorandum Opinion and*
27 *Order"). A copy of the FCC Order is appended as*
28 **Attachment JS-2.**

1 "qualifying requests," the FCC found that the
2 threshold question centered on an interpretation of
3 section 271(c)(1): 1) whether a BOC was obligated to
4 seek intraLATA relief under Track A only if an
5 existing facilities-based carrier that is already
6 competing in the local exchange market has requested
7 interconnection -- as SBC argued in that proceeding
8 and BellSouth contends here -- or 2) whether Congress
9 intended to preclude a Bell Operating Company ("BOC")
10 from proceeding under Track B once the BOC had
11 received a request for access and interconnection from
12 a potential facilities-based provider of competitive
13 telephone exchange service that would use
14 interconnection as a means of entering the market.
15 The Commission held that the latter interpretation is
16 the most natural reading of the statute, and the only
17 interpretation consistent with the statutory goal of
18 facilitating competition in the local exchange market.
19 The FCC concluded that Congress intended to preclude
20 a BOC from proceeding under Track B when the BOC
21 receives a request for access and interconnection from
22 a potential competing provider of telephone exchange
23 service, subject to the exceptions in section
24 271(c)(1)(B).

25 The record evidence in this proceeding
26 demonstrates that several unaffiliated competing

1 providers of telephone exchange service have requested
2 access and interconnection with BellSouth before
3 BellSouth may file its in-region interLATA application
4 under Track B. To Intermedia's knowledge, these
5 requests for access and interconnection would, if
6 fully implemented, satisfy the requirements of section
7 271(c)(1)(A). Indeed, Intermedia executed its own
8 interconnection agreement with BellSouth on July 1,
9 1996, and certain aspects of the interconnection
10 agreement still remain unimplemented. Because there
11 are "qualifying requests" for access and
12 interconnection, as that phrase is interpreted by the
13 FCC, BellSouth is precluded from obtaining in-region
14 interLATA authorization under Track B. There is no
15 basis for BellSouth's assertion that these
16 interconnection agreements will not result in the
17 provision of telephone exchange service to residential
18 and business subscribers described in section
19 271(c)(1)(A). Similarly, BellSouth has not alleged,
20 nor has the Commission certified, that any of the
21 competing providers of telephone exchange service has
22 negotiated in bad faith or has failed to abide by its
23 implementation schedule, to the extent one is
24 contained in its interconnection agreement.² As long

25 ² A BOC will be considered not to have received a
26 qualifying request if the State commission certifies
27 (continued...)

1 as the qualifying requests remain unsatisfied, the
2 requirements of section 271(c)(1)(A) remain
3 unsatisfied, and Track B remains foreclosed to
4 BellSouth.

5 Our interpretation is also consistent with the
6 DOJ's evaluations in the Ameritech-Michigan and
7 Southwestern Bell-Oklahoma section 271 proceedings.³
8 In those evaluations the DOJ recommends denial of
9 Southwestern Bell's and Ameritech's 271 Applications.
10 Just as I have done above, in examining whether a BOC
11 should be permitted to enter in-region interLATA
12 market, the DOJ evaluations apply the following

13 ²(...continued)
14 that the competitive carrier or carriers making such
15 a qualifying request failed to negotiate in good
16 faith or violated the terms of an agreement approved
17 under section 252 by the competitive carrier's
18 failure to comply, within a reasonable period of
19 time, with the implementation schedule set forth in
20 the interconnection agreement. Thus, a BOC may
21 still be able to satisfy the requirements of section
22 271(c)(1)(B) if there was bad faith on the part of
23 the requesting carrier or the carrier has breached
24 the terms of the interconnection agreement, as
25 certified by the relevant State commission.

26 ³ See Application of SBC Communications Inc. et al.
27 Pursuant to Section 271 of the Telecommunications
28 Act of 1996 to Provide In-Region, InterLATA Services
29 in the State of Oklahoma, CC Docket No. 97-121,
30 Evaluation of the United States Department of
31 Justice, filed May 16, 1997 (**Attachment JS-3**); and
32 Application of Ameritech Michigan Pursuant to
33 Section 271 of the Telecommunications Act of 1996 to
34 Provide In-Region, InterLATA Services in the State
35 of Michigan, CC Docket No. 97-137, Evaluation of the
36 United States Department of Justice, filed June 25,
37 1997 (**Attachment JS-4**).

1 standard: BOC in-region interLATA entry should be
2 permitted only when the local exchange and exchange
3 access markets in a state have been fully and
4 irreversibly opened to competition (See Attachment JS-
5 3 at 36-51 and Attachment JS-4 at 29-31).

6 Q: HAS INTERMEDIA REQUESTED ACCESS AND INTERCONNECTION AS
7 DESCRIBED IN SECTION 271(c)(1)(A)?

8 A: Yes. Intermedia and BellSouth executed an
9 interconnection agreement on June 21, 1996
10 (hereinafter, "Interconnection Agreement"), a copy of
11 which is appended to this testimony as **Attachment JS-**
12 **5.** The Interconnection Agreement specifically
13 addressed access and interconnection as envisioned in
14 section 271(c)(1)(A) of the 1996 Act, and permits
15 Intermedia to provide local exchange services through
16 access and interconnection to residential and business
17 subscribers operating in BellSouth's Florida
18 territory. The Order approving the amended
19 Interconnection Agreement between BellSouth and
20 Intermedia was issued by the Commission on July 1,
21 1997 (Order No. PCS-97-0771-FOF-TP Docket No.
22 970314-TP)

23 Intermedia's Interconnection Agreement with
24 BellSouth the Interconnection Agreement generally
25 provides for interconnection for purposes of the
26 exchange of local traffic at a tandem, end office, or

1 any other mutually agreed upon point. Additionally,
2 the agreement contains provisions for resale,
3 unbundling, and collocation. Particular provisions
4 include, but are not limited to:

5 • **Interconnection.** BellSouth and Intermedia agreed
6 to three methods of interconnecting facilities: (a)
7 physical collocation, (b) virtual collocation where
8 physical collocation is not practical for technical
9 reasons or space limitations, and (c) interconnection
10 via the purchase of facilities from either party by
11 the other party. BellSouth and Intermedia agreed that
12 reciprocal connectivity would be established at
13 BellSouth access tandems or end offices. The rates,
14 terms, and conditions for interconnection were
15 negotiated by BellSouth and Intermedia. The pricing
16 methodology used for interconnection is set forth in
17 Section IV of the Interconnection Agreement, and the
18 referenced attachments.

19 • **911/E911, Operator Services, Etc.** The parties
20 have agreed that Intermedia will route the traffic to
21 BellSouth at the appropriate tandem or end office.
22 Intermedia will install dedicated trunks from
23 Intermedia's serving wire center to the appropriate
24 911/E911 tandem. For E911 services, Intermedia will
25 deliver Automatic Number Identification along with the
26 call. The costs will be billed to the appropriate

1 municipality. See Section IX of the Interconnection
2 Agreement, "Access to 911/E911 Emergency Network," and
3 the attachments referenced therein, for the specific
4 terms and conditions governing access to 911 and E911
5 services.

6 BellSouth has also agreed to provide Intermedia
7 Operator Call Processing Access Service, which
8 includes processing and verification of alternate
9 billing information for collect calls, calling card
10 calls, and billing to a third number; customized call
11 branding; dialing instructions, and other types of
12 operator assistance requested by the customer. The
13 rates for Operator Call Processing Access Services
14 have been mutually agreed to by the parties.
15 BellSouth has also agreed to offer to Intermedia
16 Directory Assistance Access Services (Number Services)
17 at rates mutually agreed to by the parties. See
18 Section X of the Interconnection Agreement, "Provision
19 of Operator Services," and the attachments referenced
20 therein, for the specific rates, terms, and conditions
21 governing Operator Call Processing Access Service and
22 Directory Assistance Access Services.

23 • **Access to Telephone Numbers.** BellSouth has
24 agreed that during any period under the
25 Interconnection Agreement in which it serves as a
26 North American Numbering Plan Administrator for its

1 territory, it will ensure that Intermedia has
2 nondiscriminatory access to telephone numbers for
3 assignment to Intermedia's telephone exchange service
4 customers. The parties have agreed that BellSouth
5 will provide numbering resources pursuant to the
6 Bellcore Guidelines Regarding Number Assignment, and
7 that compliance with those guidelines will constitute
8 nondiscriminatory access to numbers. If BellSouth is
9 no longer the North American Numbering Plan
10 Administrator, the parties have agreed that they will
11 comply with the guidelines, plan, or rules adopted
12 pursuant to 47 U.S.C. § 251(e). See Section XII of
13 the Interconnection Agreement, "Access to Telephone
14 Numbers," and the attachments referenced therein for
15 the specific rates, terms, and conditions governing
16 the assignment of telephone numbers to Intermedia's
17 customers.

18 • **Access to Database and Associated Signaling, Etc.**
19 Intermedia and BellSouth have agreed that they will
20 offer to each other use of the signaling network and
21 signaling databases on an unbundled basis at published
22 tariffed rates. Signaling functionality will be
23 available with both A-link and B-link connectivity.
24 BellSouth will enter Intermedia line information into
25 its Line Information Database ("LIDB"). Entry of line
26 information into LIDB will enable Intermedia's end-

1 users to participate or not participate in alternate
2 billing arrangements, such as collect or third number
3 billed calls. BellSouth will store in its database
4 the relevant billing information and will provide
5 responses to on-line, call-by-call queries to this
6 information for purposes of Billed Number Screening,
7 Calling Card Validation, and Fraud Control. See
8 Section XIII of the Agreement, "Access to Signaling
9 and Signaling Databases," and the attachments
10 referenced therein, for the specific rates, terms, and
11 conditions governing access to databases and
12 associated signaling necessary for call routing and
13 completion.

14 • **Number Portability.** The Interconnection
15 Agreement provides that Service Provider Number
16 Portability ("SPNP") is an interim service arrangement
17 provided by each party to the other whereby an end-
18 user who switches subscription of its local exchange
19 service from BellSouth to Intermedia, or vice versa,
20 is permitted to retain use of its existing assigned
21 telephone number, provided that the end-user remains
22 at the same location for its local exchange service or
23 changes locations and services provider but stays
24 within the same serving wire center of its existing
25 number. The Interconnection Agreement specifies that

1 SPNP may be provided via remote call forwarding or
2 direct forward dialing.

3 • **Conclusion.** For a detailed description of the
4 terms, conditions, and other provisions of the
5 interconnection agreement between BellSouth and
6 Intermedia, Intermedia refers the Commission to the
7 Interconnection Agreement. See Attachment JS-5.
8 Intermedia notes that, although the provisions of the
9 Interconnection Agreement are clear and unambiguous,
10 certain provisions of the Interconnection Agreement
11 remain largely unimplemented.

12 Subsequent to the execution of the
13 Interconnection Agreement, Intermedia specifically
14 requested of BellSouth access and interconnection
15 under the terms of the Interconnection Agreement.
16 Intermedia requested, among other things, the
17 following unbundled network elements ("UNEs"): four-
18 wire digital loops, DS1 loops, two-wire analog loops,
19 sub-loops, and integrated services digital network
20 ("ISDN") loops. See **Attachment JS-6**. To date,
21 however, BellSouth has provided very limited
22 interconnection to Intermedia and, moreover, has not
23 provided the requested UNEs in conformity with the
24 requirements of section 271.

25 **Q: HAS BELL SOUTH MET THE REQUIREMENTS OF SECTION**
26 **271(c)(1)(A) OF THE 1996 ACT?**

1 A: No, BellSouth has not met the requirements of section
2 271(c)(1)(A), although this is the only avenue through
3 which BellSouth may seek in-region interLATA
4 authorization.

5 Q: **PLEASE EXPLAIN.**

6 A: In order to satisfy section 271(c)(1)(A), a BOC must
7 demonstrate that it "is providing access and
8 interconnection to its network facilities for the
9 network facilities of one or more unaffiliated
10 competing providers of telephone exchange service . .
11 . to residential and business subscribers," and the
12 telephone exchange service is being offered by the
13 competing providers "either exclusively over their own
14 . . . facilities or predominantly over their own . .
15 . facilities in combination with the resale" of
16 another carrier's telecommunications services. See 47
17 USC § 271(c)(1)(A). The legislative history of the
18 1996 Act clarifies that Congress set "meaningful"
19 facilities-based competition for business and
20 residential services as a precondition to a grant of
21 in-region interLATA authority. The 1996 Act,
22 therefore, requires meaningful facilities-based
23 competition for business and residential customers --
24 whether provided by a single competitive provider or
25 a combination of providers -- as a condition-precedent
26 to a BOC entry into the in-region interLATA market.

1 To Intermedia's knowledge, none of BellSouth's
2 telephone exchange competitors is providing service to
3 both residential and business customers either
4 exclusively over their own facilities or predominantly
5 over their own facilities in combination with resale.

6 Q: IS INTERMEDIA PROVIDING TELEPHONE EXCHANGE SERVICE TO
7 RESIDENTIAL SUBSCRIBERS?

8 A: Intermedia is providing telephone exchange service to
9 residential customers on a very limited scale, only
10 through resale and only where residential lines are
11 billed through the customer's business account.

12 Q: IN ORDER FOR BELL SOUTH TO SATISFY THE REQUIREMENTS OF
13 TRACK A, IS IT NECESSARY FOR COMPETING PROVIDERS OF
14 TELEPHONE EXCHANGE SERVICE TO BE PROVIDING SERVICE TO
15 MORE THAN ONE RESIDENTIAL SUBSCRIBER AND ONE BUSINESS
16 SUBSCRIBER?

17 A: Yes, it is necessary for the competing provider or
18 providers to be providing telephone exchange service
19 to more than one residential subscriber and one
20 business subscriber. Section 271(c)(2)(A) provides
21 that the agreements must be with "one or more
22 unaffiliated competing providers of telephone exchange
23 service . . . to residential and business
24 subscribers." 47 USC § 271(c)(1)(A). Long-standing
25 principles of statutory construction suggests that, if
26 only one subscriber in each category was required,

1 Congress would have said "to at least one residential
2 and one business subscriber." By using the plural
3 form of "subscribers," Congress clearly contemplated
4 that more than one customer in each category be
5 actually receiving telephone exchange service from the
6 competing carrier.

7 Q: IN THE EVENT BELLSOUTH IS ABLE TO SATISFY THE
8 REQUIREMENTS OF TRACK A OR TRACK B, CAN BELLSOUTH THEN
9 OBTAIN IN-REGION INTERLATA AUTHORIZATION?

10 A: While providing access and interconnection pursuant to
11 interconnection agreements under Track A is a
12 necessary condition to a grant of interLATA authority,
13 it is not the sole criterion. The BOC must also
14 demonstrate that it satisfies the 14-point competitive
15 check list mandated by section 271(c) of the 1996 Act.

16 Q: PLEASE EXPLAIN.

17 A: Section 271(c)(2) requires that, in order to obtain
18 in-region interLATA authorization under Track A, a BOC
19 must satisfy the 14-point checklist of section
20 271(c)(2)(B). Thus, even if BellSouth had satisfied
21 the requirements of Track A, BellSouth would still be
22 required to demonstrate compliance with each of the 14
23 items of the competitive checklist, including access
24 to physical collocation, cost-based unbundled loops,
25 and reliable operations support systems ("OSS")
26 functions before it may gain entry under either track.

1 COMPLIANCE WITH THE 14-POINT COMPETITIVE CHECKLIST

2 Q: HAS BELLSOUTH PROVIDED INTERMEDIA WITH ACCESS AND
3 INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF
4 SECTION 251(c)(2) and 252(d)(1) OF THE 1996 ACT?

5 A: BellSouth is providing some level of access and
6 interconnection to its network facilities to
7 Intermedia for the provision of communications
8 services to business subscribers, through resale of
9 BellSouth's retail services. Although Intermedia and
10 BellSouth have a fully executed and Commission-
11 approved Interconnection Agreement under which
12 BellSouth will provide Intermedia with access and
13 interconnection to BellSouth's network facilities, to
14 date some aspects of the Interconnection Agreement
15 remain unimplemented. In particular, BellSouth has
16 not yet established the infrastructure necessary to
17 support implementation of the Interconnection
18 Agreement. As a result, Intermedia's ability to
19 initiate widespread facilities-based service has been
20 significantly impaired to date, although its plan was
21 to initiate facilities-based services during the first
22 quarter of 1997.

23 Interconnection through the provision of
24 unbundled local loops, unbundled network elements and
25 access to the operation and support systems ("OSS")
26 access is still in the earliest trial stages, and

1 these trials are only for the most elementary (i.e.,
2 1F and 1FB)) services, not the more complex elements
3 Intermedia will utilize in the provision of local
4 exchange services.

5 Moreover, BellSouth has refused certain
6 interconnection requests by Intermedia and has failed
7 to implement certain tracking and data exchange
8 processes in a timely manner. While BellSouth has
9 entered into an agreement with Intermedia specifying
10 the terms and conditions under which BellSouth will
11 provide Intermedia with access and interconnection to
12 its network facilities, it has failed to devote the
13 resources necessary to implement the provisions of the
14 Interconnection Agreement, including provisions
15 relating specifically to interconnection. In fact,
16 BellSouth has not met deadlines agreed to and set
17 forth in the Implementation Plan (a copy of which is
18 appended as **Attachment JS-7**) to which Intermedia and
19 BellSouth agreed.⁴ For example, the Implementation
20 Plan calls for the tracking of local exchange and
21 extended area service traffic for compensation
22 purposes, and for the exchange of traffic data between
23 companies. The timeframe for implementation for these

24 ⁴ The four-page Implementation Plan specifically sets
25 forth the various elements of interconnection, the
26 timeframe within which each element is to be
27 implemented, and the responsible contacts within
28 Intermedia and BellSouth.

1 items was October 1, 1996. To date, BellSouth has not
2 even put in place a process for implementation.

3 Section 251(c)(2) requires interconnection at any
4 technically feasible point in the incumbent local
5 exchange carrier's network. Despite this explicit
6 statutory language, to date BellSouth has failed to
7 address Intermedia's request for subloop unbundling.
8 As a consequence of the this, BellSouth is neither
9 providing interconnection to Intermedia according to
10 the terms agreed to by the parties, nor is it
11 providing interconnection to Intermedia in accordance
12 with the requirements of section 251(c)(2) and
13 252(d)(1) of the 1996 Act, pursuant to section
14 271(c)(2)(B)(i) and applicable rules promulgated by
15 the FCC.

16 **Q: WHAT DO YOU THINK IS THE REASON FOR BELL SOUTH'S**
17 **FAILURE TO PROVIDE INTERMEDIA WITH ACCESS AND**
18 **INTERCONNECTION?**

19 **A:** Intermedia believes that the problems Intermedia is
20 experiencing with BellSouth with respect to access and
21 interconnection have to do with BellSouth's failure to
22 implement the Interconnection Agreement in a
23 reasonable and timely manner. Because certain
24 competitive carriers, such as Intermedia, require more
25 complex elements for the provision of local service to
26 meet the needs of their customers, BellSouth must

1 devote the resources necessary to fully implement the
2 interconnection agreements -- and clearly, with
3 respect to Intermedia, BellSouth has not done so. For
4 example, Intermedia has requested unbundled loops and
5 network elements to support the provision of local
6 frame relay service. Although some progress has been
7 made (i.e., network elements have been identified and
8 pricing has been developed), the loops and network
9 elements are still not being provisioned on an
10 unbundled basis. More importantly, the operation and
11 support systems required to support these services are
12 not yet operational and are still being tested to
13 "work out the kinks." There is no guarantee that
14 these systems will work as planned. Because of this,
15 the access needed by competitive local exchange
16 carriers and the seamless access envisioned and
17 required by the 1996 Act, are not being provided by
18 BellSouth consistent with its obligations under the
19 1996 Act. Intermedia and BellSouth, as well as the
20 industry, are working cooperatively to resolve these
21 issues and, therefore, Commission intervention at this
22 time does not appear to be necessary. It is
23 Intermedia's position, however, that on the basis of
24 the OSS implementation alone, it would be premature to
25 grant BellSouth section 271 authorization.

1 In addition to the reasons cited above, there are
2 several other possible reasons for BellSouth's failure
3 to provide Intermedia with access and interconnection.
4 It is possible that new applications raise technical
5 and administrative issues that take time to resolve.
6 It is conceivable also that there may be communication
7 problems and bureaucratic delays within BellSouth. It
8 could possible also that BellSouth may intentionally
9 be attempting to slow the implementation process so as
10 to delay competition, particularly for facilities-
11 based competition. Regardless of the reason behind
12 BellSouth's failure to implement the Interconnection
13 Agreement, the end-result nevertheless is the same:
14 BellSouth has impaired Intermedia's ability to provide
15 widespread facilities-based local exchange service
16 through unbundled network elements in Florida.

17 **Q: HAS BELL SOUTH COMPLIED WITH THE PROVISIONING PERIOD(S)**
18 **SPECIFIED IN YOUR INTERCONNECTION AGREEMENT?**

19 **A:** No, BellSouth generally has not complied with the
20 provisioning periods specified in the Interconnection
21 Agreement. As discussed previously, there are still
22 many "kinks" that must be worked out before access to
23 OSS by competing providers of telephone exchange
24 service is fully operational although, to date, the
25 relevant parties (BellSouth and competing carriers,
26 including Intermedia) are working through the

1 technical and operational issues associated with full
2 implementation of existing interconnection agreements.
3 As a result, competitive carriers, including
4 Intermedia, have experienced significant provisioning
5 delays.

6 **Q: PLEASE DESCRIBE SPECIFIC INSTANCES OF BELL SOUTH'S**
7 **NONCOMPLIANCE WITH THE PROVISIONING PERIODS SET FORTH**
8 **IN THE INTERCONNECTION AGREEMENT.**

9 **A:** Specific instances of this noncompliance are detailed
10 below.

11 During the interconnection negotiation process,
12 Intermedia stated clearly to BellSouth its need for
13 unbundled frame relay network components such as loops
14 and sub-loop elements. The provisions of the
15 Interconnection Agreement clearly contemplated in
16 Section VII.E that such network elements would be
17 provided to Intermedia even though at contract
18 execution the unbundled frame relay components were
19 not yet developed. Although Intermedia repeatedly
20 confirmed the need for the unbundled network
21 components (loops and sub-loop) through various
22 correspondence to BellSouth (see **Attachment JS-8**), to
23 date the requested frame relay network components have
24 not been made available to Intermedia.

25 BellSouth's response to Intermedia's requests for
26 sub-loop unbundling have consistently been evasive,

1 confused, or contradictory. For example, on September
2 10, 1996, BellSouth informed Intermedia that subloop
3 unbundling could not be provisioned because the LFACS
4 and TIRKS line and trunk assignment databases could
5 not handle such data. In a section 271 proceeding
6 before the Georgia Public Service Commission ("Georgia
7 Proceeding"), however, BellSouth witness Scheye
8 confirmed that it was technically feasible to provide
9 sub-loop unbundling.

10 Similarly, Intermedia consistently has requested
11 that BellSouth provide unbundled loops adequate to
12 handle its Frame Relay traffic. BellSouth has
13 maintained that one of the reasons for this delay is
14 related to billing -- specifically, BellSouth informed
15 Intermedia that its CABS billing system was
16 inappropriate for unbundled loop billing, and that it
17 had to modify its CRIS system to generate billing
18 data. This position was memorialized in Intermedia's
19 letter to BellSouth dated January 28, 1997. (See
20 **Attachment JS-9**). Yet, BellSouth witness Scheye
21 stated under oath in the Georgia Proceeding that CABS
22 is fully capable of providing billing data for
23 unbundled loops, and that BellSouth has every
24 intention of using it. Because BellSouth has
25 continued to vacillate on which billing system will
26 ultimately be used for the unbundled elements, the

1 digital loops sought by Intermedia have been delayed
2 for months. One fact does remain to this date:
3 Intermedia does not currently have unbundled frame
4 relay network components (sub-loop, loop, and
5 multiplexing elements) in place. Due to BellSouth's
6 failure to provide unbundled network elements,
7 Intermedia has not been able to provide facilities-
8 based local service.

9 Intermedia hopes to resolve these and other
10 issues cooperatively with BellSouth, and without the
11 need for Commission intervention. However, Intermedia
12 may seek Commission intervention in the event the
13 issues are not resolved satisfactorily.

14 **Q: HAVE YOU REQUESTED FROM BELL SOUTH ACCESS TO UNBUNDLED**
15 **NETWORK ELEMENTS?**

16 **A:** Yes, Intermedia has requested from BellSouth access to
17 unbundled network elements. Intermedia has requested
18 the following UNES: four-wire digital loops,
19 unbundled frame relay network elements, DS1 loops,
20 two-wire analog loops and ISDN loops. See Memorandum
21 from Intermedia to BellSouth dated July 11, 1996 for
22 original request (appended to this testimony as
23 **Attachment JS-6**).

24 **Q: IS BELL SOUTH CURRENTLY PROVIDING INTERMEDIA WITH**
25 **ACCESS TO UNES AT ANY TECHNICALLY FEASIBLE POINT IN**

1 **ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(c)(3)**
2 **AND 271(c)(2)(B)(ii)?**

3 **A:** No, BellSouth is not currently providing Intermedia
4 with access to UNEs at any technically feasible point
5 consistent with the requirements of the 1996 Act.
6 BellSouth has not articulated any reason as to why
7 BellSouth is unable to provide the UNEs as requested.
8 Rather, BellSouth is providing Intermedia with
9 tariffed services that are priced at the negotiated
10 UNE rates in the Interconnection Agreement. As of the
11 date of this testimony, Intermedia has to purchase
12 services out of the BellSouth retail tariff. In turn,
13 BellSouth credits Intermedia to reflect that the
14 tariffed item is being priced as an unbundled element.
15 Intermedia does not have any control or management
16 capabilities associated with unbundled elements, as
17 envisioned by the 1996 Act or the FCC.

18 **Q:** **ARE THERE ANY OTHER REASONS BELL SOUTH HAS FAILED TO**
19 **PROVIDE INTERMEDIA WITH ACCESS AND INTERCONNECTION?**

20 There are several other possible reasons for
21 BellSouth's failure to provide Intermedia with access
22 and interconnection. It is possible that new
23 applications raise technical and administrative issues
24 that take time to resolve. It is conceivable also
25 that there may be communication problems and
26 bureaucratic delays within BellSouth. A likely

1 possibility is that BellSouth may be failing to
2 allocate the resources necessary for implementation.
3 Although it is not Intermedia's intention, it could be
4 possible also that BellSouth may intentionally be
5 attempting to slow the implementation process so as to
6 delay competition, particularly for facilities-based
7 competition. Regardless of the reason behind
8 BellSouth's failure to implement the Interconnection
9 Agreement, the end-result nevertheless is the same:
10 BellSouth has impaired Intermedia's ability to provide
11 widespread facilities-based local exchange service
12 through UNEs in Florida.

13 **Q: HAS INTERMEDIA COMPLAINED TO BELLSOUTH REGARDING**
14 **BELLSOUTH'S FAILURE TO PROVIDE THE UNEs REQUESTED BY**
15 **INTERMEDIA?**

16 **A:** Intermedia has made numerous attempts to notify
17 BellSouth of BellSouth's failure to provision UNEs,
18 both verbally and in writing. For example, by letter
19 dated January 8, 1997, Intermedia sought to resolve
20 several issues having to do with, among other things,
21 subloop unbundling, the mechanism for billing
22 unbundled rate elements and resold services, etc. See
23 Letter from Jonathan E. Canis to Whit Jordan (Jan. 8,
24 1997) (appended hereto and incorporated herein by
25 reference as **Attachment JS-8**. Similarly, by letter
26 dated January 28, 1997, Intermedia discussed

1 BellSouth's inability to, among other things, deliver
2 frame relay-capable loops to Intermedia in conformity
3 with the parties' interconnection agreement and prior
4 representations. See Letter from Jonathan E. Canis to
5 Whit Jordan (Jan. 28, 1997) (**Attachment JS-9**). To
6 date, BellSouth has not been able to provide a more
7 substantive response to the issues and, thus, the
8 issues remain largely unresolved. BellSouth's written
9 responses to Intermedia's communications are appended
10 hereto and incorporated herein by reference
11 collectively as **Attachment JS-10**.

12 **Q: HAS INTERMEDIA REQUESTED FROM BELL SOUTH ANY**
13 **TELECOMMUNICATIONS SERVICES FOR RESALE CONSISTENT WITH**
14 **THE REQUIREMENTS OF SECTIONS 251(c)(4) and 252(d)(3)**
15 **OF THE 1996 ACT, AND IS BELL SOUTH PROVIDING SUCH**
16 **RESOLD SERVICES CONSISTENT WITH SECTION**
17 **271(c)(2)(B)(xiv) OF THE 1996 ACT?**

18 **A:** Yes, Intermedia has requested simple business services
19 offered by BellSouth (e.g., call waiting and call
20 forwarding) for resale. Intermedia has yet to request
21 more complex services (e.g., MegaLink and MultiServe)
22 for resale, however, due to provisioning limitations
23 expressed by BellSouth during negotiations. The
24 BellSouth support systems currently in place do not
25 allow Intermedia to fully support the implementation
26 of the resale of the more complex services. The

1 current systems are manual for the most part, and do
2 not facilitate the support of moves, adds, and changes
3 for the complex (i.e., engineered) services. Because
4 the ordering process is not automated (i.e., orders
5 are sent by facsimile to BellSouth for manual
6 processing), many orders are backlogged each month
7 within BellSouth. Intermedia has requested on
8 numerous occasions automated interfaces for order
9 processing and service request information but, to
10 date, BellSouth has not addressed Intermedia's
11 reasonable request.

12 Similarly, although BellSouth is providing
13 certain resold services to Intermedia, several issues
14 remain unresolved. In particular, Intermedia has
15 sought clarification from BellSouth that, when
16 Intermedia resells BellSouth service, the applicable
17 wholesale discounts apply to all of the service
18 elements that are listed in the retail tariff,
19 including nonrecurring charges. Similarly, Intermedia
20 has sought to confirm that, when a customer that
21 currently takes service from BellSouth pursuant to a
22 long-term contract switches to BellSouth service
23 resold by Intermedia, Intermedia assumes the
24 customer's obligations for the remainder of the
25 contract term, and no termination liability charges

1 would apply as a result. These and other resale
2 issues remain unresolved at this time.

3 **Q: HAS INTERMEDIA REQUESTED FROM BELLSOUTH LOCAL LOOPS**
4 **BETWEEN THE CENTRAL OFFICE AND THE END-USER'S PREMISES**
5 **THAT IS UNBUNDLED FROM LOCAL SWITCHING OR OTHER**
6 **SERVICES, PURSUANT TO SECTION 271(c)(2)(B)(iv) OF THE**
7 **1996 ACT?**

8 **A:** Yes, Intermedia has requested 4-wire digitally-
9 conditioned loops from BellSouth pursuant to section
10 271(c)(2)(B)(iv) of the 1996 Act. However, BellSouth
11 has not provided Intermedia with the requested loops.
12 BellSouth's failure to do so has had the effect of
13 significantly impairing Intermedia's ability to
14 provide widespread facilities-based local exchange
15 service in Florida.

16 **Q: IN YOUR OPINION, WHY IS BELLSOUTH NOT PROVIDING LOCAL**
17 **LOOP TRANSMISSION AS REQUESTED BY INTERMEDIA?**

18 **A:** BellSouth has not articulated any reason for failing
19 to implement the Interconnection Agreement and, in
20 particular, for not providing the requested UNEs.
21 There are several possible reasons for BellSouth's
22 failure to provide the interconnection requested by
23 Intermedia. It is possible that the requested UNEs
24 raise technical and administrative issues that take
25 time to resolve. It is conceivable also that there
26 may be communication problems and bureaucratic delays

1 within BellSouth. A likely possibility is that
2 BellSouth may be failing to allocate the resources
3 necessary for implementation. It could be possible
4 that BellSouth may intentionally be attempting to slow
5 the implementation process so as to delay competition,
6 particularly for facilities-based competition.
7 Regardless of the reason behind BellSouth's failure to
8 implement the Interconnection Agreement, the end-
9 result nevertheless is the same: BellSouth has
10 impaired Intermedia's ability to provide widespread
11 facilities-based local exchange service through UNEs
12 in Florida.

13 **Q: HAS INTERMEDIA REQUESTED FROM BELL SOUTH ACCESS TO 911**
14 **AND E911 SERVICES CONSISTENT WITH SECTION**
15 **271(c)(2)(B)(vii) OF THE 1996 ACT?**

16 **A:** Yes. Intermedia requested access to 911 and E911
17 during the negotiation of the Interconnection
18 Agreement. In particular, Section IX of the
19 Interconnection Agreement sets out the obligations of
20 BellSouth and Intermedia with respect to the provision
21 of 911/E911 services.

22 **Q: IS BELL SOUTH CURRENTLY PROVIDING INTERMEDIA WITH**
23 **ACCESS TO 911 AND E911 SERVICES?**

24 **A:** Yes, but only to the extent limited local exchange
25 service is being provided by Intermedia over
26 Intermedia's own local exchange facilities; and no to

1 the extent that Intermedia has requested 911 and E911
2 access in association with UNEs. As explained above,
3 BellSouth has not yet complied with Intermedia's
4 request for UNEs.

5 **Q: PLEASE EXPLAIN.**

6 **A:** Intermedia requires interconnection to 911 and E911
7 services in conjunction with other requested UNEs to
8 provide telecommunications services. Because
9 BellSouth has not yet provided Intermedia with the
10 requested UNEs, BellSouth also has not provided
11 Intermedia with nondiscriminatory access to 911 and
12 E911 services pursuant to section 271(c)(2)(B)(vii) of
13 the 1996 Act. While BellSouth has entered into an
14 Interconnection Agreement with Intermedia specifying
15 the terms and conditions under which BellSouth will
16 provide Intermedia with access and interconnection to
17 its network facilities, including access to 911 and
18 E911 services, BellSouth has not implemented, nor
19 demonstrated the commitment necessary to implement,
20 the Interconnection Agreement. BellSouth's conduct
21 has had the effect of impairing Intermedia's ability
22 to provide widespread facilities-based local exchange
23 service in Florida.

24 **Q: HAS INTERMEDIA REQUESTED FROM BELL SOUTH ACCESS TO**
25 **DIRECTORY ASSISTANCE SERVICES CONSISTENT WITH SECTION**
26 **271(c)(2)(B)(vii) OF THE 1996 ACT?**

1 **A:** Yes. Intermedia requested access to directory
2 assistance services during the negotiation of the
3 Interconnection Agreement. In particular, Section X.B
4 of the Interconnection Agreement sets out the
5 obligations of BellSouth and Intermedia with respect
6 to the provision of directory assistance services.

7 **Q:** **IS BELL SOUTH CURRENTLY PROVIDING INTERMEDIA WITH**
8 **ACCESS TO DIRECTORY ASSISTANCE SERVICES?**

9 **A:** Yes, but only to the extent limited local exchange
10 service is being provided by Intermedia over
11 Intermedia's local exchange facilities; and no to the
12 extent that Intermedia has requested such access in
13 association with UNEs and BellSouth has not complied
14 with the request.

15 **Q:** **PLEASE EXPLAIN.**

16 **A:** Intermedia requires interconnection to directory
17 assistance services in conjunction with other
18 requested UNEs required to provide local
19 telecommunications services. Because BellSouth has
20 not yet provided Intermedia with the requested UNEs,
21 BellSouth also has not provided Intermedia with
22 nondiscriminatory access to directory assistance
23 services pursuant to section 271(c)(2)(B)(vii) of the
24 1996 Act. While BellSouth has entered into an
25 Interconnection Agreement with Intermedia specifying
26 the terms and conditions under which BellSouth will

1 provide Intermedia with access and interconnection to
2 its network facilities, including access to directory
3 assistance services, BellSouth has not implemented,
4 nor demonstrated the commitment necessary to
5 implement, the Interconnection Agreement. BellSouth's
6 conduct has had the effect of impairing Intermedia's
7 ability to provide widespread facilities-based local
8 exchange service in Florida.

9 Q: HAS INTERMEDIA REQUESTED FROM BELL SOUTH ACCESS TO
10 OPERATOR CALL COMPLETION SERVICES?

11 A: Yes. Intermedia requested access to operator call
12 completion services during the negotiation of the
13 Interconnection Agreement. In particular, Section X
14 of the Interconnection Agreement sets out the
15 obligations of BellSouth and Intermedia with respect
16 to the provision of operator call completion services.

17 Q: IS BELL SOUTH CURRENTLY PROVIDING INTERMEDIA WITH
18 ACCESS TO OPERATOR CALL COMPLETION SERVICES?

19 A: Yes, but only to the extent limited local exchange
20 service is being provided by Intermedia over
21 Intermedia's local exchange facilities; and no to the
22 extent that Intermedia has requested such access in
23 association with UNEs and BellSouth has not complied
24 with the request.

25 Q: PLEASE EXPLAIN.

1 **A:** Intermedia requires interconnection to operator call
2 completion services in conjunction with other
3 requested UNEs to provide local telecommunications
4 services. Because BellSouth has not provided
5 Intermedia with the requested UNEs, BellSouth also has
6 not provided Intermedia with nondiscriminatory access
7 to operator call completion services pursuant to
8 section 271(c)(2)(B)(vii) of the 1996 Act. While
9 BellSouth has entered into an Interconnection
10 Agreement with Intermedia specifying the terms and
11 conditions under which BellSouth will provide
12 Intermedia with access and interconnection to its
13 network facilities, including access to operator call
14 completion services, BellSouth has not implemented,
15 nor demonstrated the commitment necessary to
16 implement, the Interconnection Agreement. BellSouth's
17 conduct has had the effect of impairing Intermedia's
18 ability to provide widespread facilities-based local
19 exchange service in Florida.

20 **Q:** **HAS INTERMEDIA EXECUTED AN AGREEMENT WITH BELL SOUTH OR**
21 **ANY OF ITS AFFILIATES FOR THE PROVISION OF WHITE PAGE**
22 **DIRECTORY LISTINGS TO INTERMEDIA'S CUSTOMERS?**

23 **A:** Yes. Intermedia has executed a separate agreement
24 with Bell Advertising & Publishing Corporation
25 ("BAPCO"), an affiliate of BellSouth, in conformance

1 with the Section XI.A of the Interconnection
2 Agreement.

3 Q: HAVE YOU SUBMITTED WHITE PAGE DIRECTORY LISTINGS TO
4 BELLSOUTH FOR INCLUSION IN BELLSOUTH'S WHITE PAGE
5 DIRECTORIES?

6 A: Yes, Intermedia has submitted white page directory
7 listings to BellSouth, but only on a very limited
8 basis. Because BellSouth has not provided the
9 requested UNEs to Intermedia, Intermedia has not had
10 an opportunity to update BellSouth's directory
11 listings database. To date, BellSouth has not
12 demonstrated the essential capabilities to comply with
13 the necessary update procedures.

14 Q: HAVE INTERMEDIA'S WHITE PAGE DIRECTORY LISTINGS BEEN
15 PUBLISHED BY BAPCO IN ANY OF BELLSOUTH'S DIRECTORIES?

16 A: Yes, a very limited number of Intermedia's white page
17 directory listings covering certain portions of Miami
18 and Orlando have been published by BAPCO.

19 Q: HAS INTERMEDIA REQUESTED FROM BELLSOUTH ACCESS TO
20 TELEPHONE NUMBERS FOR ASSIGNMENT TO INTERMEDIA'S
21 TELEPHONE EXCHANGE CUSTOMERS?

22 A: Intermedia has requested from BellSouth access to
23 telephone numbers on an ongoing basis. To the extent
24 it has done so, these requests have been fulfilled.

25 Q: HOW DOES INTERMEDIA DEFINE "NONDISCRIMINATORY ACCESS
26 TO DATABASES NECESSARY FOR CALL ROUTING AND

1 COMPLETION" AS SET OUT IN SECTION 271(c)(2)(B)(x) OF
2 THE 1996 ACT?

3 A: The term "nondiscriminatory access" as used in
4 subparagraph (c)(2)(B)(x) should have the same meaning
5 ascribed to that term in sections 251 (including
6 251(c)(2)(C) and 251(c)(2)(D)), 252, and other
7 provisions of the 1996 Act. Thus, nondiscriminatory
8 access under subparagraph (c)(2)(B)(x) means that the
9 quality of access to databases necessary for call
10 routing and completion, must be equal between all
11 carriers requesting access to this service. Moreover,
12 nondiscriminatory access necessarily means that access
13 to the database provided by an ILEC must be at least
14 equal in quality to that which the ILEC provides to
15 itself. Thus, access to databases for call routing
16 and completion functionality (including OSS mechanisms
17 utilized in their support) must be equal in quality to
18 that provided by BellSouth to itself and must be made
19 available to all interconnectors on terms and
20 conditions that are just and reasonable.

21 With respect to defining which "databases"
22 require nondiscriminatory access, the Commission
23 should adopt a broad definition that will follow the
24 evolution of the network rather than requiring access
25 only to specific databases. By BellSouth's own
26 admission in published material, such as its annual

1 report, BellSouth is devoting significant resources to
2 the development of AIN database services and
3 anticipates these services being a significant source
4 of future revenue growth. It is essential that the
5 Commission not allow BellSouth proprietary access to
6 such databases as a method of squelching competition.
7 To ensure nondiscrimination on an ongoing basis, the
8 Commission should adopt a broad definition of
9 databases similar to that adopted by the FCC. In the
10 FCC's *Interconnection Order*, the FCC adopted the
11 following definition of databases:

12 "Call-related databases are those SS7 databases
13 used for billing and collection or used in the
14 transmission, routing or other provision of a
15 telecommunications service."⁵

16 I note that the FCC has determined that a
17 competitor's ability to provide service would be
18 significantly impaired if it did not have unbundled
19 access to the ILEC's call-related databases, including
20 the LIDB, Toll-Free Calling, and AIN databases for
21 purposes of switch query and database response through
22 the SS7 network.

23 ⁵ Implementation of the Local Competition Provisions
24 in the Telecommunications Act of 1996, CC Docket No. 96-98,
25 *First Report and Order*, FCC 96-325, rel. Aug. 8, 1996, at note
26 26.

1 Q: HAS INTERMEDIA MADE ANY REQUESTS OF BELLSOUTH FOR
2 ACCESS TO DATABASES NECESSARY FOR CALL ROUTING AND
3 COMPLETION?

4 A: Yes. Intermedia requested access to databases
5 necessary for call routing and completion during the
6 negotiation of the Interconnection Agreement. Section
7 XIII of the Interconnection Agreement sets out the
8 obligations of BellSouth and Intermedia with respect
9 to access to signaling and signaling databases. In
10 particular, Section XIII.A states that "[e]ach party
11 will offer to the other party use of its signaling
12 network and signaling databases on an unbundled basis
13 at published tariff rates." Sections XIII.C and
14 XIII.D address access to LIDB and 800 service
15 databases. However, BellSouth has not provided
16 Intermedia with a nondiscriminatory access to
17 databases and associated signaling necessary for call
18 routing and completion in conjunction with UNEs,
19 pursuant to section 271(c)(2)(B)(x) and sections
20 51.307, 51.313, 51.319, and 51.321 of the FCC's rules.
21 While BellSouth has entered into an Interconnection
22 Agreement with Intermedia specifying the terms and
23 conditions under which BellSouth will provide
24 Intermedia with access and interconnection to its
25 network facilities, including access to databases
26 necessary for call routing and completion, BellSouth

1 has not implemented, nor demonstrated the commitment
2 necessary to implement, the Interconnection Agreement.
3 BellSouth's conduct has had the effect of impairing
4 Intermedia's ability to provide widespread facilities-
5 based local exchange service in Florida.

6 **Q: TO WHICH BELLSOUTH DATABASES HAS INTERMEDIA BEEN**
7 **DENIED ACCESS?**

8 **A:** As discussed above, BellSouth has provided Intermedia
9 with access to its LIDB and 800 service databases, but
10 only in cases where Intermedia provides service over
11 its own local exchange facilities. To date, BellSouth
12 has not provided Intermedia with access to such
13 databases as part of interconnection arrangements that
14 include UNEs. In addition, BellSouth has not provided
15 access to broader AIN and IN capabilities as required
16 under the Interconnection Agreement.

17 **Q: HAS BELLSOUTH PROVIDED INTERMEDIA WITH ACCESS TO**
18 **BELLSOUTH'S SERVICE CONTROL POINTS?**

19 **A:** No. BellSouth has not provided Intermedia with either
20 access or the necessary technical disclosures to
21 support access to BellSouth's service control points
22 for the provision of call-related, database-supported
23 services to Intermedia's customers.

24 **Q: HOW DOES INTERMEDIA DEFINE "NONDISCRIMINATORY ACCESS**
25 **TO ASSOCIATED SIGNALING NECESSARY FOR CALL ROUTING AND**

1 COMPLETION" AS SET OUT IN SECTION 271(c)(2)(B)(X) OF
2 THE 1996 ACT?

3 A: The term "nondiscriminatory access" as used in
4 subparagraph (c)(2)(B)(x) should have the same meaning
5 ascribed to that term in sections 251 (including
6 251(c)(2)(C) and 251(c)(2)(D)), 252, and other and
7 other provisions of the 1996 Act. Thus,
8 nondiscriminatory access under subparagraph
9 (c)(2)(B)(x) means that the quality of access to
10 signaling capabilities (including OSS mechanisms
11 utilized for their support) necessary for call routing
12 and completion, must be equal between all carriers
13 requesting access to this service. Moreover,
14 nondiscriminatory access necessarily means that access
15 to the signaling provided by an ILEC must be at least
16 equal in quality to that which the ILEC provides to
17 itself. Further, with respect to those technologies
18 which are in constant development, such as signaling
19 systems and associated architecture, the Commission
20 must go further to ensure that in the event BellSouth
21 develops signaling technology and platform
22 capabilities to support new database capabilities
23 according to its own service specifications, it must
24 also be willing to support the service specifications
25 of competing carriers. This will prevent BellSouth
26 from discriminating against its competitors by

1 developing only those database interfaces where it
2 believes it has a competitive advantage.

3 **Q: HAS INTERMEDIA REQUESTED OF BELLSOUTH ACCESS TO**
4 **SIGNALING NETWORKS NECESSARY FOR CALL ROUTING AND**
5 **COMPLETION?**

6 **A:** Yes, Intermedia requested access to signaling networks
7 necessary for call routing and completion during the
8 negotiation of the Interconnection Agreement. In
9 particular, Section XIII of the Interconnection
10 Agreement sets out the obligations of BellSouth and
11 Intermedia with respect to access to signaling
12 networks necessary for call routing and completion.
13 Specifically, Section XIII.A states that "[e]ach party
14 will offer to the other party use of its signaling
15 network and signaling databases on an unbundled basis
16 at published tariffed rates." Section XIII.A further
17 requires that signaling functionality be available
18 with both A-link and B-link connectivity. Discussions
19 between BellSouth and Intermedia concerning signaling
20 have centered on the utilization of SS7 networks and
21 protocols.

22 **Q: SHOULD "SERVICE MANAGEMENT SYSTEMS" AS SET OUT IN**
23 **SECTION 51.3199(e)(3) OF THE FCC'S RULES BE INCLUDED**
24 **UNDER SECTION 271(c)(2)(B)(x) OF THE 1996 ACT?**

25 **A:** Yes. Section 51.319(e)(3) of the FCC's rules defines
26 "Service Management System" ("SMS") as a computer

1 database or system not part of the public switched
2 network that, among other things: (a) interconnects to
3 the service control point and sends to that service
4 control point the information and call processing
5 instructions needed for a network switch to process
6 and complete a telephone call; and (b) provides
7 telecommunications carriers with the capability of
8 entering and storing data regarding the processing and
9 completing of a telephone call. Section
10 271(c)(2)(B)(x) of the 1996 Act explicitly sets out as
11 part of the 14-point checklist the BOC's obligation to
12 provide nondiscriminatory access to databases and
13 associated signaling necessary for *call routing and*
14 *completion*. Because SMS is necessary for call
15 processing and completion, SMS appropriately should be
16 included within the requirements of section
17 271(c)(2)(B)(x).

18 Moreover, a broad interpretation of section
19 271(c)(2)(B)(x) is consistent with the legislative
20 intent. Congress intended competition to expand
21 beyond the services offered today to include services
22 offered via new technology in the future. As the
23 ability to provide new services via advanced
24 technologies (such as AIN) being deployed today by
25 ILECs depends upon service provider access to the
26 ILECs' SMS, Congress intended that access to be made

1 generally available to competing carriers. A contrary
2 interpretation would allow BellSouth to develop AIN
3 services as monopoly services.

4 Q: HAS INTERMEDIA REQUESTED BELL SOUTH TO PROVIDE
5 INTERMEDIA WITH INFORMATION NECESSARY TO ENTER
6 CORRECTLY, OR FORMAT FOR ENTRY, THE INFORMATION
7 RELEVANT FOR INPUT INTO BELL SOUTH'S SMS?

8 A: Intermedia has not made a specific request for
9 detailed information concerning entry of data into
10 BellSouth's SMS. Until such time as BellSouth
11 supports widespread interconnection of Intermedia's
12 customers through the provision of UNEs, Intermedia
13 has deferred pursuing access to optional services
14 which might be associated with those UNEs. Such
15 access is necessary if BellSouth is to meet the 14-
16 point checklist mandated in section 271(c)(2) of the
17 1996 Act. Intermedia intends to pursue such
18 interfaces as soon as BellSouth provides Intermedia
19 with the UNEs necessary for their utilization.

20 Q: HAS INTERMEDIA REQUESTED BELL SOUTH TO PROVIDE
21 INTERMEDIA WITH ACCESS TO ITS SERVICE CREATION
22 ENVIRONMENT IN ORDER TO DESIGN, CREATE, TEST, AND
23 DEPLOY ADVANCED INTELLIGENT NETWORK-BASED SERVICE AT
24 THE SMS?

25 A: No, Intermedia has not specifically requested access
26 to BellSouth's service creation capabilities. Until

1 such time as BellSouth supports interconnection of
2 Intermedia's customers through the provision of UNEs,
3 Intermedia has deferred pursuing access to optional
4 services which might be associated with those UNEs.
5 Such access is necessary if BellSouth is to meet the
6 14-point checklist mandated by section 271(c)(2) of
7 the 1996 Act. Intermedia will utilize BellSouth's
8 service creation and implementation capabilities in
9 the provision of optional services generally
10 associated with 1FRs, 1FBs, and PBX trunks.
11 Intermedia intends to pursue use of BellSouth's
12 service creation and implementation capabilities as
13 soon as BellSouth provides the necessary UNEs. I
14 should note that despite BellSouth's public statements
15 that it would make AIN service development
16 capabilities generally available to its competitors,
17 BellSouth continues to internally develop, implement,
18 and deploy retail AIN services without making its
19 service creation tool kit available to competing
20 providers. This has allowed BellSouth to retain a
21 significant competitive advantage in developing new
22 services through this technology.

23 **Q: HAS INTERMEDIA REQUESTED NUMBER PORTABILITY SERVICE**
24 **FROM BELL SOUTH PURSUANT TO SECTION 271(c)(2)(B)(xi) OF**
25 **THE 1996 ACT?**

1 **A:** Yes. BellSouth has provided interim number
2 portability capabilities on an ongoing basis to
3 Intermedia. These interim number portability
4 capabilities are principally provided through Remote
5 Call Forwarding and Direct Inward Dialing. Such
6 interim measures do not meet the number portability
7 requirements of the 14-point checklist of the 1996
8 Act, however. It remains to be seen whether BellSouth
9 will meet the Commission's long-term permanent number
10 portability requirements.

11 **Q:** **HOW DOES INTERMEDIA DEFINE "NONDISCRIMINATORY ACCESS"**
12 **AS USED IN SECTION 271(c) (2) (B) (xii) OF THE 1996 ACT?**

13 **A:** The term "nondiscriminatory access" as used in
14 subparagraph (c) (2) (B) (xii) should have the same
15 meaning ascribed to that term in sections 251
16 (including 251(c) (2) (C) and 251(c) (2) (D)) and 252, and
17 other provisions of the 1996 Act. Thus,
18 nondiscriminatory access under subparagraph
19 (c) (2) (B) (xii) means that the quality of access to
20 services or information necessary to allow the
21 requesting carrier to implement local dialing parity
22 in accordance with the requirements of section
23 251(b) (3), must be equal between all carriers
24 requesting access to that service. Moreover,
25 nondiscriminatory access necessarily means that access
26 to services or information necessary to implement

1 local dialing parity provided by an ILEC must be at
2 least equal in quality to that which the ILEC provides
3 to itself.

4 Q: IS BELLSOUTH PROVIDING DIALING PARITY TO INTERMEDIA
5 PURSUANT TO SECTION 271(c)(2)(B)(xii) AND 251(b)(3) OF
6 THE 1996 ACT?

7 A: Within the limited scope of local exchange services
8 that Intermedia can provide today principally through
9 its own facilities (because of BellSouth's inability
10 to provide UNE-based interconnection), BellSouth is
11 providing dialing parity on a very limited scale.

12 Q: HAS INTERMEDIA REQUESTED TRANSPORT AND TERMINATION
13 ARRANGEMENTS FROM BELLSOUTH?

14 A: Yes. The rates for local interconnection are set out
15 in Attachment B-1 (Local Service Interconnection) to
16 the Interconnection Agreement. Terms and conditions
17 are further outlined in Section IV (Local
18 Interconnection) of the Interconnection Agreement.
19 Paragraphs C and D of Section IV were modified in an
20 addendum dated February 24, 1997.

21 Q: DO YOU BELIEVE THAT THE TERMS AND CONDITIONS FOR
22 RECIPROCAL COMPENSATION IN THE INTERCONNECTION
23 AGREEMENT ADEQUATELY PROVIDE FOR RECOVERY OF
24 ADDITIONAL COSTS ASSOCIATED WITH THE TRANSPORT AND
25 TERMINATION OF BELLSOUTH'S CALLS ON INTERMEDIA'S
26 NETWORK?

1 **A:** To the extent the Interconnection Agreement calls for
2 reciprocal rates and recovery of additional costs in
3 the event there is traffic imbalance, the compensation
4 arrangement is adequate and reasonable.

5 **Q.** **HOW CAN THE INDUSTRY AND THE COMMISSION DETERMINE**
6 **WHETHER BELLSOUTH IS PROVIDING ACCESS AND**
7 **INTERCONNECTION IN COMPLIANCE WITH THE PARITY AND**
8 **NONDISCRIMINATION PROVISIONS OF THE 1996 ACT?**

9 **A.** As discussed throughout my testimony, the 1996 Act
10 obligates BOCs to provide access to services,
11 unbundled network elements, and databases and other
12 network functionalities in a manner that does not
13 discriminate against interconnected carriers, and that
14 is in parity with the quality of service that
15 BellSouth provides to itself, its subsidiaries and its
16 own customers. In order to ensure that BellSouth
17 meets these obligations, it is necessary to establish
18 service quality standards, and to establish reporting
19 requirements to ensure that BellSouth lives up to
20 them. To this end, Intermedia supports the standards
21 proposed by the Local Competition User Group ("LCUG"),
22 at least to establish a set of initial standards. A
23 copy of the performance standards proposed by LCUG is
24 appended as Attachment JS-1. Intermedia notes that
25 the LCUG standards focus on traditional voice services
26 and do not address many of the advanced data services

1 that are of critical importance to Intermedia.
2 Intermedia will propose standards for the provision of
3 data services later in this proceeding. Of course,
4 the parity requirements imposed by the 1996 Act
5 require that BellSouth's own internal performance
6 standards determine the quality of service that it
7 provides to competitive carriers. These internal
8 standards can only be determined by reports that
9 detail how quickly and efficiently BellSouth processes
10 orders for new services or service changes for its own
11 customers or subsidiaries, and provide other measures
12 of service quality. Because these reporting
13 requirements do not exist yet, it will take time --
14 perhaps six-to-twelve months -- to initiate the
15 reporting process and to ensure a large enough
16 collection of service data to establish quality
17 standards with confidence. Ultimately, these reports
18 will establish the quality of service that will define
19 "parity" for competitive carriers. Until that time,
20 the performance standards proposed by the LCUG should
21 be used as a baseline to establish reasonable service
22 quality standards.

23 **Q: PLEASE SUMMARIZE INTERMEDIA'S POSITION.**

24 A: Section 271 of the 1996 Act conditions BellSouth's
25 entry into in-region interLATA service upon a
26 demonstration that BellSouth's local market is open to

1 competition. In particular, the 1996 Act requires
2 that before BellSouth may be authorized to provide in-
3 region interLATA services, the FCC must first find
4 that, among other things, BellSouth has fully
5 implemented approved access and interconnection
6 agreements with one or more facilities-based competing
7 carriers providing service to both business and
8 residential subscribers, or, in extremely limited
9 circumstances, has an approved or effective SGAT; and
10 provides or generally offers the 14 items on the
11 "competitive checklist." BellSouth has not satisfied
12 the threshold showings required under Track A.
13 Moreover, because qualifying requests have been
14 submitted to BellSouth and have not yet been fully
15 implemented, BellSouth is precluded from seeking
16 interLATA authority under Track B. Moreover,
17 BellSouth has not met the 14-point "competitive
18 checklist" under section 271(c)(2)(B). In particular,
19 BellSouth's failure to implement the necessary
20 processes to make network elements, operational
21 support systems, and billing and other systems
22 actually available to competing providers of telephone
23 exchange service is fatal to BellSouth's attempt to
24 seek in-region interLATA authorization. The burden of
25 proof is appropriately on BellSouth to demonstrate
26 otherwise. So long as qualifying requests for access

1 and interconnection remain unsatisfied, as is the case
2 here, the requirements of section 271(c)(1)(A) would
3 remain unsatisfied, and Track B would remain
4 foreclosed to BellSouth.

5 Although Intermedia believes that a grant of in-
6 region interLATA authority to BellSouth under either
7 Track A or Track B is improper and/or premature at
8 this time, Intermedia is confident that BellSouth will
9 be able, at some point, to comply with its obligations
10 under the 1996 Act. In that instance, Intermedia
11 would wholeheartedly support BellSouth's entry into
12 the in-region interLATA market under Track A. In the
13 meantime, until such time as BellSouth is able to
14 comply with its statutory obligations, BellSouth's
15 attempts to enter the in-region interLATA market
16 should be rejected.

17 Q: DO YOU HAVE ANYTHING FURTHER?

18 A: No.

19 Q: DOES THIS CONCLUDE YOUR TESTIMONY?

20 A: Yes. I reserve the right, however, to amend, modify,
21 or supplement my testimony, as appropriate.

22

23 **END OF TESTIMONY**

24

25

26

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery*, Federal Express** and/or U.S. Mail this 17th day of July, 1997, to the following:

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LOCAL COMPETITION USERS GROUP (LCUG)

SERVICE QUALITY MEASUREMENTS (SQM)

Version 4
May 22, 1997

Membership: AT&T, Sprint, MCI, LCI, WorldCom

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LCUG Service Quality Measurements (SQMs)

Introduction

Background:

On August 8, 1996, the Commission released its First Report and Order (the Order) in CC Docket No. 96-98 (Implementation of the Local Competition Provisions of the Telecommunications Act of 1996). The Order established regulations to implement the requirements of the Telecommunications Act of 1996. Those regulations are intended to enable potential competitive local exchange carriers (CLECs) to enter and compete in local telecommunications markets. The Commission found that nondiscriminatory access to operations support systems ("OSS") of incumbent local exchange carriers ("ILECs") was essential to successful market entry by CLECs. Access to operational support systems was to occur by January 1, 1997. Many variations of interim OSS graphic user interfaces ("GUIs") and electronic gateways have been or are being installed by the ILECs. These interim systems have not provided the capability for the CLECs to provide the same customer experience for their customers as the ILECs do for theirs. The timeliness and accuracy of information processed by the ILEC for pre-ordering, ordering and provisioning, maintenance and repair, unbundled elements, and billing have been less than the expected levels of service. This lack of service delivery does not differ between provisioning method, whether it is simply buying existing services on a wholesale basis to be resold or interconnection utilizing unbundled elements. Final solutions for application-to-application real time system interfaces are evasive because of the complexity, the diversity of commitment schedules to implement them and the lack of industry guidelines.

On February 12, 1997, the Local Competition Users Group (LCUG) issued their "Foundation For Local Competition: Operations Support Systems Requirements For Network Platform and Total Services Resale." The core principles are: Service Parity, Performance Measurement, Electronic Interfaces, Systems Integrity Notification of Change, and Standards Adherence. Each of these are significant to ensure that CLEC customers receive equal levels of service to those of ILEC customers. The LCUG group indicated that it was essential that a plan be developed to measure ILECs performance for all the essential OSS categories, e.g., pre-ordering, ordering and provisioning, maintenance and repair, network performance, unbundled elements, operator services and directory assistance, system performance, service center availability and billing. To that end, an LCUG sub-committee was formed to address measurements and metrics. The following document is the result of that activity. A comprehensive list of all measurements was initially developed and distributed to the team members for review. Each committee member was then assigned a section to investigate and propose recommendations back to the group. The group discussed each measurement and used present measurements criteria contained in regulatory requirements or good business practices to determine the final item and classes of service to be measured. The service quality measurement (SQM) goal was difficult to set because the group lacked historical trended data from the ILECs. The ILECs have been reluctant to share current performance over the past 12-18 months. The goals were drawn from best of class and/or good business practices. The SQM goal may change as the ILECs start sharing historical as well as actually self-reporting data benchmark by the ILEC, the CLEC, and the CLEC industry on a going forward basis.

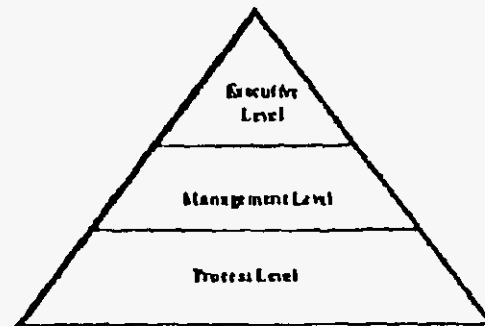
LCUG Service Quality Measurements (SQMs)

Measurement Plans:

A measurement plan must incorporate at least the following characteristics: 1) provide statistically valid and independently verifiable comparisons of the CLEC and CLEC industry experience to that of the ILEC; 2) account for potential performance variations due to differences in service and activity mix; 3) measure not only service measurements but also measures directed at UNEs in general and OSS interfaces; and 4) produce results which demonstrate the nondiscriminatory access to OSS functionality is being delivered across all interfaces and a broad range of resold services and unbundled elements. The measures must address interface availability, timeliness of execution, and accuracy of execution.

It is essential that the CLECs be able to determine that they are receiving equal treatment to that provided to the ILEC and its affiliates. Benchmarks and performance standards that are adopted by the CLECs and ILECs or ordered by commissions and reported will determine whether new service providers are receiving nondiscriminatory treatment. Benchmark comparisons should be self reported by the ILEC and reflect CLEC performance, ILEC performance and CLEC industry performance.

The measurements contained within this document addresses metrics at the executive level. There are several other levels of measurements that are used for the day-to-day activities as illustrated by the following simple diagram.



Process Improvement:

In addition to the actual reporting of measurements there must be a commitment to take corrective action when poor performance or non-parity situations are identified. The ILECs need to self-report all measurements and analyze the results. Root cause analysis must be conducted and corrective actions taken to improve results or resolve issues. Corrective action steps, schedules and milestones should be developed by the ILEC and CLEC as appropriate to ensure timely implementation of corrective steps.

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

PRE-ORDER (PO)

Function	Measurement Objective	Proposed Service Quality Measurement
Timeliness of Providing Pre-Ordering Information	Measures the ILEC response time to a query for appointment scheduling, service & feature availability, address verification, request for Telephone Numbers (TNs) and Customer Service Records (CSRs). The query interval starts with the request message leaving the CLEC and ends with the response message arriving at the CLEC.	<p>≤ 2 seconds from the time the query is launched until the following data is received back (98% ≤ 2 sec & 100% ≤ 5 sec):</p> <ul style="list-style-type: none"> • Due Date Reservation • Feature Function Availability • Facility Availability • Street Address Validation • Service Availability Information • Appointment Scheduling • Customer Service Records • Telephone Number Assignments: <ol style="list-style-type: none"> 1. ≤ 30 TNs ret'd in ≤ 2 sec 98% of time & ≤ 5 sec 100% of time, 2. > 30 TNs ret'd < 2 hours 100% of time <p><u>PO-1</u> $\frac{\text{\# of Responses Received on time}}{\text{Total \# of Queries Sent}} \times 100$</p> <p><u>PO-2</u> Mean Cycle Time</p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

ORDERING AND PROVISIONING (OP)

Function	Measurement Objective	Proposed Service Quality Measurement
Orders completed within specified intervals	Measures the percentage and mean completion interval of orders (installation, feature change, service disconnect) completed with a requested due date that is equal or less than the interval specified in the Service Quality Measurements column.	<p>Unless specified below, orders with no Premises Visit or no physical work involved completed within 1 day of service order receipt *; orders that require Premises Visit or physical work: completed within 3 days of service order receipt *; 99% orders completed on due date *.</p> <p>Installation:</p> <ul style="list-style-type: none"> • UNE Platform (at least DS0 loop + local switch + all common elements) always within 24 hours, regardless of dispatch • UNE Channelized DS1 (DS1 loop + multiplexing) always within 48 hours • Unbundled DS0 loop always within 24 hours • Unbundled DS1 loop (unchannelized) always within 24 hours • Other Unbundled Loops always within 24 hours • Unbundled Switch always within 48 hours • Dedicated Transport - DS0/DS1 always within 3 business days • Dedicated Transport - DS3 always within 5 bus days <p>Feature Changes:</p> <ul style="list-style-type: none"> • All orders completed within 3 business hours of receipt <p>Disconnects:</p> <ul style="list-style-type: none"> • Resale Product or Svc Disconnects always within 24 hrs • UNE switching within 24 hours • UNE (other) within 24 hours <p>OP - 1 $\frac{\text{\# of Orders Completed on Time}}{\text{Total \# of Orders Completed}} \times 100$</p> <p>OP - 2 Mean Completion Time</p>

* Reported for the following types of service or facility: Resold POTS, Resold ISDN, Resold Centres/Centrex-like, Resold PBX trunks, Resold Channelized T1.5 Service, Other Resold Services, UNE Platform (at least DS0 loop + local switch + transport elements), UNE Channelized DS1 (DS1 loop + multiplexing), Unbundled DS0 loop, Unbundled DS1 loop, Other Unbundled loops, Unbundled Switch, Other UNEs

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

ORDERING AND PROVISIONING (OP) (con'd)

Function	Measurement Objective	Proposed Service Quality Measurement
Order Accuracy	Measures the accuracy and completeness of the ILEC provisioning or disconnecting service by comparing what was ordered & what was completed	<p>≥ 99% are completed without error</p> <p>OP-3 $\frac{\text{\# of Orders Completed w/o error}}{\text{Total \# of Orders Sent}} \times 100$</p>
Order Status	<p>Measures the response time (by percentage and mean time) for: Firm Order Confirmations (C-FOCs and D-FOCS *), Jeopardize / revised due date, Rejects, and Completions from the time an order is sent to the ILEC until a status is received</p> <p>*C-FOC: accepted, no change D-FOC: does not match due date</p>	<ul style="list-style-type: none"> • FOC: 100% ≤ 4 hrs • Jeopardies/revised due date: 100% ≤ 4 hours • Rejects: ≥ 97% in ≤ 15 seconds • Order Completions: ≥ 97% received within 30 min of order completion <p>OP-4 $[\# \text{ of FOCs returned} + (\text{Total \# of Orders Sent} - \text{Rejects Returned})] \times 100$</p> <p>OP-5 <u>Mean Time to Return FOC</u></p> <p>OP-6 $[\# \text{ of D_FOCs returned in } \leq 4 \text{ hours} + (\text{Total \# of Orders sent} - \text{Rejects Returned})] \times 100$</p> <p>OP-7 <u>Mean Time to Return D-FOCS</u></p> <p>OP-8 $(\# \text{ of Rejects returned in } \leq 15 \text{ seconds}) + (\text{Total \# of Rejects Returned}) \times 100$</p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

ORDERING AND PROVISIONING (OP) (con'd)

Function	Measurement Objective	Proposed Service Quality Measurement
		<p>OP-9 <u>Mean Time to Return Rejects</u></p> <p>OP-10 Jeopardies returned w/i 70% of allotted order time + Total # Jeopardies Returned</p> <p>OP-11 (# of Completions returned in ≤ 30 minutes) + (Total # Completed Orders) x 100</p> <p>OP-12 Mean Time to Return Completion</p> <p>OP-13 Jeopardies (Total C-FOCS - Total Rejects)</p>
# of Held Orders	Tracks the percentage and number of held orders within specified intervals	<p>Report for: ≥ 15 days, $\leq 0.1\%$ ≥ 90 days, $\approx 0\%$</p> <p>OP-14 (# of Orders Held for \geq "x" days) + (Total # of Orders Sent to ILEC in the past "x" days) x 100 where "x" = 15 or 90 days</p> <p>OP-15 Mean Time of Orders Held Prior to Completion</p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

MAINTENANCE / REPAIR (MR)

Function	Measurement Objective	Proposed Service Quality Measurement
Time to Restore (TTR)	<p>Measures the percent of restorals made by product and service within 24 hours or less*</p> <p><i>Measures the mean time that it takes for the ILEC to resolve customer troubles*</i></p>	<p>Out of Service No Dispatch</p> <p>≥ 85% in 2 hrs</p> <p>≥ 95% in 3 hrs</p> <p>≥ 99% in 4 hrs</p> <p>All other Troubles</p> <p>≥ 95% in 24 hrs Dispatch Required</p> <p>≥ 90% in 4 hrs</p> <p>≥ 95% in 8 hrs</p> <p>≥ 99% in 16 hrs</p> <p>MR-1</p> <p>$\left(\frac{\text{\# of Troubles Restored Within "x" hours} + \text{Total \# Troubles}}{\text{Total \# of Troubles}} \right) \times 100$</p> <p>where "x" = 2, 3, 4, 8, 16, or 24 "running clock" hours</p> <p><u>Mean Time to Restore reported for ILEC and CLEC, for dispatch required and no dispatch required</u></p> <p>MR-2</p> <p>$\frac{\text{Total \# of Trouble Minutes} + \text{Total \# of Trouble Reports}}{\text{Total \# of Trouble Reports}}$</p>
Repeat Troubles	Measures the frequency of recurring customer trouble on the same line, circuit or service*	<p>≤ 1% within 30 days*</p> <p>MR-3</p> <p>$\frac{\text{\# of telephone lines reporting } \geq 1 \text{ troubles in the current report month}}{\text{Total number of troubles in the current report month}}$</p>

* Reported for the following types of service or facility: Resold POTS, Resold ISDN, Resold Centrex/Centrex-like, Resold PBX trunks, Resold Channelized T1.5 Service, Other Resold Services, UNE Platform (at least DS0 loop + local switch + transport elements), UNE Channelized DS1 (DS1 loop + multiplexing), Unbundled DS0 loop, Unbundled DS1 loop, Other Unbundled loops, Unbundled Switch, Other UNEs

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

MAINTENANCE / REPAIR (MR) (con'd)

Function	Measurement Objective	Proposed Service Quality Measurement
		<i>This includes those lines, circuits, or services with a second trouble ticket coded out as CC (Came Clear), CO (central office), FAC (Facility) or STA (station) that follow an initial ticket coded out as Any found or Non-found disposition.</i>
Troubles Per 100 Lines	Measures the frequency of troubles reported within the ILEC's network	≤ 1.5 per month* MR-4 $(\# \text{ of Initial \& Repeated Trouble Reports per exchange per month}) \div (\text{Total \# of Lines per exchange}) \times 100$
Estimated Time to Restore (Appointments Met) ETTR	Measures the compliance of restoring service within the time estimated to the CLEC, reported for premises visits required and premises visit not required*	$\geq 99\%*$ MR-5 $(\# \text{ of Customer Trouble Appointments Met} \div \text{Total \# Customer Trouble Appointments}) \times 100$

* Reported for the following types of service or facility: Resold POTS, Resold ISDN, Resold Centrex/Centrex-like, Resold PBX trunks, Resold Channelized T1.5 Service, Other Resold Services, UNE Platform (at least DS0 loop + local switch + transport elements), UNE Channelized DS1 (DS1 loop + multiplexing), Unbundled DS0 loop, Unbundled DS1 loop, Other Unbundled loops, Unbundled Switch, Other UNEs

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

GENERAL (GE)

Function	Measurement Objective	Proposed Service Quality Measurement
Systems Availability	Measures the availability of operations support systems and associated interfaces (for pre-ordering, ordering and provisioning, maintenance)	<p>< 0.1% unplanned downtime per month, reported for each interface:</p> <p>Pre-ordering Inquiry Interface Ordering Interface Maintenance Interface</p> <p>GE-1 $\frac{(\# \text{ Hours Interface and/or System Not Available as Scheduled}) + (\text{Total } \# \text{ Hours Scheduled Availability})}{100}$</p> <p>GE-2 Mean # of Hours Available</p>
Center Responsiveness	Measures the time for the ILBC representative to answer business office calls in provisioning and trouble report centers.	<p>≥ 95% within 20 seconds 100% within 30 seconds</p> <p>GE-3 $\frac{\# \text{ Calls Answered Within Specified Timeframe}}{\text{Total } \# \text{ Calls from CLEC to Center}} \times 100$</p> <p>GE-4 $\frac{\text{Mean Time to Answer Calls w/o IVR; if IVR} - \text{Mean Time to Answer Calls after the end of IVR}}{\text{Mean Time to Answer Calls w/o IVR; if IVR}}$</p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

BILLING (BI)

Function	Measurement Objective	Proposed Service Quality Measurement
Timeliness of Billing Records Delivered	Measures the timeliness of billing records and wholesale bills (usage, CSRs, service orders, time & materials, adjustments) delivered to CLEC	<p>99.9% billing records received in ≤ 24 hours 100% billing records received in ≤ 48 hours $\geq 99.95\%$ wholesale bills received within 10 calendar days of bill date</p> <p>BI-1 $\frac{\# \text{ Billing Records Delivered on time}}{\text{Total \# of Billing Records Received}} \times 100$</p> <p>BI-2 Mean Time to Provide <u>Billing</u> Records</p> <p>BI-3 Mean Time to Deliver Wholesale Bills</p>
Accuracy	Measures the percentage and mean time of billing records delivered to CLEC in the agreed-upon format and with the complete agreed-upon content (includes time and material and other non-recurring charges)	<p>$> 98\%$ wholesale bill financially accurate $> 99.99\%$ of all records transmitted</p> <p>BI-4 $\frac{(\# \text{ of Accurate and Complete Formatted Mechanized Bills} , \text{ Total \# Mechanized Bills Received})}{\text{Total \# Mechanized Bills Received}} \times 100$</p> <p>BI-5 $\frac{\# \text{ of Billing Records Transmitted Correctly}}{\text{Total \# of Billing Records Received}} \times 100$</p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

OPERATOR SERVICES AND DIRECTORY ASSISTANCE (DA)

Function	Measurement Objective	Proposed Service Quality Measurement
Average Speed to Answer	Measures the percent and mean time a call is answered by an OS or DA operator in a predefined timeframe. Includes all time from initiation of ringing until the customer's call is answered.	<p>For live agent, 90% of calls answered in 10 seconds. For Voice Response Unit service, 100% within 2 seconds.</p> <p>DA-1 $\frac{\# \text{ Calls Answered Within "x" seconds}}{\text{Total DA Calls}} \times 100$ where "x" equals 2 or 10 seconds</p> <p>DA-2 <i>DA Mean Time To Answer</i></p> <p>OS-1 $\frac{\# \text{ Calls Answered Within "x" seconds}}{\text{Total OS Calls}} \times 100$ where "x" equals 2 or 10 seconds</p> <p>OS-2 <i>OS Mean Time To Answer</i></p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

NETWORK PERFORMANCE (NP)

Function	Measurement Objective	Proposed Service Quality Measurement
Network Performance Parity	Compares ILEC performance distribution for its own customers to ILEC performance distribution for CLEC customers. Measures the deviation from supplier service performance distribution for each metric specified.	<p>Deviation $\leq 0.10\%$ from supplier service performance distribution:</p> <p>Transmission quality:</p> <ul style="list-style-type: none"> • Subscriber Loop Loss • Signal to Noise Ratio • Idle Channel Circuit Noise • Loops-Circuit Balance • Circuit Notched Noise • Attenuation Distortion <p>Speed of Connection:</p> <ul style="list-style-type: none"> • Dial Tone Delay • Post Dial Delay • Call Completion/ Delivery Rate <p>Reliability Requirements: (For TSR Only)</p> <ul style="list-style-type: none"> • Network incidents affecting > 5000 blocked calls • Network incidents > 100,000 blocked calls <p>Statistical comparison based on the Mean ILEC Customer Experience and standard deviation from this mean, the Mean CLEC Customer Experience and standard deviation from this mean, and the number of observations used to determine these means.</p> <p>NP-1 (Mean ILEC customer experience - Mean CLEC customer experience) \div Mean ILEC customer experience $\times 100$ <i>Deviation between ILEC performance for ILEC and CLEC customers must be less than 0.10%.</i></p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

INTERCONNECT / UNBUNDLED ELEMENTS AND COMBOS (IUE)

Function	Measurement Objective	Proposed Service Quality Measurement
Availability of Network Elements	Measures the availability of network elements (e.g. signaling link transport, SCPs/ Databases, & loop combinations)	<p>Loop Combo availability 100%</p> <p>Signaling Link Transport Unavailability:</p> <ul style="list-style-type: none"> A-Link: ≤ 1 min per year D-Link: ≤ 1 sec per year SCPs/Databases: ≤ 15 min per year SCPs/Databases correctly updated: $\geq 99\%$ in ≤ 24 hrs <p>IUE-1 $\frac{\# \text{ minutes Loop unavailable} \times 100}{\text{Total \# minutes}}$</p> <p>IUE-2 $\frac{\# \text{ minutes A-link available during "x" years}}{\text{"x" years}}$</p> <p>IUE-3 $\frac{\# \text{ seconds D-link unavailable during "x" year}}{\text{"x" year}}$ <p>Where $x \leq$ or \geq year. After year, monthly reporting should be for a rolling year.</p> <p>IUE-4 $\frac{\# \text{ Database Records Correctly Updated} \times 100}{\text{Total \# Update Requests Received by ILEC}}$</p> <p>IUE-5 $\frac{(\# \text{ Database Records Updated within 24 hours of Update Request Receipt})}{(\text{Total \# Database Update Requests Received})} \times 100$</p> </p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

INTERCONNECT / UNBUNDLED ELEMENTS AND COMBOS (IUE) (con'd)

Function	Measurement Objective	Proposed Service Quality Measurement
Performance of Network Elements	Measures the performance of network elements (e.g. LIDB, routing to CLEC OS/DA platforms, 800, AIN)	<p>Example:</p> <ul style="list-style-type: none"> • LIDB reply rate to all query attempts $\geq 99.95\%$ • LIDB query time-out $\leq 0.05\%$ • Unexpected data values in replies for all LIDB queries $\leq 1\%$ • % of LIDB queries return a missing customer record = 0% • Group troubles in all LIDB queries $\leq 0.5\%$ <p>Delivery to OS platform:</p> <p>Mean Post Dial Delay for "0" calls from LSO to CLEC OS platform ≤ 2 seconds PDD for "0+" calls with 6 digit analysis from LSO to CLEC OS platform: $95\% \leq 2.0$ sec; Mean ≤ 1.75 sec</p> <p>Percent of call attempts to CLEC OS Platform that were blocked $\leq 0.1\%$</p> <p>IOE-6 $\frac{(\# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ Query Replies Received by CLEC}) + (\text{Total } \# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ Queries Received by ILEC})}{\text{Total } \# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ Queries Received by ILEC}} \times 100$</p> <p>IUE-7 $\frac{(\# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ time-out responses received by CLEC}) + (\text{Total } \# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ Queries Received by ILEC})}{\text{Total } \# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ Queries Received by ILEC}} \times 100$</p> <p>IUE-8 $\frac{(\# \text{ LIDB} \mid \text{ or } 800 \text{ or AIN or } n \mid \text{ Query Replies with unexpected data values received by CLEC}) + (\text{Total } \# \text{ LIDB Queries Received by ILEC})}{\text{Total } \# \text{ LIDB Queries Received by ILEC}} \times 100$</p>

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

INTERCONNECT / UNBUNDLED ELEMENTS AND COMBOS (IUE) (con'd)

Measurement	Measurement	Measurement
		<p>IUE-9 $\left(\frac{\# \text{ LIDB (or 800 or AIN or n) Query Replies missing customer record received by CLEC}}{\text{(Total \# LIDB (or 800 or AIN or n) Queries received by ILEC)}} \times 100 \right)$</p> <p>IUE-10 $\left(\frac{\text{Cumulative Total \# Post Dial Delay Seconds experienced on "0" calls from LSO to CLEC OS platform} + \text{(Total \# "0" calls from LSO to CLEC OS platform)}}{\text{Total \# "0" calls from LSO to CLEC OS platform}} \right)$</p> <p>IUE-11 $\left(\frac{\text{Cumulative Total \# Post Dial Delay Seconds experienced on "0+" calls with 6 digit analysis from LSO to CLEC OS platform} + \text{(Total \# "0+" calls with 6 digit analysis from LSO to CLEC OS platform)}}{\text{Total \# "0+" calls with 6 digit analysis from LSO to CLEC OS platform}} \right)$</p> <p>IUE-12 $\left(\frac{\# \text{ of "0+" calls with 6 digit analysis from LSO to CLEC OS platform that have Post Dial Delay} \leq 2 \text{ seconds} + \text{(Total \# "0+" calls with 6 digit analysis from LSO to CLEC OS platform)}}{\text{Total \# "0+" calls with 6 digit analysis from LSO to CLEC OS platform}} \right)$</p> <p>IUE-13 $\left(\frac{\# \text{ Blocked Call Attempts to CLEC OS Platform}}{\text{Total \# Call Attempts to CLEC OS Platform}} \times 100 \right)$</p>

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LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

FORMULAS QUICK REFERENCE GUIDE

Metric No.	Formula
PRE-ORDER	
PO-1	$\frac{\text{\# of Responses Received on Time}}{\text{Total \# of Queries Sent}} \times 100$
PO-2	Mean Cycle Time
ORDERING AND PROVISIONING	
OP-1	$\frac{\text{\# of Orders Completed on Time}}{\text{Total \# of Order Completed}} \times 100$
OP-2	Mean Completion Interval
OP-3	$\frac{\text{\# of Orders Completed w/o Error}}{\text{Total \# of Orders Sent}} \times 100$
OP-4	$\frac{[\text{\# of C-FOCs Returned in } \leq 4 \text{ hours} + (\text{Total \# of Orders Sent} - \text{Syntax Rejects Returned})]}{\text{Total \# of Orders Sent}} \times 100$
OP-5	Mean Time to Return FOC
OP-6	$\frac{[\text{\# of D-FOCs Returned in } + (\text{Total \# of Orders Sent} - \text{Rejects Returned})]}{\text{Total \# of Orders Sent}} \times 100$

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LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

OP-7	Mean Time to Return <i>D-FOCs</i>	
OP-8	(# of <i>Syntax</i> Rejects Returned in ≤ 15 seconds) + (Total # of <i>Syntax</i> Rejects Returned)	x 100
OP-9	Mean Time to Return Rejects	
OP-10	<i>Jeopardies Returned within 70% of allotted order time + Total number Jeopardies Returned</i>	
OP-11	(# of Completions Returned in ≤ 30 minutes) + (Total # Completed Orders)	x 100
OP-12	Mean Time to Return Completion	
OP-13	Jeopardies Total C-FOCs - Total Rejects	
OP-14	(# of Orders Held for $\geq x$ days) + (Total # of Orders Sent to ILEC in past x days)	x 100
OP-15	Mean Time of Orders Held Prior to Completion	
MAINTENANCE / REPAIR		
MR-1	(# of Troubles Restored within x hours + Total # Troubles) where "x" = 2,3,4,8,16 or 24 "running clock" hours	x 100

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LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

MR-2	$\frac{\text{Total \# of Trouble Minutes}}{\text{Total \# of Trouble Reports}}$	
MR-3	$\frac{\text{\# of telephone lines reporting } \geq 2 \text{ troubles in the current report months}}{\text{Total \# of troubles in current report months}}$	
MR-4	$\frac{\text{\# of Initial \& Repeated Trouble Reports per exchange per month}}{\text{Total \# of Lincs per exchange}} \times 100$	
MR-5	$\frac{\text{\# Customer Trouble Appointments Met}}{\text{Total \# Customer Trouble Appointments}} \times 100$	
GENERAL		
GE-1	$\frac{(\text{\# Hours Interface and/or System Not Available as Scheduled})}{(\text{Total \# Hours Scheduled Availability})} \times 100$	
GE-2	Mean \# of Hours Available	
GE-3	$\frac{\text{\# Calls Answered within Specified Timeframe}}{\text{Total \# Calls from CLEC to Center}} \times 100$	
GE-4	Mean Time to Answer Calls w/o IVR; If IVR, Mean Time to Answer Calls after end of IVR	
BILLING		
BI-1	$\frac{\text{\# Billing Records Delivered on Time}}{\text{Total \# of Billing Records Received}} \times 100$	

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

BI-2	Mean Time to Provide Billing Records	
BI-3	Mean Time to Deliver Wholesale Bills	
BI-4	(# of Accurate & Complete Formatted Mechanized Bills + Total # Mechanized Bills Received)	x 100
BI-5	<u># of Billing Records Transmitted Correctly</u> Total # of Billing Records Received	x 100
DIRECTORY ASSISTANCE AND OPERATOR SERVICES		
DA-1	<u># Calls Answered within "x" seconds</u> Total DA Calls where "x" equals 2 or 10 seconds	x 100
DA-2	DA Mean Time to Answer	
OS-1	<u># Calls Answered within "x" seconds</u> Total OS Calls where "x" equals 2 or 10 seconds	x 100
OS-2	OS Mean Time to Answer	
NETWORK PERFORMANCE		
NP-1	(Mean ILEC customer experience - Mean CLEC customer experience) + Mean ILEC Customer Experience	x 100

LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

INTERCONNECTION / UNBUNDLED ELEMENTS AND COMBOS

IUE-1	<u># Minutes Loop available</u> Total # Minutes	x 100
IUE-2	<u># Minutes A-link unavailable during x years</u> x years (where "x" < or > 1 year after first year, monthly reporting should be for a rolling year.	
IUE-3	<u># Seconds D-link unavailable during x years</u> x years	
IUE-4	<u># Database Records Correctly Updated</u> Total # Update Requests Received by ILEC	x 100
IUE-5	(# Database Records Updated within 24 hrs. of Update Request Received) ÷ (Total # Database Update Requests Received)	
IUE-6	(# LIDB [or 800 or AIN or n] Query Replies Received by CLEC) ÷ (Total # LIDB [or 800 or AIN or n] Queries Received by ILEC	x 100
IUE-7	(# LIDB [or 800 or AIN or n] Time-Out Responses Received by CLEC) ÷ (Total # LIDB [or 800 or AIN or n] Queries Received by ILEC)	x 100
IUE-8	(# LIDB [or 800 or AIN or n] Query Replies with Unexpected Data Values Received by CLEC) ÷ (Total # LIDB [or 800 or AIN or n] Queries Received by ILEC)	x 100

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LCUG Service Quality Measurements (SQMs)

ASSUMPTION: OSS FULLY IMPLEMENTED BY ILEC

IUE-9	(# LIDB [or 800 or AIN or n] Query Replies Missing Customer Record Received by CLEC) + (Total # LIDB [or 800 or AIN or n] Queries Received by ILEC)	x 100
IUE-10	(Cumulative Total # Post Dial Delay Seconds experienced on "0" calls from LSO to CLEC OS platform) ÷ (Total # "0" calls from LSO to CLEC OS platform)	
IUE-11	(Cumulative Total # Post Dial Delay Seconds experienced on "0+" calls with 6-digit analysis from LSO to CLEC OS platform) ÷ (Total # "0+" calls with 6-digit analysis from LSO to CLEC OS platform)	
IUE-12	(# of "0+" calls with 6-digit analysis from LSO to CLEC OS platform that have Post Dial Delay ≤ 2 seconds) ÷ (Total # "0+" calls with 6-digit analysis from LSO to CLEC OS platform)	
IUE-13	$\frac{\text{\# Blocked Call Attempts to CLEC OS Platform}}{\text{Total \# Call Attempts to CLEC OS Platform}}$	x 100

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

In the Matter of)	
)	
)	
Application by SBC Communications Inc.,)	CC Docket No. 97-121
Pursuant to Section 271 of the)	
Communications Act of 1934, as amended,)	
To Provide In-Region, InterLATA Services)	
In Oklahoma)	

MEMORANDUM OPINION AND ORDER

Adopted: June 25, 1997

Released: June 26, 1997

By the Commission: Chairman Hundt issuing a separate statement.

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I. INTRODUCTION

1. On April 11, 1997, SBC Communications Inc. and its subsidiaries, Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance, (collectively, SBC) filed an application for authorization under section 271 of the Communications Act of 1934, as amended, to provide in-region interLATA services in the State of Oklahoma.¹ For the reasons set forth below, we conclude that SBC has not demonstrated on this record that it is providing access and interconnection to an unaffiliated, facilities-based competing provider of telephone exchange service to residential and business subscribers, as required by section 271(c)(1)(A) of the statute.² We further conclude that, under the circumstances presented in this application, SBC may not obtain authorization to provide in-region interLATA services in Oklahoma pursuant to Track B of the Act at this time because SBC has received, at the very least, several requests for access and interconnection within the meaning of section 271(c)(1)(B).³

2. Given our findings that SBC has not satisfied section 271(c)(1)(A) on this record, and may not at this time proceed pursuant to section 271(c)(1)(B), we conclude that SBC has not satisfied the requirements of subsection 271(c)(1). We therefore deny, pursuant to section 271(d)(3), SBC's application to provide in-region interLATA services in Oklahoma.

¹ See *Comments Requested on Application by SBC Communications, Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Oklahoma*, Public Notice, DA 97-753 (rel. Apr. 11, 1997). On April 23, 1997, the Association for Local Telecommunications Services (ALTS) filed a motion asking the Commission to dismiss SBC's application and impose sanctions on SBC (ALTS Motion). In response to this motion, the Common Carrier Bureau (Bureau) issued a Public Notice seeking comment from interested third parties. See *ALTS's Motion to Dismiss SBC Communications Inc.'s Application for Section 271 Authorization to Provide In-Region, InterLATA Service in the State of Oklahoma*, Public Notice, DA 97-864 (rel. Apr. 23, 1997) (*April 23rd Public Notice*).

² 47 U.S.C. § 271(c)(1)(A).

³ *Id.* § 271(c)(1)(B). As used in this Order, the term "Track B" includes both the requirements in section 271(c)(1)(B) and the other section 271 requirements that a BOC must satisfy if it relies on a statement of generally available terms and conditions to satisfy section 271, including the requirement that the BOC's statement "offers all of the items included in the competitive checklist in [section 271(c)(2)(B)]." See *Id.* § 271(d)(3)(A)(ii). Similarly, the term "Track A" includes the requirement that, "with respect to access and interconnection provided pursuant to [section 271(c)(1)(A), the BOC] has fully implemented the competitive checklist in [section 271(c)(2)(B)]." See *Id.* § 271(d)(3)(A)(i).

II. STATUTORY FRAMEWORK

3. The Telecommunications Act of 1996⁴ conditions Bell Operating Company (BOC)⁵ provision of in-region interLATA services on compliance with certain provisions of section 271. BOCs must apply to the Commission for authorization to provide interLATA services originating in any in-region state.⁶ The Commission must issue a written determination on each application no later than 90 days after receiving such application.⁷ 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.⁸ In addition, the Commission must consult with the applicable state commission to verify that the BOC has either a state-approved interconnection agreement or statement of generally available terms and conditions that satisfies the "competitive checklist," as described below.⁹

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq.* The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act."

⁵ For purposes of this proceeding, we adopt the definition of the term "Bell Operating Company" contained in 47 U.S.C. § 153(4).

⁶ 47 U.S.C. § 271(d)(1). The Modification of Final Judgment (MFJ), which ended the government's antitrust suit against AT&T, and which resulted in the divestiture of the BOCs from AT&T, prohibited the BOCs from providing interLATA services. *See United States v. Western Elec. Co.*, 552 F. Supp. 131, 226-234 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also United States v. Western Elec. Co.*, Civil Action No. 82-0192 (D.D.C. Apr. 11, 1996) (vacating the MFJ). For purposes of this proceeding, we adopt the definition of the term "in-region state" that is contained in 47 U.S.C. § 271(i)(1). We note that section 271(j) provides that a BOC's in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines "interLATA services" as "telecommunications between a point located in a local access and transport area and a point located outside such area." 47 U.S.C. § 153(21). Under the 1996 Act, a "local access and transport area" (LATA) is "a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission." 47 U.S.C. § 153(25). LATAs were created as part of the MFJ's "plan of reorganization." *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff'd sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, "all BOC territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest." *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993 (D.D.C. 1983).

⁷ 47 U.S.C. § 271(d)(3).

⁸ *Id.* § 271(d)(2)(A).

⁹ *Id.* § 271(d)(2)(B).

4. Section 271 requires the Commission to make several findings before approving BOC entry. As a preliminary matter, a BOC must show that it satisfies the requirements of either section 271(c)(1)(A) or 271(c)(1)(B).¹⁰ Those sections provide:

(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. 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.

(B) FAILURE TO REQUEST ACCESS.-A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f). For purposes of this subparagraph, a Bell operating company shall be considered not to have received any request for access and interconnection if the State commission of such State certifies that the only provider or providers making such a request have (i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement.

5. In order to grant a BOC's application, the Commission must also find that: (1) the interconnection agreements or statements approved at the state level under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B);¹¹ (2) the requested

¹⁰ *Id.* § 271(d)(3)(A).

¹¹ *Id.* § 271(c)(2)(B).

authorization will be carried out in accordance with the requirements of section 272;¹² and (3) the BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity."¹³

III. REQUIREMENTS OF SECTION 271(c)(1)(A)

A. Background

6. In order to satisfy section 271(c)(1)(A), a BOC must demonstrate that it "is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . . to *residential and business subscribers*."¹⁴ According to SBC, its "implemented agreement with Brooks Fiber satisfies all the requirements of [section 271(c)(1)(A)]."¹⁵ Because SBC relies exclusively on Brooks Fiber (Brooks) for purposes of satisfying section 271(c)(1)(A), we will focus in this section only on the record evidence concerning Brooks' activities in Oklahoma. A key issue in determining whether SBC has satisfied section 271(c)(1)(A) is whether Brooks is a competing provider of telephone exchange service to both residential and business subscribers.

7. The following facts regarding Brooks' operations in Oklahoma are undisputed. Brooks, a carrier unaffiliated with SBC, has received authority to "operate as a competitive local exchange company . . . , providing all types of intrastate switched services, including switched local exchange (i.e., dial-tone) service" in Oklahoma.¹⁶ Brooks has an effective

¹² *Id.* § 272. See *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*), on recon., FCC 97-52 (rel. Feb. 19, 1997), further recon. pending, petition for summary review in part denied and motion for voluntary remand granted sub nom., *Bell Atlantic v. FCC*, No. 97-1067 (D.C. Cir. filed Mar. 31, 1997), petition for review pending sub nom., *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir. filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *Second Order on Reconsideration*, CC Docket No. 96-149, FCC 97-222 (rel. June 24, 1997); *Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996).

¹³ 47 U.S.C. § 271(d)(3)(C).

¹⁴ *Id.* § 271(c)(1)(A) (emphasis added).

¹⁵ SBC Brief in Support at 12.

¹⁶ Initial Comments of Brooks Fiber Communications of Oklahoma, Inc., and Brooks Fiber Communications of Tulsa, Inc., Oklahoma Corporation Commission (Oklahoma Commission) Proceeding Cause No. PUD 970000064, at 1 (filed Mar. 11, 1997) (SBC Application, Appendix - Volume IV, Tab 23) (Initial Comments of Brooks Before the Oklahoma Commission).

local exchange tariff in place for the provision of residential and business services.¹⁷ As of March 11, 1997, Brooks was serving twenty business customers in Oklahoma.¹⁸ Of these twenty business customers, one received service via resold SBC ISDN service, while the others received service either via direct on-net connections to Brooks' fiber optic transmission rings or through leased SBC dedicated T-1 facilities.¹⁹ In addition, Brooks has test circuits activated to the residences of four of its Oklahoma employees.²⁰ These circuits are all provisioned through the resale of SBC's local exchange service.²¹ Brooks is not billing the employees involved in the test of these circuits.²²

¹⁷ Brooks Fiber Communications of Tulsa, Inc. and Brooks Fiber Communications of Oklahoma, Inc., O.C.C. Tariff No. 2 (SBC Application, Appendix - Volume II, Tab 3).

¹⁸ Initial Comments of Brooks Before the Oklahoma Commission at 2; SBC Apr. 28 Comments at 9.

¹⁹ Initial Comments of Brooks Before the Oklahoma Commission at 2.

²⁰ *Id.*; Brooks Apr. 28 Comments at 2; Brooks May 1 Comments at 6; *see also* SBC Apr. 28 Comments at 3.

²¹ Brooks Apr. 28 Comments at 2; Brooks May 1 Comments at 6 *see also* SBC Brief in Support at 11; SBC Apr. 28 Comments at 3.

²² ALTS Motion, Affidavit of John C. Shapleigh, Executive Vice President -- Regulatory and Corporate Development, Brooks Fiber Properties, Inc., at 1 (Affidavit of John C. Shapleigh); *see also* SBC Apr. 28 Comments at 9-10 (asserting that for purposes of section 271 the price charged by the competing provider is irrelevant).

B. Positions of the Parties²³

8. As an initial matter, we note that commenters offer differing views about the showing that SBC must make in order to demonstrate that Brooks is a competing provider that satisfies the requirements of section 271(c)(1)(A).²⁴ Commenters use various terms (e.g., "serv[e],"²⁵ "provi[de],"²⁶ "offer[],"²⁷ "furnish[]"²⁸) to describe what Brooks must do to meet the competing provider requirement of section 271(c)(1)(A), although commenters often do not define the terms they use.

9. Various commenters assert that SBC does not satisfy the requirements of section 271(c)(1)(A) because Brooks' test of four circuits to the homes of its employees does not constitute residential service for purposes of this section.²⁹ Brooks states that the sole purpose of its test is to identify and correct any problems in SBC's and Brooks' resale support and ancillary services systems.³⁰ According to Brooks, it is not billing the employees involved in the test of these circuits.³¹ Brooks represents that it "is not now offering

²³ Given our 90-day statutory deadline to make determinations on BOC section 271 applications, we will treat the opposition to SBC's application filed by the Battle Group, Inc. d/b/a TBG Communications as an *ex parte* submission, rather than a late-filed pleading. We note that this filing falls within the 20-page limit placed on written *ex parte* submissions in our December 6th Public Notice. See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708 (December 6th Public Notice).

²⁴ ALTS Motion at 4; TRA Apr. 28 Comments at 11-12; WorldCom Apr. 28 Comments at 4-5; MCI Apr. 28 Comments at 1-2; LCI Apr. 28 Comments at 2-5.

²⁵ WorldCom states that "Section 271(c)(1)(A) requires an applicant to show that competitors are *serving* residential (not just business) customers" WorldCom Apr. 28 Comments at 5 (emphasis added).

²⁶ TRA states that "an unaffiliated facilities-based competitor [must be] *engaged in the provision* of both residential and business telephone exchange services" TRA Apr. 28 Comments at 11 (emphasis added).

²⁷ According to Bell Atlantic, in order to satisfy section 271(c)(1)(A), "the competing provider's local exchange service must be one that is being '*offered*' to residential subscribers" Bell Atlantic Apr. 28 Comments at 9 n.4 (emphasis added).

²⁸ SBC asserts that "Brooks Fiber not only '*offer[s]*' service over its own network -- thereby fulfilling [the section 271(c)(1)(A)] requirement -- but actually furnishes service to customers exclusively over that network." SBC Brief in Support at 10 (emphasis in original).

²⁹ Oklahoma AG Apr. 28 Comments 5; ALTS Motion at 3-4; LCI Apr. 28 Comments at 5; NCTA May 1 Comments at 10-11; Sprint Apr. 28 Comments at 2-3; WorldCom Apr. 28 Comments at 4; WorldCom May 1 Comments at 9-10.

³⁰ Brooks Apr. 28 Comments at 2.

³¹ Brooks May 1 Comments at 6 n.3.

residential service in Oklahoma, nor has it ever offered residential service in Oklahoma."³² and that it "is not accepting any request in Oklahoma for residential service."³³ According to the Department of Justice, "[t]he provision of service on a test basis does not make Brooks a 'competing provider' of service to residential 'subscribers,' in the absence of any effort on Brooks' part to provide service on a commercial basis."³⁴ CompTel asserts that "[i]t does not even appear that Brooks' four 'customer' test is a telecommunications service at all, because it is neither available to the public nor offered for a fee."³⁵ SBC responds that the fact that "Brooks' residential customers are employees served on a 'test' basis . . . is irrelevant to [its] application."³⁶ According to SBC, section 271 "makes no distinctions based upon the end user's employment, the label a carrier attaches to its local service, or the pricing of the service."³⁷ In discussing Brooks' service operations generally, SBC also asserts that there is no requirement under section 271(c)(1)(A) that the competing provider serve any minimum number of customers.³⁸

10. In asserting that Brooks is a competing provider of residential service for purposes of section 271(c)(1)(A), SBC relies on the fact that Brooks has an effective local exchange tariff in place for residential and business service.³⁹ SBC also emphasizes that the Oklahoma Corporation Commission (Oklahoma Commission) has determined that Brooks is

³² ALTS Motion, Affidavit of John C. Shapleigh at 1.

³³ *Id.*

³⁴ Department of Justice Evaluation at 21; *see also* WorldCom Reply Comments at 13 (citing Department of Justice Evaluation and stating that "test customers simply do not count under Track A.").

³⁵ CompTel Apr. 28 Comments at 2 (citing definition of "telecommunications service" at 47 U.S.C. § 153(46)).

³⁶ SBC Apr. 28 Comments at 9.

³⁷ *Id.* at 9-10.

³⁸ SBC Brief in Support at 9-10; SBC Apr. 28 Comments at 9; SBC Reply Comments at 3; *but see* State Attorneys General Reply Comments at 6-7 (arguing that, while there is no metric test showing a specific level of market entry, it is not sufficient for the competing provider to provide service to a handful of subscribers in the state if the competing provider's operations are so limited that no reliable inferences may be drawn about the feasibility of full scale competitive entry); AT&T May 1 Comments at 8 (responding to SBC's claims and asserting that "Congress did not vote down any 'metric' amendments to the facilities-based provider requirement that became law . . .").

³⁹ SBC Brief in Support at 10 (citing SBC Application, Appendix - Volume II, Tab 3, at §§ 2.1.1 & 4); *see also* Bell Atlantic Apr. 28 Comments at 9 n.4. According to Bell Atlantic, "SBC has an approved agreement with a competitor that is offering service to residential subscribers under an effective tariff (and that is legally obligated to provide service upon demand), and this should be adequate to apply under Track A." *Id.*

providing service to both business and residential subscribers.⁴⁰ In addition, both SBC and the Oklahoma Commission suggest that Brooks has certain legal obligations to furnish service to residential subscribers in Oklahoma,⁴¹ and that Brooks has media advertisements seeking to attract residential subscribers.⁴² In contrast, the Department of Justice contends that "[a]lthough Brooks plans to offer service to residential subscribers in Oklahoma (and is doing so in other states), and has a tariff on file in Oklahoma under which it could at some point serve residential customers, it is not presently a 'competing provider of telephone exchange services . . . to residential . . . subscribers,' as required by [s]ection 271(c)(1)(A)."⁴³

11. Various commenters also contend that SBC does not meet the requirements of section 271(c)(1)(A) because Brooks is not providing facilities-based service to both residential and business subscribers.⁴⁴ A number of commenters argue that section 271(c)(1)(A)'s requirement that competing providers offer telephone exchange service either "exclusively" or "predominantly" over their own telephone exchange service facilities should apply independently to both business and residential subscribers.⁴⁵ Similarly, CPI asserts that a carrier that serves residential customers solely through resale does not meet the "predominance" test.⁴⁶ In contrast, the Department of Justice states that section 271(c)(1)(A) permits an applicant to serve one class of subscribers via resale, so long as the competitor's local exchange services as a whole are provided predominantly over its own facilities.⁴⁷ In its

⁴⁰ SBC Reply Comments at 2.

⁴¹ SBC Apr. 28 Comments at 10-11; Oklahoma Commission Reply Comments at 8-9; *but see* AT&T Reply Comments at 26-27 (disputing Oklahoma Commission's finding that section 271(c)(1)(A) is satisfied because Brooks has committed to provide residential service and because Brooks has entered into an interconnection agreement anticipating the provision of such service).

⁴² SBC Reply Comments at 4 n.8 and attached Appendix - Volume I, Tab 19; Oklahoma Commission Reply Comments at 8.

⁴³ Department of Justice Evaluation at 20.

⁴⁴ *See* Oklahoma AG Apr. 28 Comments at 5-6; Brooks Apr. 28 Comments at 4; NCTA May 1 Comments at 10-11; WorldCom Apr. 28 Comments at 4-5; WorldCom May 1 Comments at 10; *see also* U S West Apr. 28 Comments at 2-3 (stating that the competing providers must provide "both residence and business service 'predominantly over their own telephone exchange service facilities'"); BellSouth May 1 Comments at 4 (stating that in order to satisfy section 271(c)(1)(A) a competing provider must provide "service to 'residential and business' customers 'exclusively' or 'predominantly' over its own facilities").

⁴⁵ Brooks May 1 Comments at 9; Sprint May 1 Comments at 11-13; CompTel Reply Comments at 9-12; ALTS Reply Comments at 3-6; AT&T Reply Comments at 25-30.

⁴⁶ CPI May 1 Comments at 2.

⁴⁷ Department of Justice May 21 Addendum at 2-4.

reply comments. SBC also asserts that the statute "does not impose any requirement that the CLEC actually serve both business and residential customers over its own facilities."⁴⁸

12. Certain commenters also argue that Brooks does not qualify as a "predominantly" facilities-based carrier with respect to its business subscribers.⁴⁹ Many commenters also offer differing interpretations of the phrase "predominantly over their own telephone exchange service facilities," contained in section 271(c)(1)(A).⁵⁰

C. Discussion

13. As noted above, there is considerable dispute in the record of this proceeding about whether SBC has shown that Brooks' residential operations meet the requirements of section 271(c)(1)(A). Consequently, in determining whether SBC has demonstrated compliance with section 271(c)(1)(A), we focus our discussion on whether Brooks is a competing provider of telephone exchange service to residential subscribers.⁵¹ We note that the burden is on SBC⁵² to show that Brooks is an "unaffiliated competing provider[] of telephone exchange service . . . to residential . . . subscribers."⁵³ Given our conclusion below that Brooks is not a competing provider of telephone exchange service to *residential* subscribers, we find it unnecessary to reach the issue of whether Brooks is a competing provider of telephone exchange service to *business* subscribers.

14. As summarized above, commenters offer differing views about the showing SBC must make with respect to Brooks' residential service operations (i.e., whether Brooks must serve, provide, offer, or furnish residential service). We need not and do not define the precise scope of the phrase "competing provider[] of telephone exchange service" for purposes of this Order. Issues concerning the nature and size of the presence of the

⁴⁸ SBC Reply Comments at 3.

⁴⁹ See, e.g., Brooks May 1 Comments at 12-16; AT&T May 1 Comments at 7-9.

⁵⁰ See, e.g., SBC Apr. 28 Comments at 13; Sprint May 1 Comments at 10-11; CPI May 1 Comments at 2-3.

⁵¹ Because SBC relies only on one carrier (i.e., Brooks) for demonstrating compliance with section 271(c)(1)(A), we need not determine whether a BOC may rely, for purposes of satisfying section 271(c)(1)(A), on multiple carriers who together provide telephone exchange service to residential and business subscribers. See Department of Justice Evaluation at 13 n.18.

⁵² See 47 U.S.C. § 271(d)(3) (stating that "[t]he Commission shall not approve the authorization requested in an application . . . unless it finds that . . . the petitioning [BOC] has met the requirements of [] section (c)(1)").

⁵³ *Id.* § 271(c)(1)(A).

competing provider require very fact-specific determinations.⁵⁴ We anticipate addressing such issues in upcoming applications where facts clearly present the issues and warrant a Commission determination. We do, however, conclude that a "competing provider" cannot mean a carrier such as Brooks that at present has in place at most paper commitments to furnish service. We find 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 in order to satisfy section 271(c)(1)(A).⁵⁵ Consistent with this interpretation, we note that the Joint Explanatory Statement states that "[t]he requirement that the BOC 'is providing access and interconnection' means that the competitor has implemented the agreement and the competitor is operational."⁵⁶

15. Although SBC emphasizes that the Oklahoma Commission "concluded that [SBC] satisfies the requirements of subsection 271(c)(1)(A) because Brooks Fiber serves both business and residential customers . . . ,"⁵⁷ we find that the Oklahoma Commission's determination on this issue is not dispositive. Section 271 requires us to consult with the Oklahoma Commission "in order to verify the compliance of [SBC] with the requirements of [section 271(c)]" before we make any determination on SBC's application under section 271(d).⁵⁸ At the same time, as the expert agency charged with implementing section 271, we are required to make an independent determination of the meaning of statutory terms in section 271.

16. Moreover, based on the record before us, we find that it is unclear what standard the Oklahoma Commission applied or what specific facts it relied on in making its determination about Brooks' activities. In its order in the state's section 271 proceeding, the Oklahoma Commission concluded "that Brooks Fiber meets the requirement of [s]ection

⁵⁴ See SBC Brief in Support at 9-10 (asserting that there is no requirement under section 271(c)(1)(A) that the competing provider serve any minimum number of customers).

⁵⁵ See AT&T May 1 Comments at 9. The Webster's Third New International Dictionary defines the verb to "compete" as "to seek or strive for something (as a position, possession, reward) for which others are also contending." Webster's Third New International Dictionary (1971 ed.).

⁵⁶ Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 148 (1996) (Joint Explanatory Statement).

⁵⁷ SBC Reply Comments at 2. As support for this statement, SBC cites to the Oklahoma Commission's order in its section 271 docket and to the Oklahoma Commission's initial comments filed in this proceeding. *Id.*; see also *Application of Ernest G. Johnson, Director of the Public Utility Division, Oklahoma Corporation Commission to Explore the Requirements of Section 271 of the Telecommunications Act of 1996, Final Order*, Cause No. PUD 970000064, Order No. 411817 at 2 (Oklahoma Commission Final Order), in Oklahoma Commission May 1 Comments, Appendix G at 2 and Oklahoma Commission May 1 Comments at 4-6.

⁵⁸ 47 U.S.C. § 271(d)(2)(B).

271(c)(1)(A) of the Act,"⁵⁹ but did not provide any basis for its determination. In its initial comments in this proceeding, the Oklahoma Commission assert that "Brooks is currently providing local service to business customers predominantly over its own facilities and by resale on a test basis to its employees for their residential service."⁶⁰ The Oklahoma Commission contends in its reply comments in this proceeding that "[w]ith respect to the Track 'A' versus Track 'B' issue, the [Oklahoma Commission] has determined that Brooks Fiber is providing both business and residential service"⁶¹ Given the facts in the record before us, the Oklahoma Commission's determination that Brooks "is providing" residential service could be based on, either cumulatively or individually, a range of factors -- e.g., Brooks' provision of circuits to four employees on a test basis, Brooks' effective state tariff, or service obligations that Brooks has under Oklahoma law. None of the Oklahoma Commission's statements, either taken together or individually, specifies whether the Oklahoma Commission has made a finding that Brooks is actually furnishing residential service, or otherwise qualifies as a competing provider of residential service.

17. We conclude that Brooks' provision of local exchange service on a test basis, at no charge, to the homes of four of its employees does not qualify Brooks as a "competing provider[] of "telephone exchange service . . . to residential . . . subscribers."⁶² The term "subscribers" suggests that persons receiving the service pay a fee.⁶³ The term "telephone exchange service" also requires that there be payment of a fee.⁶⁴ For the purposes of section

⁵⁹ Oklahoma Commission Final Order at 2.

⁶⁰ Oklahoma Commission May 1 Comments at 6.

⁶¹ Oklahoma Commission Reply Comments at 8.

⁶² 47 U.S.C. § 271(c)(1)(A).

⁶³ The Webster's Third New International Dictionary defines the verb to "subscribe" as "to agree to take and pay for something (as stock) by signing one's name to a formal agreement." A subscriber is defined as "one that subscribes." Webster's Third New International Dictionary (1971 ed.) (emphasis added).

⁶⁴ A "telephone exchange service" is a type of "telecommunications service." See *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, 15636 (1996) (*Local Competition Order*) (stating that the "term 'telecommunications service' by definition includes a broader range of services than the terms 'telephone exchange service and exchange access.'"), *motion for stay denied*, 11 FCC Rcd 11754 (1996), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *further recon. pending, appeal pending sub nom. Iowa Util. Bd. v. FCC and consolidated cases*, No. 96-3321 *et al.*, partial stay granted pending review, 109 F.3d 418 (8th Cir. 1996), order lifting stay in part (8th Cir. Nov. 1, 1996), *motion to vacate stay denied*, 117 S. Ct. 429 (1996). The statutory definition of "telecommunications service" requires the offering of service "for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46) (emphasis added). The Commission has previously stated that the phrase "for a fee" in section 153(46) of the Act "means services rendered in exchange for something of value or a monetary payment." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at para. 784 (rel. May 8, 1997), *Erratum*, CC Docket No. 96-45, FCC 97-

271(c)(1)(A), the *competing* provider must actually be in the market, and, therefore, beyond the testing phase.⁶⁵ Hence, we agree with the Department of Justice that "[t]he provision of service on a test basis does not make Brooks a 'competing provider' of service to residential 'subscribers,' in the absence of any effort on Brooks' part to provide service on a commercial basis."⁶⁶

18. Nor are we persuaded that Brooks is a competing provider of telephone exchange service to residential and business subscribers merely because it has an effective tariff in place for the provision of both business and residential service in Oklahoma.⁶⁷ Like the Department of Justice, we conclude that the existence of an effective local exchange tariff alone is not sufficient to satisfy section 271(c)(1)(A).⁶⁸ Brooks represents that it "is not now offering residential service in Oklahoma, nor has it ever offered residential service in Oklahoma,"⁶⁹ and that it "is not accepting any request in Oklahoma for residential service."⁷⁰ Neither SBC nor any other commenter has presented evidence to show that Brooks is accepting requests for residential service. Thus, SBC has not even made a threshold showing that Brooks is a competing provider that satisfies section 271(c)(1)(A).

19. Given the record in this proceeding, it is unclear whether Brooks is obligated under Oklahoma law to provide residential service. We note that Brooks' Oklahoma tariff provides that "[t]he furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities"⁷¹ Brooks suggests that this language

157 (rel. June 4, 1997). Similarly, an integral part of the definition of "telephone exchange service" is that the service be covered by the "exchange service charge." 47 U.S.C. § 153(47).

⁶⁵ As discussed below in Section IV, the term "such provider" as used in section 271(c)(1)(B) refers to a potential competing provider, rather than an operational competing provider.

⁶⁶ Department of Justice Evaluation at 21. *See also* Brooks May 1 Comments at 8 (asserting that its four test circuits do not constitute commercial operation of residential service in any recognized business use of that term); TRA Apr. 28 Comments at 11-12 (stating that "it is beyond dispute that the facilities-based competitor must actually be engaged in the provision of commercial service to residential and business accounts in order to satisfy" the standard of section 271(c)(1)(A)).

⁶⁷ *See* Oklahoma Commission Reply Comments at 8-9; SBC Brief in Support at 10 (citing SBC Application, Appendix - Volume II, Tab 3, at §§ 2.1.1 & 4); Bell Atlantic Apr. 28 Comments at 9 n.4.

⁶⁸ Department of Justice Evaluation at 20.

⁶⁹ ALTS Motion, Affidavit of John C. Shapleigh at 1.

⁷⁰ *Id.*

⁷¹ *See* SBC Application, Appendix - Volume II, Tab 3 at § 2.1.2.2.

exempts it from providing service under the current circumstances.⁷² SBC claims that, notwithstanding Brooks' representations in this proceeding, Brooks is obligated under Oklahoma law to serve residential customers.⁷³ The Oklahoma Commission states that Brooks' "[Oklahoma Commission]-approved tariff requires" it to provide service to business and residential customers, and that the Oklahoma Commission will "object to any attempt by Brooks Fiber to deviate from providing service to both residential and business customers."⁷⁴ The Oklahoma Commission does not, however, address the specific exemption contained in Brooks' tariff.

20. We conclude that the determination of whether Brooks is obligated under state law to provide residential service is not dispositive of the question presented here, because, irrespective of Brooks' state obligations, the key determination for our purposes is whether Brooks is a competing provider of residential telephone exchange service under the Communications Act. We note that notwithstanding all of its claims regarding Brooks' legal obligations, SBC does not rebut Brooks' statement that it "is not accepting any request in Oklahoma for residential service."⁷⁵ Thus, as a practical matter, competing telephone exchange service is not available on a commercial basis to any residential subscribers in Oklahoma. Regardless of whatever state obligations a carrier may have, we cannot conclude for purposes of section 271(c)(1)(A) that a carrier is a competing provider of telephone exchange service to residential subscribers if it is not even accepting requests for that service.

21. For similar reasons, we also discount the significance of allegations concerning Brooks' media advertisements. The fact that Brooks has a web site listing certain services that SBC suggests "might be attractive to residential customers" does not contradict Brooks' statement that it currently is not accepting requests for residential service.⁷⁶ Similarly, we do not attach significant evidentiary weight to the Oklahoma Commission's unsubstantiated assertion that "Brooks has begun media advertisements seeking to attract both business and residential customers,"⁷⁷ without further elaboration on the significance of such advertisements.

⁷² Brooks May 1 Comments at 11 n.8.

⁷³ SBC contends that "Brooks obtained a certificate of public convenience and necessity to provide local service in Oklahoma by representing that it would offer service to residential customers in its service areas" SBC Apr. 28 Comments at 10. SBC also claims that a Brooks witness testified before the Oklahoma Commission that Brooks intended to offer residential service. *Id.* at 10-11.

⁷⁴ Oklahoma Commission Reply Comments at 8-9.

⁷⁵ ALTS Motion, Affidavit of John C. Shapleigh at 1.

⁷⁶ SBC Reply Comments at 4 n. 8 and attached Appendix - Volume I, Tab 19.

⁷⁷ Oklahoma Commission Reply Comments at 8.

22. As noted above, various commenters have discussed whether section 271(c)(1)(A)'s requirement that competing providers offer telephone exchange service either "exclusively" or "predominantly" over their own telephone exchange service facilities should apply independently to both business and residential subscribers.⁷⁸ In addition, certain commenters have raised the issue of how to interpret the "predominantly" requirement of section 271(c)(1)(A). We need not and do not address either of these issues for purposes of SBC's Oklahoma section 271 application, because, as we have concluded above, Brooks does not qualify as a "competing provider of telephone exchange service . . . to residential . . . subscribers" pursuant to section 271(c)(1)(A).

IV. REQUIREMENTS OF SECTION 271(c)(1)(B)

A. Background

23. 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.⁷⁹ In its motion to dismiss, ALTS asserts that SBC is precluded from proceeding under Track B because "interconnection requests" have been filed in Oklahoma.⁸⁰ In response to this motion, the Bureau invited parties to address in detail their legal theories of when a BOC is permitted to file under section 271(c)(1)(B) and when a BOC is foreclosed from proceeding under section 271(c)(1)(B). The Bureau requested parties to address, among other things, the nature of a "request" that is referred to in section 271(c)(1)(B), which we hereinafter refer to as a "qualifying request," and whether and when SBC has received such a request.⁸¹

B. Positions of the Parties

24. In its application, SBC contends that it is entitled to proceed under Track B.⁸² SBC interprets the phrase "such provider" as used in section 271(c)(1)(B) to refer to an "exclusively" or "predominantly" facilities-based competing provider of telephone exchange

⁷⁸ See *supra* para. 11.

⁷⁹ 47 U.S.C. § 271(c)(1)(B).

⁸⁰ ALTS Motion at 2, 4-5.

⁸¹ April 23rd Public Notice at 2.

⁸² SBC Brief in Support at 12.

service to residential and business subscribers, as described in section 271(c)(1)(A).⁸³ Thus, under SBC's reading of the statute, a BOC is entitled to proceed under Track B unless: (1) a competing provider is actually providing telephone exchange service to residential and business subscribers in accordance with the terms of section 271(c)(1)(A); and (2) that competing provider has requested access and interconnection more than three months prior to the filing of an application as required by section 271(c)(1)(B).⁸⁴ Under this reading, the fact that a carrier has requested access and interconnection but has not yet begun to provide competing service (such as a carrier that is still engaged in negotiations with a BOC) does not foreclose the BOC from proceeding under Track B. Thus, according to SBC, to foreclose Track B, the requesting carrier "may not simply anticipate building facilities and seek interconnection in anticipation of that day. Rather, it must actually be 'such provider' described in [section 271(c)(1)(A)]."⁸⁵

25. A central element of SBC's argument is that a request for access and interconnection does not become a qualifying request that forecloses Track B until the carrier begins providing the type of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A). Specifically, SBC maintains that a request from a prospective competitor "may become" a qualifying request that forecloses Track B "once the carrier starts to provide qualifying, facilities-based service pursuant to its interconnection agreement" with SBC.⁸⁶ Accordingly, SBC seems to take the position that, if it has not satisfied the requirements of section 271(c)(1)(A), then it must be eligible to proceed under Track B.⁸⁷

⁸³ *Id.* at 14 (citing 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin)). See also SBC Apr. 28 Comments at 14 & n.24 (citing the Joint Explanatory Statement at 148 and 142 Cong. Rec. H1152 (daily ed. Feb. 1, 1996) (statement of Rep. Hastert)).

⁸⁴ SBC Brief in Support at 14-15. Pursuant to section 271(c)(1)(B), a BOC may file an application for in-region interLATA entry "if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1)." 47 U.S.C. § 271(c)(1)(B). SBC argues that, if a BOC "that has an effective statement of terms and conditions also has implemented a state-approved agreement with a qualifying CLEC [competitive local exchange carrier], but that CLEC only qualified, or requested access, within the prior three months, then the [BOC] may apply for interLATA entry under" both Track A and Track B. SBC Brief in Support at 15 n. 15. Because, according to SBC, Brooks commenced its facilities-based provision of telephone exchange service on January 15, 1997, and SBC filed its application for in-region long distance with the Commission on April 11, 1997, SBC concludes that it is therefore eligible to proceed under both Track A and Track B. *Id.*; SBC Apr. 28 Comments at 17-18.

⁸⁵ SBC Brief in Support at 14.

⁸⁶ See SBC Apr. 28 Comments at 17.

⁸⁷ See *id.* at 9.

26. In their comments on ALTS' motion and on SBC's application generally, BOCs and their potential competitors differ sharply on what constitutes a "qualifying request" that will foreclose Track B. Most potential competitors, trade associations, the Oklahoma Attorney General, and the States Attorneys General generally agree with ALTS and appear to assert that *any* request for access and interconnection is a qualifying request that forecloses Track B.⁸⁸ Most BOCs, in contrast, contend that only a request from an already competing facilities-based provider of telephone exchange service to residential and business subscribers can be a qualifying request that precludes a BOC from proceeding under Track B.⁸⁹ U S West, CompTel, LCI, and the Department of Justice contend, however, that Track B is available to any BOC that has not received a request for access and interconnection to provide service that would satisfy the requirements of section 271(c)(1)(A).⁹⁰ We note that the Oklahoma Commission, in a 2-1 decision, found it was unnecessary to determine whether SBC could proceed under section 271(c)(1)(B) in light of its determination that SBC satisfies the requirements of section 271(c)(1)(A).⁹¹

C. Discussion

1. Summary

27. All parties appear to agree that, if SBC has received a "qualifying request" for access and interconnection, the statute bars SBC from proceeding under Track B. We agree with this analysis and conclude that, in order to decide whether SBC's application may proceed under Track B, we must determine whether SBC has received a "qualifying request." We conclude that a "qualifying request" under section 271(c)(1)(B) is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the

⁸⁸ See, e.g., AT&T May 1 Comments at 16-17; Brooks Apr. 28 Comments at 4; CPI Apr. 28 Comments at 2; CPI Reply Comments at 3-4; MCI May 1 Comments at 16; NCTA May 1 Comments at 8; Oklahoma AG Apr. 28 Comments at 7; Sprint Apr. 28 Comments at 11; State Attorneys General Reply Comments at 7; Time Warner May 1 Comments at 32; TRA Apr. 28 Comments at 8-9; TRA May 1 Comments at 13-14.

⁸⁹ Ameritech Apr. 28 Comments at 4; Bell Atlantic Apr. 28 Comments at 4-6; BellSouth Apr. 28 Comments at 3; SBC Apr. 28 Comments at 17-18. See also NYNEX Apr. 28 Comments at 1-2 (asserting that Track B is available where one or more facilities-based providers have not requested interconnection agreements which include all fourteen items of the competitive checklist).

⁹⁰ See U S West Apr. 28 Comments at 3 (recognizing that the "Track B alternative is available to the BOC only if it has not received a request . . . that would satisfy Track A"); LCI Apr. 28 Comments at 6 (asserting the Brooks' request was of the type that, once implemented "would provide [SBC] the basis for seeking approval under Track A"); Department of Justice Evaluation at 12; CompTel Reply Comments at 7; *but see* CompTel Apr. 28 at 4 (asserting that, because SBC has received at least "16 requests for access and interconnection," Track B is foreclosed).

⁹¹ Oklahoma Commission May 1 Comments at 6 & Appendix G at 4; *see also id.*, Appendix G at 2, Dissenting Opinion of Commissioner Bob Anthony (asserting "I too agree with those parties that Track B does not apply.").

requirements of section 271(c)(1)(A). We further conclude that the request for access and interconnection must be from an unaffiliated competing provider that seeks to provide the type of telephone exchange service described in section 271(c)(1)(A). As discussed below, such a request need not be made by an operational competing provider, as some BOCs suggest. Rather, the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers.

28. We reach this conclusion for several reasons. As a matter of statutory interpretation, we find that our reading, by giving full effect to the meaning of the term "request" in section 271(c)(1)(B), is the one most consistent with the statutory design. In addition, as a matter of policy, we find that our interpretation will best further Congress' goal of introducing competition in the local exchange market by giving BOCs an incentive to cooperate with potential competitors in providing them the facilities they need to fulfill their requests for access and interconnection. Moreover, we find our interpretation to be particularly sound in contrast to the extreme positions set forth by SBC and its potential competitors, as described below.

29. Under SBC's interpretation of section 271(c)(1)(B), only operational facilities-based competing providers may submit qualifying requests that preclude a BOC from proceeding under Track B.⁹² Adoption of this interpretation of a qualifying request would create an incentive for a BOC to delay the provision of facilities in order to prevent any new entrants from becoming operational and, thereby, preserve the BOC's ability to seek in-region interLATA entry under Track B.⁹³ As the Department of Justice observes, this reading of section 271(c)(1)(B) would effectively "reward the BOC that failed to cooperate in implementing an agreement for access and interconnection and thereby prevented its competitor from becoming operational."⁹⁴ Opponents of SBC's application offer a radically different -- and, in our view, equally unreasonable -- interpretation of when a qualifying request has been made. These parties claim that *any* request for access and interconnection submitted by a potential new entrant to a BOC is a qualifying request and precludes the BOC from proceeding under Track B. We conclude, however, that this statutory reading could create an incentive for potential competitors to "game" the negotiation process by submitting an interconnection request that would foreclose Track B but, if implemented, would not satisfy the requirements of section 271(c)(1)(A). Such a result would effectively give a

⁹² We note that when we refer to SBC's position, we are also referring to the positions advanced by Ameritech, Bell Atlantic, and BellSouth.

⁹³ See AT&T May 1 Comments at 18-19; CompTel at Apr. 28 at 5; NCTA May 1 Comments at 9 (asserting that, under SBC's reading, BOCs would have no incentive to enter into or faithfully execute meaningful interconnection agreements with competitors).

⁹⁴ Department of Justice Evaluation at 17. See also AT&T May 1 Comments at 19.

BOC's potential competitors in local telecommunications markets the power to deny the BOC entry into the in-region interLATA market.⁹⁵

30. As discussed below, on the basis of the record before us, we find that SBC has received, at the very least, several qualifying requests for access and interconnection that, if implemented, will satisfy the requirements of section 271(c)(1)(A). We therefore conclude that SBC, at this time, may not pursue in-region interLATA entry in Oklahoma under section 271(c)(1)(B).

2. Standard for Evaluating "Qualifying Requests"

31. Section 271(c)(1)(B) provides that a BOC meets the "requirements of [section 271(c)(1)(B)] if . . . no such provider has requested the access and interconnection described in [section 271(c)(1)(A)]"⁹⁶ The threshold question here is whether Congress has tied the availability of Track B to a request for access and interconnection from a carrier that is already competing in the local exchange market, as SBC contends, or whether Congress intended to preclude a BOC from proceeding under Track B upon its receipt of a request for access and interconnection from a prospective competing provider of the type of telephone exchange service described in section 271(c)(1)(A).⁹⁷ We find the most natural reading of the statute, and the only interpretation consistent with the statutory goal of facilitating competition in the local exchange market, is the latter interpretation.

32. According to SBC, "such provider" refers to an already operational facilities-based provider of telephone service to residential and business subscribers.⁹⁸ Thus, although

⁹⁵ See U S West Apr. 28 Comments at 4, 6-7.

⁹⁶ 47 U.S.C. § 271(c)(1)(B).

⁹⁷ In support of its interpretation, SBC cites a floor statement from Congressman Tauzin indicating that the phrase "such provider" refers to the "exclusively" or "predominantly" facilities-based carrier described in the second sentence in Track A. SBC Brief in Support at 14; SBC Apr. 28 Comments at 14. See also Ameritech Apr. 28 Comments at 4; Bell Atlantic Apr. 28 Comments at 5; BellSouth Apr. 28 Comments at 3. In contrast, potential competitors contend that the phrase "such provider" refers to the unaffiliated competing provider described in the first sentence in section 271(c)(1)(A). Thus, according to potential competitors, the "such provider" need not be facilities-based at the time it makes a request for access and interconnection. See AT&T May 1 Comments at 18; CompTel Reply Comments at 6-7; MCI Apr. 28 Comments at 2; Sprint Apr. 28 Comments at 8-9. We find the issue of whether the phrase "no such provider" refers to the first or the second sentence in section 271(c)(1)(A) to be immaterial because, as discussed in detail below, the relevant question is whether "such provider" as used in section 271(c)(1)(B) refers to an already competing provider or a potential competing provider.

⁹⁸ See SBC Brief in Support at 14. See also Ameritech Apr. 28 Comments at 4; Bell Atlantic May 1 Comments at 9; BellSouth Apr. 28 Comments at 4.

it has received at least 45 requests for "local interconnection and/or resale" in Oklahoma.⁹⁹ SBC claims that none of these requests, with the exception of the one from Brooks, is a qualifying request.¹⁰⁰ With respect to Brooks, SBC claims that Brooks' request was not a qualifying request when it was submitted in March 1996, but rather became a qualifying request on January 15, 1997, because on that date, according to SBC, Brooks became an operational facilities-based provider of telephone service to residential and business subscribers. Since this event occurred within three months of the filing of its section 271 application, however, SBC asserts that its application can proceed under Track B.

33. We find implausible SBC's assertion that Congress tied the availability of Track B to a request for access and interconnection from a carrier that was already competing in the local exchange market. Potential competitors usually request access and interconnection under section 251 in order to *become* operational.¹⁰¹ Even if a competing provider has a fully redundant network, it would need interconnection from the BOC prior to becoming operational in order to complete calls to, and receive calls originating from, BOC customers. Indeed, SBC does not dispute that Brooks requested access and interconnection from SBC in March 1996 in order to be able to offer local exchange service in competition with SBC. In keeping with its interpretation of the words "such provider," however, SBC maintains that this request was not transformed into a qualifying request for purposes of Track B until ten months later, when SBC began providing access and interconnection to Brooks in January 1997. There is nothing in the text of the statute, or its legislative history, to suggest that a request for access and interconnection must be perfected at some unknown future date before it may become a qualifying request for the purposes of Track B. Nor does SBC provide any support for this assertion. We therefore find SBC's theory of a "post-dated" request to be without merit.

34. We conclude that Congress intended to preclude a BOC from proceeding under Track B when the BOC receives a request for access and interconnection from a prospective

⁹⁹ SBC Application, Appendix-Volume I, Tab 18 at 7, para. 13.

¹⁰⁰ As described above, SBC argues that, if the Commission does not find Brooks to be a qualifying carrier for purposes of section 271(c)(1)(A), then SBC may proceed under Track B. Even if the Commission does find Brooks to be a qualifying carrier for purposes of section 271(c)(1)(A), however, SBC asserts it is eligible for both Track A and Track B because Brooks' request was made within the three month statutory window under section 271(c)(1)(B).

¹⁰¹ As we noted in the *Local Competition Order*, to become operational, all new entrants will require interconnection with a BOC in order to complete calls to BOC customers, and most will need access to unbundled network elements and other BOC facilities in order to begin offering service. See *Local Competition Order*, 11 FCC Rcd at 15509-10. See also AT&T Reply Comments at 24; CPI May 1 Comments at 9-10; Oklahoma AG Apr. 28 Comments at 7; TRA Apr. 28 Comments at 8. As discussed in detail below, SBC does propose hypothetical scenarios in which carriers would be operational carriers when they requested access and interconnection from the BOC. SBC does not suggest, however, that one of those scenarios is present in the instant proceeding.

competing provider of telephone exchange service, subject to the exceptions in section 271(c)(1)(B) discussed below.¹⁰² Thus, we interpret the words "such provider" as used in section 271(c)(1)(B) to refer to a potential competing provider of the telephone exchange service described in section 271(c)(1)(A). We find it reasonable and consistent with the overall scheme of section 271 to interpret Congress' use of the words "such provider" in section 271(c)(1)(B) to include a potential competing provider. This interpretation is the more natural reading of the statute because, unlike SBC's strained interpretation, it retains the meaning of the term "request." By its terms, Track B only applies where "no such provider *has requested* the access and interconnection described in [section 271(c)(1)(A)]."¹⁰³ Under SBC's reading, however, Track B is available to a BOC if it is not already providing access and interconnection to competing carriers, no matter how many *requests* for access and interconnection the BOC has received. To give full effect to the term "request," we therefore interpret the words "such provider" to mean any such potential provider that has requested access and interconnection.

35. Indeed, we note that the phrase "competing provider" is commonly used to refer to both potential and actual competing providers. For example, in our *Local Competition Order*, we frequently referred to potential competitors of local exchange service as "competing providers" despite the fact that they were not yet actually offering service in competition with the incumbent LEC.¹⁰⁴ Similarly, in the instant proceeding, we note that SBC itself consistently uses the terms "competitors" and "CLECs" when referring to potential providers of local exchange service. For example, SBC refers to a "CLEC that wishes to provide local services in Oklahoma," "CLECs' decisions to postpone providing local telephone service," and "competitors [that] can make a business decision whether to enter the local exchange."¹⁰⁵

36. SBC asserts that, if Congress had meant to refer in section 271(c)(1)(B) to any party *seeking to begin negotiations* for access and interconnection, it would have used the phrase "requesting telecommunications carrier" as it did in section 251(c), rather than the term

¹⁰² See *infra* at para. 37.

¹⁰³ 47 U.S.C. § 271(c)(1)(B) (emphasis added). Indeed, we note that the caption of section 271(c)(1)(B) is entitled "Failure to Request Access." See Sprint Apr. 28 Comments at 11.

¹⁰⁴ See, e.g., *Local Competition Order*, 11 FCC Rcd at 15608, 15642, 15692, 15710, 15749, 15767, 15774, 16131, 16163.

¹⁰⁵ See SBC Brief in Support at 8; SBC Apr. 28 Comments at 18; SBC Reply Comments at 1; see also SBC Apr. 28 Comments at 17 ("Congress ensured that competitors could not strategically block interLATA entry by timing their interconnection requests or introduction of their local services."); SBC Brief in Support at 17 ("[SBC] has satisfied the checklist requirements . . . through its [Oklahoma Commission]-approved agreements with Brooks and other CLECs.") SBC Reply Comments at 14 ("When accepting competitors' allegations as proof of supposed misconduct by [SBC], DOJ never even acknowledges responses that the [Oklahoma Commission] found persuasive . . .").

"such provider."¹⁰⁶ We find, however, that Congress' use of the phrase "requesting telecommunications carrier" in section 251 provides additional support for our interpretation. A "telecommunications carrier" is defined in section 3(44) of the Act as a "provider of telecommunications services"¹⁰⁷ Thus, read literally, a "requesting telecommunications carrier" in section 251 is a provider of telecommunications services that requests interconnection or access to unbundled elements. SBC, however, does not assert that the requesting telecommunications carrier in section 251 must be an operational provider of telecommunications services at the time it makes its request. To the contrary, SBC appears to agree that Congress used the term "requesting telecommunications carrier" to refer to a potential entrant seeking to begin negotiations for access and interconnection.¹⁰⁸ In the context of section 271, however, SBC inconsistently rejects the very same interpretation of "such provider" that it has conceded is correct with respect to the term "requesting telecommunications carrier" in the context of section 251. In our view, Congress used the term "requesting telecommunications carrier" in section 251 to refer to a *potential* telecommunications carrier that was requesting access and interconnection and, in the same fashion, used the term "such provider" in section 271(c)(1)(B) to refer to a potential provider that "has requested the access and interconnection [described in section 271(c)(1)(A)]." In fact, to have used the adjective "requesting" before the noun "provider" in section 271(c)(1)(B) would have been superfluous because the sentence already incorporates the concept of a requesting provider by using the verb "requested."

37. Similarly, we find that SBC's interpretation of this provision effectively reads the exceptions in section 271(c)(1)(B) out of the statute. The exceptions provide that the BOC "shall be considered not to have received any request for access and interconnection" if the applicable state regulatory commission certifies that the provider making the request fails to negotiate in good faith or fails to comply, within a reasonable time, with the implementation schedule set forth in the interconnection agreement.¹⁰⁹ These exceptions ensure that, if, after a request for access and interconnection, facilities-based competition does not emerge because the potential competitor fails either to bargain in good faith or to

¹⁰⁶ SBC Reply Comments at 5 n.10.

¹⁰⁷ 47 U.S.C. § 153(44).

¹⁰⁸ SBC Reply Comments at 5 n.10.

¹⁰⁹ See 47 U.S.C. § 271(c)(1)(B). BOCs are free to negotiate implementation schedules for their interconnection agreements. In the *Local Competition Order*, we declined to impose a "bona fide request" process on requesting carriers. We found that incumbent LECs may not require requesting carriers, as a condition to begin negotiations, to commit to purchase services or facilities for a specified period of time. *Local Competition Order*, 11 FCC Rcd at 15578. We concluded that forcing carriers to make such a commitment before critical terms, such as price, have been resolved would be likely to impede new entry. We note, however, that nothing in the Commission's rules precludes incumbent LECs from negotiating, or states from imposing in arbitration, schedules for the implementation of the terms and conditions by the parties to the agreement. See also 47 U.S.C. § 252(c)(3).

implement its interconnection agreement according to a negotiated or arbitrated schedule. Track B would become available to the BOC. Such certifications by a state commission, in effect, would amount to a determination that the BOC had not received a qualifying request. Under SBC's theory of a "post-dated" request, a qualifying request that forecloses Track B would occur only after the initial request has resulted in a negotiated and implemented interconnection agreement with the BOC. Consequently, there would be virtually no need for exceptions that make Track B available in the event of bad faith negotiations or failure to comply with an implementation schedule.

38. SBC only identifies two scenarios, neither of which is present here, where the exceptions in section 271(c)(1)(B) might come into play under its interpretation: (1) where a competing LEC that is already providing facilities-based telephone exchange service completely over its own network requests access and interconnection from the BOC; or (2) where a competing LEC that has obtained an interconnection agreement prior to the 1996 Act makes such a request.¹¹⁰ SBC asserts that the exceptions in section 271(c)(1)(B) exist to ensure that a qualifying carrier (i.e., an already competing provider) "cannot foreclose interLATA entry by requesting, but then failing to negotiate or implement, an agreement."¹¹¹ As described below, however, we find that these scenarios are extremely rare.¹¹² It seems implausible that Congress would have created the exceptions in section 271(c)(1)(B) to apply to circumstances that would almost never arise. We conclude therefore that adhering to SBC's interpretation would virtually strip these exceptions of their meaning.

39. We also find unpersuasive the few passages of legislative history on which SBC relies in support of its argument that "such provider" in section 271(c)(1)(B) refers to an operational competing provider. For example, SBC relies on references in the Joint Explanatory Statement to a "qualifying facilities-based competitor," and a "facilities-based competitor that meets the criteria set out in [section 271(c)(1)(A) that] has sought to enter the market."¹¹³ Notably, this latter reference to the Joint Explanatory Statement equally supports our interpretation of "such provider" because it refers to a carrier that "has sought to enter the market."

40. In addition, SBC relies on a floor statement indicating that the phrase "such provider" refers to the facilities-based provider described in the second sentence of section

¹¹⁰ See SBC Apr. 28 Comments at 16-17.

¹¹¹ *Id.* at 15.

¹¹² See *infra* paras. 48-53.

¹¹³ See SBC Apr. 28 Comments at 14 & n.24 (citing Joint Explanatory Statement at 148); see also SBC Reply Comments at 5 (citing Joint Explanatory Statement at 147).

271(c)(1)(A).¹¹⁴ SBC also cites a floor statement stating that a BOC may pursue entry under Track B if it has not received "any request for access and interconnection from a facilities-based carrier that meets the criteria in section 271(c)(1)(A)."¹¹⁵ We decline to attach the weight to these and other citations to the legislative history that SBC assigns because other passages in the legislative history refer to "would-be" or "potential" competitors. These passages indicate that Congress assumed carriers would not yet be operational competitors when they requested the access and interconnection arrangements necessary to enable them to compete.¹¹⁶ For example, as discussed below,¹¹⁷ the Conference Committee emphasized the importance of "potential competitors" having the benefit of the Commission's rules implementing section 251.¹¹⁸ In addition, the House Commerce Committee indicated that Track B would not create an "unreasonable burden on a *would-be* competitor" to request access and interconnection under section 271(c)(1)(A).¹¹⁹ SBC cites no support for its contention that this language "simply reflects a belief that [competing LECs] would be full competitors in the local market only after they implement interconnection agreements under section 251."¹²⁰

41. Contrary to SBC's claim that its reading of section 271 is supported by legislative history, we conclude that the legislative history surrounding section 271(c)(1)(A) establishes that, consistent with its goal of developing competition, Congress intended Track A to be the primary vehicle for BOC entry in section 271. As discussed below, by tying BOC in-region, interLATA entry to the development of local competition in this manner, Congress expected that there would be a "ramp-up" period during which requests from potential competitors would preclude BOCs from applying under Track B while requesting carriers are in the process of becoming operational competitors. We find, therefore, that the statutory scheme established by Congress supports our conclusion that the term "such

¹¹⁴ See SBC Brief in Support at 14 (citing 141 Cong. Rec. H8425, H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin)).

¹¹⁵ See SBC Apr. 28 Comments at 14 & n.25 (citing 142 Cong. Rec. H1152 (daily ed. Feb. 1, 1996) (statement of Rep. Hastert)).

¹¹⁶ See Department of Justice Evaluation at 16; AT&T Reply Comments at 24-25.

¹¹⁷ See *infra* at para. 43.

¹¹⁸ See Joint Explanatory Statement at 148-49 (emphasis added).

¹¹⁹ See H.R. Rep. No. 204, 104th Cong., 1st Sess., pt. 1, at 77-78 (emphasis added) (House Report).

¹²⁰ SBC Reply Comments at 6 n.11.

provider" in section 271(c)(1)(B) refers to a potential competitor that is seeking access and interconnection in order to enter the local exchange market.¹²¹

42. That Congress intended BOCs to obtain approval to enter their in-region interLATA markets primarily by satisfying the requirements of section 271(c)(1)(A) is evidenced not only by the stated purpose of the 1996 Act which was to "open[] all telecommunications markets to competition,"¹²² but also by statements in the Report of the House Commerce Committee.¹²³ These statements are particularly relevant because the text of section 271(c)(1) was adopted almost verbatim from the House bill.¹²⁴ The House Committee Report states that the existence of a facilities-based competitor that is providing service to residential and business subscribers "is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition."¹²⁵ Moreover, that Report observes that "the Committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance."¹²⁶ Thus, we find that Congress regarded the presence of one or more operational competitors in a BOC's service area as the most reliable evidence that the BOC's local markets are, in fact, open to competitive entry.¹²⁷

43. At the same time, Congress, by intending Track A to be the primary entry vehicle, understood that there would be some delay between the passage of the 1996 Act and actual entry by facilities-based carriers into the local market.¹²⁸ For example, it expressly

¹²¹ See TRA Apr. 28 Comments at 8 (contending that Track B's reference to a "provider" describes a potential facilities-based competitor seeking entry into the local exchange market through network access and interconnection); TRA May 1 comments at 14-15; WorldCom Apr. 28 Comments at 8-9.

¹²² Joint Explanatory Statement at 1.

¹²³ See, e.g., ALTS Motion at 6-7; CompTel Apr. 28 Comments at 3-4; NCTA May 1 Comments at 7 n. 12; Sprint Apr. 28 Comments at 5.

¹²⁴ The Conference Committee expressly adopted the language contained in section 271(c)(1) from the House bill. See Joint Explanatory Statement at 147 (stating that the "test that the conference agreement adopts comes virtually verbatim from the House amendment").

¹²⁵ House Report at 76-77.

¹²⁶ *Id.* at 77.

¹²⁷ See CompTel Apr. 28 Comments at 3.

¹²⁸ See Department of Justice Evaluation at 10; Sprint Apr. 28 Comments at 9; Time Warner May 1 Comments at 10-11. Congress' expectation that section 271 relief may take some time is also evidenced by section 271(e)(1) which states that the joint marketing restriction applicable to larger interexchange carriers would expire once a BOC "is authorized . . . to provide interLATA services in an in-region State, or [once] 36

recognized that it would take time for competitors to construct or upgrade networks and then to extend service offerings to residential and business subscribers.¹²⁹ As the Joint Explanatory Statement observes, "it is unlikely that competitors will have a fully redundant network in place when they initially offer service, because the investment necessary is so significant."¹³⁰ Rather, as many commenters recognize, because potential competitors must accomplish a number of things before they may begin to provide telephone exchange service, such as obtaining a certificate of convenience and necessity from the state commission, negotiating (and arbitrating, if necessary) an interconnection agreement with the BOC, obtaining state approval of that agreement, filing and obtaining approval of a tariff for local exchange service, and implementing their interconnection agreement, it will inevitably take some time before these carriers can actually begin to provide telephone exchange service.¹³¹ Congress' recognition that this transformation to operational status would not be an instantaneous one is evidenced by the Joint Explanatory Statement's observation that, "it is important that the Commission rules to implement new section 251 be promulgated within 6 months after the date of enactment so that *potential* competitors will have the benefit of being informed of the Commission rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts."¹³²

44. That Congress expected there to be a "ramp-up" period for requesting carriers to become operational competitors is further evidenced by section 251 itself. In adopting section 251, Congress acknowledged that the development of competition in local exchange markets is dependent, to a large extent, on the opening of the BOCs' networks.¹³³ Under section 251, incumbent LECs, including BOCs, are required to take certain steps to open their networks including "providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold."¹³⁴ Our rules implementing section 251 envisioned that incumbent LECs would need some time to complete these necessary steps. For example, in the *Local Competition Order*,

months have passed since the date of enactment of the Telecommunications Act of 1996, *whichever is earlier*." See 47 U.S.C. § 271(e)(1) (emphasis added); Sprint Apr. 28 Comments at 10-11 n. 9.

¹²⁹ See Sprint Apr. 28 Comments at 9-10.

¹³⁰ Joint Explanatory Statement at 148.

¹³¹ Department of Justice Evaluation at 13; CPI Apr. 28 Comments at 8; MCI Reply Comments at 4-5; WorldCom Apr. 28 Comments at 11.

¹³² Joint Explanatory Statement at 148-49 (emphasis added).

¹³³ As the Department of Justice observes, a "fundamental premise of the 1996 Act is that the development of local exchange competition will require opening up the possibilities for access and interconnection to the BOC's local network." Department of Justice Evaluation at 10.

¹³⁴ *Local Competition Order*, 11 FCC Rcd at 15506.

we stated that incumbent LECs must have made modifications to their operational support systems (OSS) necessary to provide access to OSS functions by January 1, 1997.¹³⁵ Moreover, in the *Second Order on Reconsideration*, we declared that we would not take enforcement action against incumbent LECs "making good faith efforts to provide . . . access [to OSS functions]."¹³⁶ In reaching these conclusions, we recognized that some incumbent LECs would require some time before they would be able to provide potential competitors access to their OSS.

45. Moreover, we find that the very language of section 271(c)(1)(B) confirms that Congress envisioned the existence of a "ramp-up" period.¹³⁷ The exceptions in section 271(c)(1)(B) are indicative of Congress' recognition that there would be a period during which good-faith negotiations are taking place, interconnection agreements are being reached, and the potential competitors are becoming operational by implementing their agreements.¹³⁸ By delineating the circumstances under which Track B becomes available to the BOC, Congress must have understood that there would often be some time when Track B is unavailable, but the BOC has not yet satisfied the requirements of section 271(c)(1)(A).¹³⁹ This would not be the case, however, under SBC's theory that only a request for access and interconnection from an operational facilities-based provider will foreclose Track B.

46. Further, as a matter of policy, we find that our interpretation of "such provider" is consistent with the incentives established by Congress in section 271. In order to gain entry under Track A, a BOC must demonstrate that it has "fully implemented" the competitive checklist in section 271(c)(2)(B).¹⁴⁰ Thus, by expecting Track A to be the primary means of BOC entry, Congress created an incentive for BOCs to cooperate with potential competitors in the provision of access and interconnection and thereby facilitate competition in local exchange markets. In contrast, Track B, which requires only that a BOC "offer[]" the items

¹³⁵ *Id.* at 15767-68.

¹³⁶ *Local Competition Order, Second Order on Reconsideration*, CC Docket No. 96-98, FCC 96-476 at para. 11 (rel. Dec. 13, 1996).

¹³⁷ Dobson Apr. 28 Comments at 3 (asserting that the language of section 271(c)(1)(B) confirms that Congress envisioned the existence of a hiatus during which pending requests would preclude BOCs from applying under Track B even though the requesting carriers are not yet operational); WorldCom Apr. 28 Comments at 11-12.

¹³⁸ See 47 U.S.C. § 271(c)(1)(B). See also Brooks Apr. 28 Comments at 5-6; Dobson Apr. 28 Comments at 3; WorldCom Apr. 28 Comments at 11-12.

¹³⁹ See Cox May 1 Comments at 7 n. 9 (stating that the exceptions in section 271(c)(1)(B) demonstrate that Congress understood there would be a lag between requesting interconnection and providing service, and that it did not intend for normal delays to permit BOCs to jump to Track B).

¹⁴⁰ 47 U.S.C. § 271(d)(3)(A)(i).

included in the competitive checklist, does not contemplate the existence of competitive local entry and, therefore, does not create such an incentive for cooperation.¹⁴¹ Rather, as discussed more fully below, Congress intended Track B to serve as a limited exception to the Track A requirement of operational competition so that BOCs would not be unfairly penalized in the event that potential competitors do not come forward to request access and interconnection, or attempt to "game" the negotiation or implementation process in an effort to deny the BOCs in-region interLATA entry.¹⁴²

47. In addition, if we were to find that only a request from an operational competing facilities-based provider of residential and business service forecloses Track B, this would guarantee that, after ten months, the BOC either satisfies the requirements of section 271(c)(1)(A) or is eligible for Track B.¹⁴³ As the Department of Justice asserts, "[s]uch an interpretation of [s]ection 271 would radically alter Congress' scheme, [by] expanding Track B far beyond its purpose and, for all practical purposes, reading the carefully crafted requirement of Track A out of the statute."¹⁴⁴ For example, under SBC's theory, either a BOC has received a "qualifying request" from a carrier that already satisfies the requirements of section 271(c)(1)(A), or the BOC may proceed under Track B.¹⁴⁵ SBC advocates an interpretation of the statute where the circumstances under which a competing provider may make a "qualifying request" would be so rare that, after December 8, 1996, Track B would be available in any state that lacks a competing provider of the type of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A).¹⁴⁶ As WorldCom maintains, this would lead to the illogical result that BOCs that successfully delay

¹⁴¹ *Id.* § 271(d)(3)(A)(ii).

¹⁴² See *infra* at para. 55. See also CompTel Apr. 28 Comments at 3; Department of Justice Evaluation at 11; Sprint Apr. 28 Comments at 10-11; TRA Apr. 28 Comments at 4-5.

¹⁴³ Or, as SBC alleges in the instant case, a BOC would be eligible to proceed under both Track A and Track B if the qualifying request was made within the three months prior to the filing of the BOC's section 271 application. We recognize, of course, that in order to be eligible for Track B a BOC must also have a statement of generally available terms and conditions that has been approved or permitted to take effect by the applicable state commission. See 47 U.S.C. § 271(c)(1)(B).

¹⁴⁴ Department of Justice Evaluation at 13.

¹⁴⁵ See MCI Apr. 28 Comments at 3 (claiming that, under SBC's interpretation, Track B would only apply when no facilities-based provider that already has an access and interconnection agreement requests such an agreement); NCTA May 1 Comments at 7 (stating that SBC construes the statute so that after ten months Track B would virtually always apply unless a competitor who already qualifies as a facilities-based competitor to residential and business subscribers requests access three months before the BOC files).

¹⁴⁶ See Cox Reply Comments at 16 (asserting that, if the BOCs really believed Track B became available if no operational competing provider requested access and interconnection prior to September 8, 1996, they would have filed their statements of generally available terms by the middle of 1996 and applied for in-region, interLATA entry on December 8, 1996).

or prevent entry into their local markets by new entrants that have requested access and interconnection under section 251 would be rewarded by being granted the right to pursue in-region interLATA entry through Track B.¹⁴⁷ As a consequence, BOC in-region interLATA entry would, in most states, precede the introduction of local competition.¹⁴⁸ We find it unlikely that Congress intended to eviscerate Track A in this manner. As the Department of Justice contends, there is "no basis for the assumption that Congress intended Track A, the only track included in the bill as originally passed by the Senate, to play such an insignificant role."¹⁴⁹

48. In addition to its notion of a "post-dated" request, SBC sets forth two other hypothetical scenarios in which the BOC could receive a "qualifying request" from an already operational carrier that forecloses Track B.¹⁵⁰ Although SBC does not argue that either of these hypothetical situations is present here, we briefly describe them to illustrate their limited application. Under one scenario, SBC argues that it could receive a request for access and interconnection from a competing LEC that is already providing facilities-based telephone exchange service to residential and business customers completely over its own network. Alternatively, SBC maintains it could receive a request for access and interconnection from a competing LEC that had negotiated an interconnection agreement prior to the 1996 Act.¹⁵¹

49. As an initial matter, we note that SBC appears to set forth a reading of the word "request" in these hypothetical scenarios that is different from the one it uses in characterizing Brooks' request for access and interconnection in the instant application. SBC appears to assert that, for the purposes of the hypothetical scenarios, whether a request for access and interconnection constitutes a qualifying request is determined at the time the request is made. For the purposes of the case at hand, however, SBC claims that Brooks' request for access and interconnection was not qualifying at the time it was made, but subsequently became a qualifying request when Brooks became operational. SBC fails to explain how the meaning of the statutory term "request" can vary according to the operational status of the requestor.

¹⁴⁷ WorldCom Apr. 28 Comments at 13-14; WorldCom May 1 Comments at 20-21; Department of Justice Evaluation at 13 (stating that, if SBC's interpretation of Track B were correct, Track B would no longer be a limited exception applicable where a BOC would otherwise be foreclosed indefinitely from entry into in-region interLATA markets). *See also* AT&T May 1 Comments at 18; NCTA May 1 Comments at 7 (stating that SBC's interpretation of section 271(c)(1)(B) nullifies Track A agreements as a means of stimulating local competition).

¹⁴⁸ WorldCom Reply Comments at 7; TRA Reply Comments at 11-12.

¹⁴⁹ Department of Justice Evaluation at 14. *See also* MCI Reply Comments at 4.

¹⁵⁰ SBC Apr. 28 Comments at 16-17. *See also* BellSouth Apr. 28 Comments at 4-5.

¹⁵¹ SBC Apr. 28 Comments at 16-17 (citing 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux)); BellSouth Apr. 28 Comments at 4-5.

50. In addition, we agree with the Department of Justice that it is implausible that Congress would have adopted Track A solely to deal with situations of such narrowly limited significance as SBC poses in its hypotheticals.¹⁵² SBC's first scenario assumes the presence of a carrier, prior to the 1996 Act, with a completely duplicative, ubiquitous network that provided telephone exchange service to residential and business subscribers in competition with a BOC, but did not yet have an access and interconnection agreement with the BOC.¹⁵³ We know of no such carrier.¹⁵⁴ Indeed, the legislative history of the Act reflects Congress' recognition that the existence of such facilities-based competition in local markets in February 1996 was improbable.¹⁵⁵ Similarly, the second scenario assumes the presence of either a facilities-based competing LEC that provided telephone exchange service to both residential and business subscribers under a pre-1996 Act interconnection agreement or a facilities-based competing LEC with a pre-1996 Act interconnection agreement that would be capable of providing such service within the statutory window in section 271(c)(1)(B). If there were such interconnection agreements in place between a BOC and a competing LEC operating within a BOC's service area, we do not know of them.¹⁵⁶

51. Notably, SBC's primary support for the second scenario is the Joint Explanatory Statement's reference to an interconnection agreement between New York Telephone and Cablevision in Long Island, NY.¹⁵⁷ We disagree with SBC that this reference demonstrates that "Congress was aware that, in various markets throughout the country, cable companies and competitive access providers had negotiated interconnection agreements with

¹⁵² Department of Justice Evaluation at 14.

¹⁵³ See Oklahoma AG Apr. 28 Comments at 7. As noted above, such a carrier would presumably require interconnection with the BOC if its customers completed calls to, or received originating calls from, BOC customers. See *supra* at para. 33.

¹⁵⁴ Significantly, the Department of Justice asserts that it "is not aware of any provider other than the [incumbent LECs] that had a significant facilities-based telephone local exchange network of its own in the United States, sufficiently ubiquitous to dispense with interconnection with the BOCs, before the 1996 Act was passed." Department of Justice Evaluation at 15 n. 20. See also AT&T Reply Comments at 23. We note that neither SBC nor any other commenter has provided any examples of such carriers.

¹⁵⁵ See Joint Explanatory Statement at 148 ("it is unlikely that competitors will have a fully redundant network in place when they initially offer local service . . .").

¹⁵⁶ Although in an *ex parte* statement, SBC cites examples of "facilities-based cable-telephone services being provided or tested during consideration of the [1996 Act]," it is unclear from SBC's representation whether these potential competitors were providing, or planning to provide, telephone exchange service in a BOC's service area pursuant to a pre 1996-Act interconnection agreement or, alternatively, whether the new entrants still had to negotiate and execute such agreements. See Letter from Dale Robertson, Senior Vice President, SBC, to William F. Caton, Acting Secretary, FCC at 2 (June 24, 1996) (SBC June 24 *Ex Parte*).

¹⁵⁷ See *id.*

incumbent LECs prior to the 1996 Act."¹⁵⁸ As the Department of Justice observes, a single reference to only one pre-1996 Act interconnection agreement between an incumbent LEC and a facilities-based provider does not establish that Congress expected such situations to be common.¹⁵⁹ Indeed, it is not obvious from this reference in the legislative history whether Cablevision either actually provided telephone exchange service to both residential and business subscribers on the date of enactment or intended to do so in the future.¹⁶⁰ Based on its experience with the implementation of the 1996 Act nationwide, the Department of Justice notes that only a small minority of states had any local exchange competition before the 1996 Act was passed, and very few providers had become operational.¹⁶¹ Moreover, the very passage of the 1996 Act -- which was designed to remove impediments to local entry -- indicates that Congress believed that the degree of local telephone competition and interconnection prior to the passage of the 1996 Act was unsatisfactory.

52. Even if there were such facilities-based carriers with pre-1996 Act interconnection agreements, we find that SBC's interpretation would greatly undermine the very incentives that Congress sought to establish in section 271. As mentioned above, section 271 and, in particular, Track A, was established to provide an incentive for BOCs to cooperate in the development of local competition. Under SBC's interpretation of the statute, the BOCs' only incentive would be to cooperate with operational carriers that are already receiving access and interconnection. We find that the incentive to cooperate established by Track A is not limited to only those carriers that are already operational, but instead was designed to ensure that BOCs facilitate the entry of a larger and more significant class of carriers -- *potential* competitors requesting access and interconnection. It would be anomalous for Congress to have adopted Track A solely to provide an incentive to BOCs to cooperate with already competing providers, which do not require the BOCs' cooperation in order to become operational.

53. We note that, if such a competing LEC was not already providing the type of telephone exchange service described in section 271(c)(1)(A) at the time of passage of the

¹⁵⁸ SBC Apr. 28 Comments at 16.

¹⁵⁹ Department of Justice Evaluation at 15 n.19. *See also* WorldCom Reply Comments at 6-7.

¹⁶⁰ *But see* SBC June 24 *Ex Parte*, Attachment at 1-2 (asserting that by December 1995 "Cablevision had 175 business customers and was preparing to offer residential service on a commercial basis").

¹⁶¹ Department of Justice Evaluation at 15 n.19. According to the Commission's Common Carrier Competition Report, as of March 21, 1996, competing LECs were operational in only five states. "New competitors [were] small and [were] still experimenting in the market." Common Carrier Competition, CC Report No. 96-9, FCC, Common Carrier Bureau, Spring 1996 at 3-4 (Common Carrier Competition Report). *See also* TRA Reply Comments at 10-11. SBC itself points to only ten potential competitors in five states, one of which is Cablevision, that were planning, testing, or providing telephony services on a limited scale prior to the passage of the 1996 Act. Of these potential competitors, it appears that most of them were merely in the planning or testing stage when the 1996 Act was passed. *See* SBC June 24 *Ex Parte*, Attachment at 1-2.

1996 Act and if it chose to obtain a new agreement pursuant to section 252, it would have to engage in negotiations with the BOC, reach an interconnection agreement, obtain state approval of this interconnection agreement under section 252(e)(4),¹⁶² and then begin providing the type of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A) before its request for access and interconnection could be considered qualifying under SBC's interpretation of section 271(c)(1)(B). As the Department of Justice recognizes, in order for the BOC to be precluded from filing under Track B, the competing LEC would have to complete all of this in the first seven months after the date of enactment.¹⁶³ Not only is this unlikely, but this scenario assumes that the BOC would be inclined to cooperate with the competing LEC, reach a negotiated agreement quickly, and proceed under the more rigorous Track A standard, rather than attempt to delay the advent of competition by forcing competing LECs to resort to arbitration until Track B becomes available. Under SBC's interpretation, given the nine-month arbitration deadlines established in section 252(b)(4)(C), a BOC could virtually guarantee its eligibility under Track B by placing all carrier negotiations in arbitration.¹⁶⁴ It seems, therefore, that few, if any, potential competitors would be in a position, under this interpretation, to make a "qualifying request" for access and interconnection before a BOC would become eligible to pursue Track B.¹⁶⁵

54. Although we reject SBC's interpretation of "qualifying request," we also reject the interpretation of those parties who argue that *any* request from a potential competitor forecloses Track B. As the Department of Justice observes, the term "such provider" in section 271(c)(1)(B) should be interpreted with reference to the type of facilities-based competition that would satisfy the requirements of section 271(c)(1)(A).¹⁶⁶ Accordingly, we conclude that the request from a potential competitor must be one that, *if implemented*, will satisfy section 271(c)(1)(A).¹⁶⁷ That is, we find that a "qualifying request" must be one for access and interconnection to provide the type of telephone exchange service to residential

¹⁶² Under this section, the state commission has up to 90 days to approve or reject an interconnection agreement. See 47 U.S.C. § 252(e)(4).

¹⁶³ See Department of Justice Evaluation at 14. Pursuant to section 271(c)(1)(B), in order for a BOC to file an application under Track B as soon as it became available, on December 8, 1996, it must not have received a qualifying request prior to September 8, 1996.

¹⁶⁴ 47 U.S.C. § 252(b)(4)(C). See Sprint Apr. 28 Comments at 11-12 n.10. See also Cox Reply Comments at 15-16. We also note that, after the parties reach an arbitrated agreement, it must be submitted to the applicable state commission for approval. Under section 252(e)(4), the state commission has 30 days in which to approve or deny it. 47 U.S.C. § 252(e)(4).

¹⁶⁵ See Department of Justice Evaluation at 14.

¹⁶⁶ *Id.* at 12.

¹⁶⁷ See LCI Apr. 28 Comments at 6 (stating that SBC's agreement with Brooks "was of the type that once implemented, would provide [SBC] with the basis for seeking approval under Track A.").

and business subscribers described in section 271(c)(1)(A). To find otherwise would not only be contrary to the explicit terms of section 271(c)(1)(B), which states that only a request for "the access and interconnection described in [section 271(c)(1)(A)]" can foreclose Track B,¹⁶⁸ but would lead to anomalous results. For example, allowing *any* type of request for negotiation to foreclose Track B could lead to a situation where a BOC is foreclosed from pursuing Track B because there has been a request for negotiation, even though such a request, when implemented, may not satisfy the requirements of section 271(c)(1)(A). As Ameritech observes, under this interpretation, if a BOC receives a request for access and interconnection from a would-be facilities-based provider of telephone exchange service to business, but not residential, subscribers, Track B would be foreclosed, but the BOC would not be able to satisfy section 271(c)(1)(A) because it would not be able to show that residential subscribers are served by a competing provider. Such a result may place a BOC indefinitely in a "no-man's land" where, in effect, neither Track A nor Track B is available to it.¹⁶⁹

55. According to its legislative history, Track B was adopted by Congress to deal with the possibility that a BOC, through no fault of its own, could find that it is unable to satisfy Track A.¹⁷⁰ The Joint Explanatory Statement explains that section 271(c)(1)(B) is "intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new section 271(c)(1)(A) has sought to enter the market."¹⁷¹ Similarly, the House Committee Report elaborates that, to "the extent that a BOC does not receive a request from a competitor that comports with the criteria [described in section 271(c)(1)(A)], it [should] not [be] penalized in terms of its ability to obtain long distance relief."¹⁷² In this manner, Track B appropriately safeguards the BOCs' interests where there is no prospect of local exchange competition that will satisfy the requirements of section 271(c)(1)(A) or in the event competitors purposefully delay entry in the local market in an attempt to prevent a BOC from gaining in-region, interLATA entry.¹⁷³ As the Department of Justice observes, however, "Track B does not represent congressional abandonment of the fundamental principle, carefully set forth in Track A, that a BOC may not begin providing in-region interLATA

¹⁶⁸ 47 U.S.C. § 271(c)(1)(B).

¹⁶⁹ See also Department of Justice Evaluation at 11. This assumes, of course, that the BOC is not able to show that the requesting provider failed to negotiate in good faith or violated the terms of the interconnection agreement by failing to comply, within a reasonable period of time, with its implementation schedule. See 47 U.S.C. § 271(c)(1)(B).

¹⁷⁰ Department of Justice Evaluation at 12.

¹⁷¹ Joint Explanatory Statement at 148.

¹⁷² House Report at 77.

¹⁷³ Department of Justice Evaluation at 17.

services before there are facilities-based competitors in the local exchange market," provided these competitors are moving toward that goal in a timely fashion.¹⁷⁴

56. Thus, while SBC's interpretation would ensure that after ten months a BOC either satisfies the requirements of section 271(c)(1)(A) or is eligible to proceed under Track B, the interpretation of the potential competitors could create a situation where the BOC may not be able to pursue either statutory avenue for interLATA relief. In essence, while SBC's interpretation effectively nullifies Track A, the potential competitors' interpretation effectively nullifies Track B. We are keenly aware that adopting the interpretation urged by the potential competitors would necessarily foreclose Track B entry in any state in which a potential competitor has made a request for access and interconnection, regardless whether it is a request that will ever lead to the type of telephone exchange service described in section 271(c)(1)(A).¹⁷⁵ We find that permitting *any* request to foreclose Track B would give potential competitors an incentive to "game" the section 271 process by purposefully requesting interconnection that does not meet the requirements of section 271(c)(1)(A), but prevents the BOCs from using Track B.¹⁷⁶ Such a result would effectively give competing LECs the power to deny BOC entry into the long distance market. This is surely not the result that Congress intended in adopting Track B.

57. We recognize, as several parties point out, that the standard we are adopting will require the Commission, in some cases, to engage in a difficult predictive judgment to determine whether a potential competitor's request will lead to the type of telephone exchange service described in section 271(c)(1)(A).¹⁷⁷ As discussed above, however, we find that this type of judgment is required by the terms of section 271 and is consistent with the statutory scheme envisioned by Congress. The standard we adopt in this Order is designed to take into account both the BOCs' incentive to delay fulfillment of requests for access and interconnection and the incentive of potential local exchange competitors to delay the BOCs' entry into in-region interLATA services. Upon receipt of a "qualifying request," as we interpret it, the BOC will have an incentive to ensure that the potential competitor's request is

¹⁷⁴ *Id.* at 17-18.

¹⁷⁵ We note that Track B would become available if either of the two exceptions in section 271(c)(1)(B) were applicable. *See also* BellSouth Apr. 28 Comments at 5 (maintaining that adoption of ALTS's "misreading" of section 271(c)(1) would nullify Track B entry).

¹⁷⁶ Ameritech Apr. 28 Comments at 5 n. 3; Bell Atlantic Apr. 28 Comments at 8 (stating that the approach advocated by ALTS would place BOCs at the mercy of their competitors); NYNEX Apr. 28 Comments at 6; U S West Apr. 28 Comments at 5-6.

¹⁷⁷ CPI Reply Comments at 3; *see also* Bell Atlantic Apr. 28 Comments at 7; BellSouth Apr. 28 Comments at 4; SBC Reply Comments at 6 & Appendix A at 14 n.6.

quickly fulfilled so that the BOC may pursue entry under Track A.¹⁷⁸ As long as the qualifying request remains unsatisfied, the requirements of section 271(c)(1)(A) would remain unsatisfied, and Track B would remain foreclosed to the BOC.

58. Further, our standard will not allow potential competitors to delay indefinitely BOC entry by failing to provide the type of telephone exchange service described in Track A. Indeed, in some circumstances, there may be a basis for revisiting our decision that Track B is foreclosed in a particular state. For example, if following such a determination a BOC refiles its section 271 application, we may reevaluate whether it is entitled to proceed under Track B in the event relevant facts demonstrate that none of its potential competitors is taking reasonable steps toward implementing its request in a fashion that will satisfy section 271(c)(1)(A). In addition, as discussed above, the exceptions in section 271(c)(1)(B) provide that a BOC will not be deemed to have received a qualifying request if the applicable state commission certifies that the requesting carrier has failed to negotiate in good faith or failed to abide by its implementation schedule. In this manner, these exceptions also provide BOCs a means of protecting themselves against any feared "gamesmanship" on the part of potential competitors, such as the submission of sham requests intended solely to preclude BOC entry. We therefore disagree with Bell Atlantic that our standard will leave the BOCs "hostage to the claims of competitors."¹⁷⁹ Moreover, for the reasons set forth above, we disagree with CPI that concerns about gamesmanship are misplaced.¹⁸⁰ Finally, we note that the Commission is called upon in many contexts to make difficult determinations and has the statutory mandate to do so.¹⁸¹ The fact that a determination, such as the one we must make

¹⁷⁸ Thus, as the Department of Justice observes, properly construed, "the statute serves Congress' procompetitive purposes by affording the BOC a strong incentive to cooperate as would-be facilities-based competitors attempt to negotiate agreements and become operational." Department of Justice Evaluation at 17.

¹⁷⁹ See Bell Atlantic Reply Comments at 4.

¹⁸⁰ See *supra* at para. 56; CPI Reply Comments at 4-5 (asserting that the assumption that competitors would game the regulatory process in order to prevent BOC entry into long distance does not make economic or marketplace sense).

¹⁸¹ See 47 U.S.C. § 154(i). In different contexts, the United States Supreme Court has recognized that the Commission must necessarily make difficult predictive judgments in order to implement certain provisions of the Communications Act. See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594-96 (1981) (recognizing that the Commission's decisions must sometimes rest on judgment and prediction rather than pure factual determinations) (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 813-814 (1978)); *NAACP v. FCC*, 682 F.2d 993 (D.C. Cir. 1982) ("greater discretion is given administrative bodies when their decisions are based upon judgmental or predictive conclusions"). See also *Pub. Util. Comm'n of State of Cal. v. F.E.R.C.*, 24 F.3d 275, 281 (D.C. Cir. 1994) (acknowledging that predictions regarding the actions of regulated entities are the type of judgments that courts routinely leave to administrative agencies). Indeed, we note that determining whether a BOC's section 271 application meets the requirements of the competitive checklist, the requirements of section 272, and is consistent with the public interest, convenience and necessity will require the Commission to engage in highly complex, fact-intensive analyses. See 47 U.S.C. § 271(d)(3).

here, may be complex does not mean the Commission may avoid its statutory duty to undertake it.

59. We also reject NYNEX's argument that Track B is available in any situation where one or more facilities-based providers, as described in section 271(c)(1)(A), have not requested interconnection agreements that include all fourteen items of the competitive checklist.¹⁸² By its terms, Track B is only available in the event the BOC fails to receive a qualifying request for the access and interconnection "described in [section 271(c)(1)(A)]." As discussed above, we have determined that a qualifying request is a request from a potential competitor that, if implemented, will satisfy the requirements of section 271(c)(1)(A). Pursuant to section 271(c)(1)(B), a BOC shall not be considered to have received a qualifying request if the requesting carrier fails to negotiate in good faith or does not abide by the implementation schedule contained in its agreement.¹⁸³ We find that section 271(c)(1) and the competitive checklist in section 271(c)(2)(B) establish independent requirements that must be satisfied by a BOC applicant. Thus, the fact that a BOC has received a request for access and interconnection that, if implemented, will satisfy section 271(c)(1)(A), does not mean that the interconnection agreement, when implemented, will necessarily satisfy the competitive checklist. Similarly, we find nothing in the terms of section 271(c)(1)(A) or section 271(c)(1)(B) that suggest that a qualifying request for access and interconnection must be one that contains all fourteen items in the checklist. In rejecting NYNEX's contention, we do not reach the question of whether a potential competitor's interconnection agreement must contain all fourteen items of the competitive checklist in order for a BOC to demonstrate its compliance with the competitive checklist in section 271(c)(2)(B).

3. Existence of Qualifying Requests in Oklahoma

60. Consistent with the requirements set forth by Congress, SBC's ability to proceed under Track B is not foreclosed unless there has been a timely request for access and interconnection from a potential provider of the type of telephone exchange service described in section 271(c)(1)(A). We note that the determination of whether the BOC has received such a qualifying request will be a highly fact-specific one. At the same time, however, Congress required the Commission to make determinations on a BOC's section 271 application within 90 days. Given the expedited time in which the Commission must review these applications, it is the responsibility of the BOC to submit to the Commission a full and complete record upon which to make determinations on its application.¹⁸⁴ In this regard, we

¹⁸² NYNEX Apr. 28 Comments at 1-2. The competitive checklist is contained in 47 U.S.C. § 271(c)(2)(B).

¹⁸³ See 47 U.S.C. § 271(c)(1)(B).

¹⁸⁴ BOCs are required under our rules to maintain "the continuing accuracy and completeness of information" furnished to the Commission. See *Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC

find it of great significance that, in its application, SBC does not argue that none of the requests it has received will lead to the type of telephone exchange service described in section 271(c)(1)(A). Instead, SBC contends that the only relevant determination for the purposes of section 271(c)(1)(B) is whether it has received a request for access and interconnection from an already competing provider of such service. Thus, by declining to argue in the alternative, SBC has not addressed the issue we must resolve here -- whether SBC has received a timely request for access and interconnection that, if implemented, will lead to the type of telephone exchange service described in section 271(c)(1)(A).

61. We expect that if a BOC seeks to proceed under Track B, as SBC does here, it will submit all relevant information reasonably within its control concerning each request for access and interconnection that it has received. Such information should include, but not be limited to, the names of the requesting carriers, the dates the requests were made, the nature of such requests, and whether the requests have resulted in interconnection agreements. Because we have not received this type of extensive information in this proceeding concerning the requests for access and interconnection received by SBC in Oklahoma, we cannot be certain how many qualifying requests it has received. Nonetheless, based on the record presently before us, we find that, at the very least, SBC has received several qualifying requests for access and interconnection that foreclose Track B.

62. As noted above, SBC represents in its application that, as of April 4, 1997, it had received 45 requests for "local interconnection and/or resale" in Oklahoma.¹⁸⁵ SBC did not submit information on many of the 45 requests.¹⁸⁶ Nevertheless, the record indicates that SBC has received requests from potential competitors for negotiation for access and interconnection to SBC's network that, if implemented, will satisfy the requirements of section 271(c)(1)(A). Indeed, we note that SBC has reached negotiated interconnection agreements with at least eight requesting carriers. Seven of these interconnection agreements have been approved by the Oklahoma Commission, two as recently as June 5, 1997.¹⁸⁷

Docket No. 97-1, Order, 12 FCC Rcd 3309, 3323 (1997) (*Ameritech Order*) (citing 47 C.F.R. § 1.65(a) (stating that it is essential that our decision on a section 271 application be based on an accurate current record). See *December 6th Public Notice*.

¹⁸⁵ SBC Application, Appendix-Volume I, Tab 18 at 7, para. 13.

¹⁸⁶ As CPI observes, SBC did not provide the Commission with the full list of carriers that initiated the 45 requests, nor information about these carriers or the type of access and interconnection they requested. CPI Apr. 28 Comments at 5-6. Further, as is evidenced by Cox's comments, although Cox reached a negotiated agreement with SBC on April 10, 1997, SBC did not disclose this fact in its section 271 application filed April 11, 1997, or in its subsequent comment filings. See Cox Apr. 28 Comments, Attachment at para. 3.

¹⁸⁷ SBC has state-approved interconnection agreements with the following carriers: Brooks Fiber, approved on October 22, 1996; USLD, approved on December 23, 1996; ICG Telecom Group, Inc. (ICG Telecom) and Sprint, approved on April 3, 1997; and American Communications Services, Inc. (ACSI), Cox, Dobson approved on June 5, 1997. SBC's interconnection agreement with Intermedia Communications has been pending approval

Further, four of the five state-approved interconnection agreements in the record, SBC's agreements with Brooks, Cox, ICG Telecom, and USLD, contain statements signifying the desire of these carriers to provide telephone exchange service to residential and business subscribers "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."¹⁸⁸ For example, the SBC-Cox interconnection agreement states that Cox seeks to interconnect with SBC in order to provide telephone exchange service to "residential and business end-users predominantly over [its own] telephone exchange service facilities in Oklahoma."¹⁸⁹

63. SBC does not allege, nor has the Oklahoma Commission certified, that any of these carriers has negotiated in bad faith or has failed to abide by its implementation schedule, to the extent one is contained in its agreement.¹⁹⁰ Thus, SBC has not availed itself of either of the exceptions in section 271(c)(1)(B). Moreover, SBC has not presented any evidence to suggest that these agreements will not result in the provision of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A).¹⁹¹ Indeed, based on the record before us, it appears that at least two carriers -- Brooks and Cox -- have already taken affirmative steps to enter the residential and business local exchange markets.¹⁹² For example, Cox has stated its intention to provide telephone exchange service to residential and business subscribers in Oklahoma City using its upgraded cable television

since January 23, 1997. Letter from John W. Gray, Senior Staff Attorney, Oklahoma Corporation Commission, to William F. Caton, Acting Secretary, FCC (June 5, 1997).

¹⁸⁸ 47 U.S.C. § 271(c)(1)(A). See SBC Application, Appendix-Volume III, Tab 2, SBC-Brooks Agreement at 1; *Id.* at Tab 4, SBC-ICG Telecom Agreement at 1; *Id.* at Tab 7, SBC-USLD Agreement at 1; Letter from Laura H. Phillips, Counsel for Cox, to William F. Caton, Acting Secretary, FCC (May 27, 1997), SBC-Cox Interconnection Agreement at 1 (SBC-Cox Interconnection Agreement). We also note that six of the carriers with which SBC has interconnection agreements, ACSI, Brooks, Cox, Dobson, Sprint, and USLD, have filed for and received certificates of convenience and necessity for the provision of local exchange service and the remaining two, ICG Telecom and Intermedia, have applications pending for such certificates. SBC Application, Appendix-Volume I, Tab 18, Stafford Affidavit at 6-7.

¹⁸⁹ SBC-Cox Interconnection Agreement at 1.

¹⁹⁰ See, e.g., AT&T May 1 Comments at 16 n.6; AT&T Reply Comments at 25; LCI Apr. 28 Comments at 7; MCI Apr. 28 Comments at 3; MCI May 1 Comments at 17; Oklahoma AG Apr. 28 Comments at 7; Time Warner May 1 Comments at 32; WorldCom May 1 Comments at 14.

¹⁹¹ See Cox Apr. 28 Comments at 2 n.3 (asserting that SBC must provide evidence that facilities-based competition is not emerging before it can follow Track B, otherwise it could evade intent of section 271 by stonewalling interconnection negotiations and then claiming there are no facilities-based providers).

¹⁹² See also Oklahoma Commission Reply Comments at 3 n.2 (asserting that AT&T has made a verbal commitment to the Oklahoma Commission to be "up and running and providing both residential and business local exchange service in Oklahoma in October 1997.").

plant before the end of 1997.¹⁹³ In addition, as mentioned above, SBC's interconnection agreement with Brooks has already led to the provision of telephone exchange service to business subscribers.¹⁹⁴

64. We note further that it has been less than seven months since the Cox, ICG Telecom, and USLD interconnection agreements have been approved, and since Brooks has become operational. As discussed above, Congress envisioned there would be a "ramp-up" period during which a competing LEC implements its interconnection agreement.¹⁹⁵ We agree with NCTA, therefore, that the current absence of competing residential service in Oklahoma does not, on the record before us, mean that "no such provider has requested the access and interconnection described in [section 271(c)(1)(A)]."¹⁹⁶ Although SBC maintains that the Commission cannot base "section 271 determinations on the unverifiable, fluctuating plans of parties who have an incentive to color their supposed intentions to block [BOC in-region] interLATA entry,"¹⁹⁷ SBC has provided no evidence to suggest that any of the carriers that have expressed their intent to provide the telephone exchange service described in section 271(c)(1)(A) will not do so.¹⁹⁸ In fact, except for an unsupported assertion that AT&T, MCI,

¹⁹³ See Cox Reply Comments at 5. Cox has facilities that pass 95% of all residential customers in Oklahoma City and has installed a local switch that is "operational and internally tested." See *id.* See also Department of Justice Evaluation at 95. According to Cox, its ability to commence commercial operation in Oklahoma is dependent upon SBC's "willingness and cooperation in providing timely physical collocation, adequate numbering resources, interim number portability and necessary OSS functionality." Cox Reply Comments at 5. Cox notes that it plans to begin providing cable-based telecommunications services to residential and business customers in Orange County, CA in June 1997. *Id.* at 5 n.7. See also Cox Apr. 28 Comments at 1-2 (stating that it is actively engaged in entering the local market in Oklahoma City and expects to provide a significant facilities-based alternative to SBC for residential customers).

¹⁹⁴ See *supra* at para. 7. Although Brooks asserted in its May 1 comments that it has "no immediate plans" to commence a general offering of local exchange service in Oklahoma to residential customers, in its reply comments, Brooks indicates that it is presently exploring opportunities for providing residential service to multiple dwelling unit locations through direct on-net connections to Brooks' fiber facilities, is examining the use of wireless systems, and is investing approximately \$2.8 million in collocation facilities in Oklahoma, in addition to its previous investment in fiber optic transmission equipment and digital switching facilities. See Brooks May 1 Comments at 7; Brooks Reply Comments at 4-5 & n.12 ("Brooks will look for opportunities to offer residential local exchange service through whatever facilities-based alternatives may exist in a particular location at any time."). See also SBC June 24 *Ex Parte* at 1-2 (asserting that there is no technical reason why Brooks is incapable of service multiple dwelling units located along its networks).

¹⁹⁵ See *supra* at paras. 44-45.

¹⁹⁶ 47 U.S.C. § 271(c)(1)(A). See NCTA May 1 Comments at 8.

¹⁹⁷ SBC Reply Comments at 6.

¹⁹⁸ We note that USLD has stated that, although it plans to enter the local exchange market in Oklahoma initially through reselling SBC's local exchange retail services, over the long term, it plans to construct some of its own facilities and to integrate those facilities with SBC's network elements. USLD May 1 Comments at 2.

and Sprint plan to delay BOC entry by becoming facilities-based carriers at a "painfully slow pace."¹⁹⁹ SBC does not maintain that its competitors in Oklahoma are engaging in any "strategic manipulation of local market entry" or have "intentionally delayed implementation" of their interconnection agreements in order to prevent SBC from entering the in-region, interLATA market in Oklahoma.²⁰⁰ Rather, the record is replete with allegations from competitors such as Brooks and Cox that their efforts to enter the local exchange market have been frustrated by the actions of SBC.²⁰¹

65. Although we find, and SBC has not disputed, that SBC has received several requests for access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A), we do not today decide the meaning of the facilities-based requirement in section 271(c)(1)(A).²⁰² Some commenters assert that this requirement applies independently to both business and residential subscribers.²⁰³ The Department of Justice, in contrast, contends that this requirement permits a new entrant to serve one class of customers via resale, so long as the competitor's local exchange services as a whole are provided predominantly over its own facilities.²⁰⁴ We need not and do not decide this issue here because we conclude that, under either interpretation, the facts described above indicate that SBC has received several qualifying requests for access and interconnection. In reaching this conclusion, we find it unnecessary to address SBC's compliance with the competitive checklist requirements set forth in section 271(c)(2)(B). Nonetheless, we recognize that, even if SBC had satisfied the requirements of section 271(c)(1)(A), it would still be required to demonstrate compliance with each and every item of the competitive checklist, including access to physical collocation, cost-based unbundled loops, and reliable OSS functions before it may gain entry under Track A. We leave it to future applications to define the scope of these and other checklist requirements.

¹⁹⁹ SBC Reply Comments at 7.

²⁰⁰ See LCI Apr. 28 Comments at 7; TRA May 1 Comments at 14-15. Indeed, SBC's application provides numerous examples of alternative facilities-based networks in Oklahoma that, according to SBC, "could be, are being, or will be used to provide competing local exchange service to end user (retail service) customers, or . . . as alternative sources to [SBC's] wholesale service offerings." SBC Brief in Support, Appendix-Volume 1, Tab 20 at 3, para. 5. SBC offers information on the scope of facilities-based service planned by, among others, Brooks, Cox, Multimedia Cablevision, Indian Nations Fiberopuc, ACSI and Tele-Communications Inc. (TCI). See *id.* at Tab 20.

²⁰¹ See, e.g., Cox May 1 Comments at 21-23; Brooks Reply Comments 8-10.

²⁰² See *supra* at para. 22.

²⁰³ Brooks May 1 Comments at 9; Sprint May 1 Comments at 11-13; CompTel Reply Comments at 9-12; ALTS Reply Comments at 3-6; AT&T Reply Comments at 25-30.

²⁰⁴ Department of Justice May 21 Addendum at 2-4.

V. CONCLUSION

66. We conclude, based on the record submitted in the instant proceeding, that SBC has failed to satisfy the requirements of section 271(c)(1), and we therefore deny SBC's application pursuant to section 271(d)(3). SBC has not demonstrated on this record that it is providing access and interconnection to an unaffiliated, facilities-based competing provider of telephone exchange service to residential and business subscribers, as required by section 271(c)(1)(A).²⁰⁵ We also conclude, under the circumstances presented in this case, that SBC has not satisfied section 271(c)(1)(B) because it has received several requests for access and interconnection within the meaning of section 271(c)(1)(A).²⁰⁶ We note, however, that SBC may refile its application in the future and demonstrate that circumstances have changed such that it has satisfied section 271(c)(1)(A) or has become eligible to proceed under section 271(c)(1)(B).²⁰⁷

67. Because we reach the merits of SBC's section 271 application, we dismiss ALTS' motion to dismiss as moot. Further, given the extensive legal analysis contained herein, we disagree with ALTS that SBC's application is so frivolous that it warrants the imposition of sanctions. We therefore deny ALTS' request for sanctions against SBC.

VI. ORDERING CLAUSES

68. 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, SBC Communications Inc.'s application to provide in-region interLATA service in the State of Oklahoma filed on April 11, 1997, IS DENIED.

69. IT IS FURTHER ORDERED that the motion to dismiss filed by the Association for Local Telecommunications Services on April 23, 1997, IS DISMISSED as moot.

²⁰⁵ 47 U.S.C. § 271(c)(1)(A).

²⁰⁶ We find it unnecessary to address BellSouth's argument concerning the appropriate deference to give the Department of Justice's interpretation of sections 271(c)(1)(A) and 271(c)(1)(B). See BellSouth Reply Comments at 5-6. See also SBC Reply Comments at 14-15 (asserting that the Commission should only give substantial weight to the Department of Justice's views on matters within its antitrust expertise). Although we agree with the Department of Justice's evaluation on the issues decided herein, our extensive analysis demonstrates that we arrived at our interpretation of section 271(c)(1) independently. In light of this, we find it unnecessary to consider the circumstances under which "[t]he Commission shall give substantial weight to the Attorney General's evaluation." 47 U.S.C. § 271(d)(2)(A).

²⁰⁷ See LCI Apr. 28 Comments at 8 (asserting that there is no statutory bar to the refiling of a BOC section 271 application).

70. IT IS FURTHER ORDERED that the request for sanctions filed by the Association for Local Telecommunications Services on April 23, 1997, IS DENIED.

71. IT IS FURTHER ORDERED that the Motion to Accept Late Filed Pleading by the Battle Group, Inc. d/b/a/ TBG Communications IS DENIED.

APPENDIX

COMMENTERS ON SBC 271 APPLICATION
FOR OKLAHOMA

1. Alarm Industry Communications Committee (AICC)
2. Ameritech
3. Association for Local Telecommunications Services (ALTS)
4. AT&T Corp. and AT&T Communications of the Southwest, Inc. (AT&T)
5. Attorneys General of Delaware, Florida, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New York, North Dakota, Oklahoma, Utah, West Virginia and Wisconsin (State Attorneys General)
6. Bell Atlantic
7. BellSouth Corporation (BellSouth)
8. Brooks Fiber Properties, Inc. (Brooks)
9. Competition Policy Institute (CPI)
10. Competitive Telecommunications Association (CompTel)
11. Cox Communications, Inc. (Cox)
12. Dobson Wireless, Inc. (Dobson)
13. LCI International Telecom Corp. (LCI)
14. MCI Telecommunications Corporation (MCI)
15. National Cable Television Association (NCTA)
16. NYNEX Telephone Companies (NYNEX)
17. Oklahoma Attorney General (Oklahoma AG)
18. Oklahoma Corporation Commission (Oklahoma Commission)
19. Paging and Narrowband PCS Alliance of the Personal Communications Industry Association
20. Southwestern Bell Telephone Company (SBC)
21. Sprint Communications Company L.P. (Sprint)
22. Telecommunications Resellers Association (TRA)
23. Texas Association of Long Distance Telephone Companies
24. Time Warner Communications Holdings, Inc. (Time Warner)
25. United States Department of Justice (Department of Justice)
26. U. S. Long Distance (USLD)
27. U S WEST, Inc. (U S West)
28. Valu-Line of Kansas, Inc.
29. WorldCom, Inc. (WorldCom)

**SEPARATE STATEMENT OF
CHAIRMAN REED E. HUNDT**

RE: *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*, CC Docket No. 97-121, June 25, 1997

In its application, SBC stresses that "Southwestern Bell can use its brand name, reputation for providing reliable, high-quality telephone service, and network expertise to inject competition into interLATA services in Oklahoma, particularly for the business of ordinary residential callers. . . . Southwestern Bell will be a committed, effective new entrant into the interLATA business in Oklahoma, and Oklahoma consumers will benefit from this new competition for all telecommunications services."¹ Although the Department of Justice did not recommend approval of the SBC application, the Department did note: "InterLATA markets remain highly concentrated and imperfectly competitive . . . and it is reasonable to conclude that additional entry, particularly, by firms with the competitive assets of the [Bell Operating Companies], is likely to provide additional competitive benefits."²

I agree strongly that the entry into the long distance market by SBC or a carrier with similar assets would promote competition and benefit consumers. The Commission has previously noted concern about evidence with regard to lock-step increases in basic rates among the three major interexchange carriers that "suggests that there may be tacit price coordination among AT&T, MCI and Sprint."³

As SBC itself emphasizes, SBC's assets -- including its network, customer information, brand recognition, and financial strength -- would make it a formidable competitor in the market for long-distance or bundled local-long distance service. The experience of a relatively small incumbent local exchange carrier, Southern New England Telephone, suggests how effective individual Bell Companies will be as interexchange competitors when they choose to do what is necessary to meet the terms of Section 271 of the Communications Act.⁴

¹ SBC Brief in Support of its Application for Provision of In-Region InterLATA Services in Oklahoma, at iv (filed Apr. 11, 1997).

² Department of Justice Evaluation at 3-4 (filed May 16, 1997).

³ *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3314 ¶ 82 (1995).

⁴ According to reports, Southern New England Telephone has gained a market share of 35% of the access lines in Connecticut. Merrill Lynch, *Telecom Services -- RBOCs & GTE. Fourth Quarter Review: Defying the Bears Once Again, Reported Robust EPS Growth; Regulatory Cloud Beginning to Lift*, at 8 (Feb. 19, 1997). See also, Southern New England Tel. Co., *SNET First Quarter EPS \$0.70 Before Extraordinary Charge*, Press Release (Apr. 23, 1997).

Both a Bell Company's failure to open its markets in accordance with the Communications Act, and its combination with its strongest potential competitor, would frustrate the pro-competitive purposes of the Telecommunications Act of 1996 and deny consumers that Act's potential benefits. There is a better way to achieve the consumer benefits of Bell Company entry into long distance, and that is to meet fully the standards Congress set in Section 271.

The power to enter the long distance market lies in the hands of the Bell Companies -- if they have the will, the law makes clear the way. In the present application, SBC has plainly failed to meet the standards set forth in Section 271. For that reason, the application must be denied.

Evaluation of the U.S. Department of Justice
SBC Communications-Oklahoma
May 16, 1997

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

In the Matter of)
)
Application of SBC Communications)
Inc. et al. Pursuant to Section 271 of the)
Telecommunications Act of 1996 to)
Provide In-Region, InterLATA)
Services in the State of Oklahoma)
)

CC Docket No. 97-121

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MAY 16 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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May 16, 1997

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Summary of Evaluation

SBC Communications Inc.'s application to provide in-region interLATA service in Oklahoma should be denied because SBC has failed to satisfy the requirements of Section 271 of the Telecommunications Act of 1996.

In enacting the Telecommunications Act of 1996, Congress sought to open all telecommunications markets to competition. This objective is particularly important in local markets, which historically have been monopolies. At present, the Bell Operating Companies control about three-quarters of all local exchange and access traffic in the United States.

Section 271 of the 1996 Act conditions Bell Operating Company ("BOC") entry into in-region interLATA service on a showing that the BOC's local market is open to competition. Specifically, the 1996 Act requires that before a BOC may be authorized to provide in-region interLATA services, the Federal Communications Commission must find that a BOC: (1) has fully implemented approved access and interconnection agreements with one or more facilities-based local competitors serving business and residential subscribers, or, in certain limited circumstances, has an approved or effective statement of generally available terms; (2) provides or generally offers the fourteen items on the statutory "competitive checklist"; (3) satisfies the requirements of Section 272, including the establishment of a separate long distance subsidiary and the satisfaction of nondiscrimination conditions; and (4) has demonstrated that in-region interLATA entry would be in the public interest. The 1996 Act further requires that, in making this determination, the FCC consult with the Department of Justice and give "substantial weight"

to its assessment of the BOC's application for in-region interLATA entry.

SBC's application for interLATA authority in Oklahoma falls short on several grounds, a point underscored by the lack of competitive entry into that state, despite the interest of potential competitors in entering the local telephone markets. As a threshold matter, SBC fails to meet the prerequisites of Section 271(c)(1) so as to be able to satisfy either of the two alternative statutory entry tracks. Having received requests for access and interconnection by qualifying potential facilities-based competitors, SBC cannot proceed under Track B. Although these requests require that SBC's application be evaluated under the standards of Track A, SBC cannot presently satisfy Track A because SBC is not "providing access and interconnection" to any facilities-based carrier competing with it for both business and residential customers.

Even if SBC were entitled to proceed under either Track A or Track B, it still could not obtain approval under Section 271 because it also has not fully satisfied the competitive checklist. Specifically, SBC has failed to: (1) provide adequate wholesale support processes, which enable a competitor to obtain and maintain required checklist items such as resale services and access to unbundled elements; and (2) provide (a) physical collocation, and (b) adequate interim number portability.

Finally, granting SBC's entry would not be consistent with the public interest. In evaluating an application in this regard, the Department seeks to determine whether the BOC's local markets have been irreversibly opened to competition. The Department believes that the most probative indicator of whether a local market is open to competition is the history of actual

commercial entry. This does not mean that BOC interLATA entry must be delayed until local competition is sufficiently vigorous to discipline the BOC's market power. Actual local entry with successful commercial usage of the BOC's wholesale support systems may be sufficient to demonstrate that the inputs competitors need are commercially available. Such entry also permits the formulation of performance benchmarks that will enable regulators and competitors to detect and constrain potential BOC backsliding and competitive misconduct after long distance entry. As of yet, however, there is no sufficient history of such entry in Oklahoma and our inquiry suggests that several significant obstacles to such competitive entry remain in place.

Based on our assessment of the market conditions in Oklahoma, we conclude that the current lack of entry does not reflect an absence of demand for new entrants or a lack of interest on the part of those planning to enter into the local markets in Oklahoma; numerous potential competitors -- facilities-based and otherwise -- have sought access and interconnection agreements with SBC. Rather, our assessment of market conditions reveals that competitors are being denied the opportunities for entry required and contemplated by the 1996 Act, in large part due to SBC's failure to provide what potential competitors have requested and need for effective entry. Accordingly, granting SBC's application for interLATA authority at this time -- before SBC has done its part to remove remaining obstacles to local competition and the necessary steps are taken to ensure that competition has the opportunity to develop -- would not be in the public interest.

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

In the Matter of)	
)	
Application of SBC Communications)	
Inc. et al. Pursuant to Section 271 of the)	
Telecommunications Act of 1996 to)	CC Docket No. 97-121
Provide In-Region, InterLATA)	
Services in the State of Oklahoma)	
)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction

The United States Department of Justice, pursuant to Section 271(d)(2)(A) of the Telecommunications Act ("1996 Act" or "Telecommunications Act"),¹ submits this evaluation of the application filed by SBC Communications Inc. ("SBC") on April 11, 1997 to provide in-region interLATA telecommunications services in the state of Oklahoma.² Congress granted the United States Department of Justice ("the Department"), the Executive Branch agency primarily

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996)(codified at 47 U.S.C. § 151 et seq.).

² Section 271(d)(2)(A) requires the Commission to consult the Attorney General on any Bell Operating Company ("BOC") application to provide in-region interLATA services under Section 271(c)(1) of the Telecommunications Act and also requires that the Commission give any written evaluation by the Attorney General "substantial weight" in its decision.

responsible for protecting competition,³ a significant statutory role in overseeing the BOC interLATA entry process under the Telecommunications Act and helping to ensure that the timing of BOC interLATA entry furthers, and does not impede, the competition in all telecommunications markets that the 1996 Act seeks to promote.

SBC's application fails to satisfy the requirements of Section 271. Stated simply, SBC's application for interLATA authority in Oklahoma does not satisfy the statutory criteria and the Act's underlying objective of ensuring that local markets are open to competition. SBC's application, therefore, is premature.

In Part I of this evaluation, the Department describes the statutory framework of the 1996 Act. In Part II, the Department explains why SBC has failed to comply with either of the two entry tracks established in Section 271(c)(1). Part III then discusses several areas in which SBC has failed to satisfy the competitive checklist. Finally, Part IV reviews SBC's application under the public interest standard, focusing on the competitive environment in local telecommunications in Oklahoma and the reasons why competition has not yet developed there.⁴

³ The submission of this evaluation does not affect the independent enforcement responsibilities of the Department under the antitrust laws. See, e.g., United States v. R.C.A., 358 U.S. 334, 350 n.18 (1959). See also Section 601(b) of the 1996 Act, 110 Stat. 143.

⁴ The Department's discussion of particular areas of noncompliance in this evaluation does not necessarily mean that we believe that those requirements not discussed have been satisfied.

I. The Requirements of Section 271 and the Competitive Objectives of the Telecommunications Act

Congress' objective in the 1996 Act was to truly and fully open all telecommunications markets to competition. Through Sections 251, 252, and 253, among others, Congress sought to remove the legal and economic barriers to competition in local exchange and access markets. In Section 271, Congress set forth the conditions under which the Bell Operating Companies ("BOCs") would be permitted to provide in-region interLATA services.

Section 271 reflects a Congressional judgment that competition in interLATA markets could be enhanced by allowing the BOCs to enter those markets. The significant growth in long distance competition since the breakup of the integrated Bell system has produced greater service innovation, improvements in quality, and downward pressure on prices.⁵ InterLATA markets

⁵ The Commission has found that interLATA markets are sufficiently competitive to permit substantial deregulation. The Commission concluded in 1995 that "most major segments of the interexchange market are subject to substantial competition today, and the vast majority of interexchange services and transactions are subject to substantial competition." Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3288, at ¶ 26 (rel. Oct. 23, 1995). It has repeated the conclusion that the market for interLATA telecommunications services is "substantially competitive" in decisions subsequent to the passage of the Telecommunications Act. Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order, CC Docket No. 96-149, FCC 96-489 ("Non-Accounting Safeguards Order"), at ¶ 62 (rel. Dec. 24, 1996); Policy and Rules Concerning the Interstate Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, CC Docket No. 96-61, FCC 96-424, at ¶¶ 21-22 (rel. Oct. 31, 1996). The Commission has found that "market forces will generally ensure that the rates, practices and

remain highly concentrated and imperfectly competitive, however, and it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits.⁶ See Affidavit of Dr. Marius Schwartz ("Schwartz Aff.") ¶¶ 7, 35, 90-98, Exhibit C to this Evaluation.

But Section 271 reflects Congressional judgments about the importance of opening local telecommunications markets competition as well. The incumbent local exchange carriers ("LECs"), broadly viewed, still have virtual monopolies in local exchange services and switched access, and dominate other local markets as well.⁷ Taken together, the BOCs have some three-

classifications [of interexchange carriers] are just and reasonable and not unjustly and unreasonably discriminatory." Policy and Rules Concerning the Interstate Interexchange Market, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, CC Docket No. 96-61, FCC 96-424, at ¶ 21 (rel. Oct. 31, 1996). The Commission has also rejected arguments that "current levels of competition are inadequate to constrain AT&T's prices," finding that "AT&T cannot unilaterally exercise market power." *Id.* at ¶ 12. See also Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271 (1995).

⁶ In 1995, according to the Commission's long distance market share statistics, AT&T had a market share of 53%, MCI 17.8%, Sprint 10%, LDDS 5%, and all other long distance carriers 14% (each individually about 1% or less) based on revenues. Federal Communications Commission, Statistics of Communications Common Carriers ("FCC 1996 Common Carriers Statistics"), at Table 1.4 (1996). Based on these shares, the Herfindahl-Herschman Index (HHI) for aggregated interLATA services nationwide was approximately 3272 in 1995, placing it well within the concentrated range. See U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines, § 1.5 (1992). The HHI has dropped very substantially from its level of 8130 at the time of divestiture of the Bell System in 1984.

⁷ The Commission's most recent analysis for 1995 estimates that LECs nationwide have 99.6% of local exchange services, 97% of local private line, and 97.5% of other local services, as well as 98.5% of interstate and intrastate access services. Federal Communications Commission, Telecommunications Industry Revenue: TRS Fund Worksheet Data ("FCC 1996 TRS Data"), at Table 2 (Dec. 1996). The Commission noted in its Notice of Proposed

quarters of all local revenues nationwide, and their revenues in their local markets are twice as large as the net interLATA market revenues in their service areas.⁸ Accordingly, more

Rulemaking in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 14171, ¶ 6, n.13 (rel. Apr. 19, 1996), that the competitive access provider revenues of \$1.15 billion in 1995 still represented "a de minimis portion of the market." While the evidence available to the Department indicates that there has been more competitive entry and growth of existing competitors at the local level in 1996, thanks largely to the Telecommunications Act, it also indicates that the overall local market share of the BOCs and other incumbent LECs has not changed over the past year to any competitively significant extent. Total revenues of competitive local exchange carriers (CLECs) and competitive access providers (CAPs) in 1996 have been estimated at only \$2.2 billion, about 2% of the total revenues of the BOCs and other LECs. Competitors in local exchange services and switched access still have nationwide revenue shares of well under 1%. In dedicated access services, competitors' nationwide revenue share has been estimated at about 10%, though this is concentrated heavily in urban areas. In intraLATA toll, the LECs have lost about 25% of total revenues nationwide to competitors, primarily interexchange carriers. This competition has been stimulated by the introduction of 1+ dialing parity in sixteen states, but is very uneven on a state-by-state basis. See Schwartz Aff. ¶¶ 30-34, 38-39, 89 and Table 1.

⁸ According to the Commission's common carrier statistics, in 1995 gross long distance revenues were \$72.45 billion, but long distance revenues net of the \$22.55 billion in access charges paid to reporting local carriers were \$49.9 billion. In contrast, according to the same statistics, in 1995 all reporting incumbent local exchange carriers ("LECs"), including the BOCs, had a total of (1) \$46 billion in local exchange service revenues, including basic switched and private line revenues and some vertical services (of which over \$37 billion was accounted for by BOCs), (2) \$29 billion in exchange access revenues (of which over \$22 billion was accounted for by the BOCs), (3) \$10.7 billion in intraLATA toll and miscellaneous long distance revenues (of which over \$8.1 billion was accounted for by the BOCs), and (4) \$10.2 billion in miscellaneous revenues (\$7.2 billion for the BOCs), most of which came from directory services, carrier billing and collection and nonregulated activities. The reporting LECs had \$95.6 billion in gross revenues, of which \$86 billion came from the three most important broad categories of local services they provide. The BOCs' gross revenues were over \$74.8 billion, of which the great majority, over \$67 billion, came from local exchange services, access and intraLATA toll. FCC 1996 Common Carrier Statistics at Table 2.9. The Commission's estimates of the LECs' revenues are slightly higher in another analysis, which includes the smaller LECs and puts total LEC revenues in excess of \$100 billion. FCC 1996 TRS Data at Tables 18 and 19. For an analysis of local and long distance revenues in 1995, see Schwartz Aff. Table 1.

considerable benefits could be realized by fully opening these local markets to competition. See Schwartz Aff. ¶¶ 38-39. Moreover, we anticipate that there will be significant benefits from enabling not only the BOCs, but also interexchange carriers and other firms all to be able to realize the full advantages of vertical integration into all markets, as the Commission also has recognized, and the 1996 Act is designed to make such integration possible.⁹ See Schwartz Aff. ¶¶ 7, 82-88.

Section 271 reflects Congress' recognition that the BOCs' cooperation would be necessary, at least in the short run, to the development of meaningful local exchange competition, and that so long as a BOC continued to control local exchange markets, it would have the natural economic incentive to withhold such cooperation and to discriminate against its competitors. Accordingly, Congress conditioned BOC entry on completion of a variety of steps designed to facilitate entry and foster competition in local markets. These statutory prerequisites to interLATA entry ensure that the BOCs have appropriate incentives to take the steps needed to open their monopoly markets, while reducing their incentives and opportunities to abuse their position in the market, i.e., disadvantaging competitors who are dependent on non-discriminatory access to the local exchange network, both for local services and for integrated local and long

⁹ Non-Accounting Safeguards Order at ¶ 7; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325, at ¶ 4 (rel. Aug. 8, 1996) ("Local Competition Order") ("under the 1996 Act, the opening of one of the last monopoly bottleneck strongholds in telecommunications -- the local exchange and exchange access markets -- to competition is intended to pave the way for enhanced competition in *all* telecommunications markets, by allowing all providers to enter all markets").

distance services. In particular, Congress carefully structured the four, inter-related prerequisites for BOC entry to ensure both (1) that the BOCs would have appropriate incentives to cooperate with competitors who wished to enter local markets, and (2) that BOC entry into interLATA markets would not be held hostage indefinitely to the business decisions of the BOCs' competitors. Thus, rather than allowing for immediate entry or entry at a date certain, Congress chose to accept some delay in achieving the benefits of BOC interLATA entry in order to achieve the more important opening of local markets to competition.

Section 271 establishes four basic requirements for long distance entry.¹⁰ The first three such requirements -- satisfaction of the requirements of Section 271(c)(1)(A) ("Track A") or Section 271(c)(1)(B) ("Track B"), the competitive checklist, and Section 272 -- establish specific, minimum criteria that a BOC must satisfy in all cases before an application may be granted. In

¹⁰ Specifically, Congress required a BOC to show that:

(A) the petitioning Bell operating company has met the requirements of subsection (c)(1) of this section and -

(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A) of this section, has fully implemented the competitive checklist in subsection (c)(2)(B) of this section; or

(ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B) of this section, such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B) of this section;

(B) the requested authorization will be carried out in accordance with the requirements of section 272 of this title; and

(C) the requested authorization is consistent with the public interest, convenience, and necessity.

47 U.S.C. § 271 (d)(3)(1997).

addition, Congress imposed a fourth requirement, calling for the exercise of discretion by the Department of Justice and the Commission. The Department is to perform a competitive evaluation of the application, "using any standard the Attorney General considers appropriate." 47 U.S.C. § 271(d)(2)(A)(1997) (emphasis added). And, in order to approve the application, the Commission must find that "the requested authorization is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C)(1997). In reaching its conclusion on a particular application, the Commission is required to give "substantial weight to the Attorney General's evaluation." 47 U.S.C. § 271(d)(2)(A)(1997).

II. SBC's Application Does Not Satisfy the Preconditions of Section 271(c)(1)(A) or (B)

Section 271(c)(1) of the 1996 Act requires the BOC seeking authority to provide in-region interLATA services to meet the requirements of subparagraph (A) ("Track A") or subparagraph (B) ("Track B"). SBC contends that it meets the standards of both tracks. It claims to have satisfied Track A based on an approved interconnection agreement with a facilities-based operational provider, Brooks Fiber. At the same time, SBC claims that it has satisfied Track B on the basis of its Statement of Generally Available Terms ("SGAT"), which the Oklahoma Corporation Commission ("OCC") allowed to take effect by lapse of time for review under the 1996 Act, without approving it. In our view, based on the facts presented, SBC's application can *qualify* only for Track A consideration, not Track B.¹¹ Further, as SBC

¹¹ Or, as OCC Administrative Law Judge Goldfield put it, even though Brooks Fiber, the one provider relied on by SBC under Track A, was not yet furnishing facilities-based residential service in Oklahoma, it was a "qualifying, facilities-based carrier under subsection (c)(1)(A) for

has failed to *satisfy* Track A's entry requirements, SBC's application should be denied.

A. The Standards of Track A Govern SBC's Application

Track A reflects Congress' judgment that, in most circumstances, a BOC should not be permitted to provide in-region interLATA service until it "is providing access and interconnection," pursuant to binding agreements approved under Section 252, to "one or more unaffiliated competing providers of telephone exchange service ... to residential and business subscribers."¹² Section 271(c)(1)(A). As the Conference Report makes clear, the access and interconnection agreements must have been implemented, and the competing provider(s) must be "operational." H.R. Conf. Rep. No. 104-458, at 148 (1996). Both residential and business customers must be served by one or more facilities-based providers¹³ in order for the BOC to satisfy Track A's entry requirements. While each qualifying facilities-based provider need not be

the purpose of foreclosing a Track B application." Report and Recommendations of the Administrative Law Judge, OCC Cause No. PUD 97-64, at 35 (Apr. 21, 1997) ("ALJ Report") (emphasis added). Similarly, the Oklahoma Attorney General concluded that Track B has been foreclosed. See Comments of the Oklahoma Attorney General Regarding the Issues raised in ALTS' Motion to Dismiss, CC Docket No. 97-121, at 6-8 (Apr. 23, 1997). One OCC Commissioner reached the same conclusion, while the other two refrained from deciding the issue.

¹² An exchange access provider, exchange service reseller, or cellular carrier does not satisfy Track A. H.R. Conf. Rep. No. 104-458, at 148 (1996).

¹³ "For the purpose of this subparagraph [Track A], 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." Section 271(c)(1)(A).

serving both types of customers if the BOC is relying on multiple providers, it necessarily follows that if the BOC is relying on a single provider it would have to be competing to serve both business and residential customers.

Congress understood that requiring operational facilities-based competition pursuant to binding agreements approved under Section 252 would impose some delay on BOC entry into in-region interLATA services. But a fundamental premise of the 1996 Act is that the development of local exchange competition will require opening up the possibilities for access and interconnection to the BOC's local network. See S. Rep. No. 104-23, at 5 (1995). The approach of Track A, making the BOCs' ability to provide interLATA services dependent on the presence of an implemented agreement with an operational competitor, serves Congress' purpose of fostering local exchange competition by providing a strong incentive for the BOC to work with potential competitors to facilitate their entry. And, as the Conference Report notes, the presence of an operational competitor actually using the checklist elements is important in assisting the state commission and the FCC in determining, for purposes of Section 271(d)(2)(B), that the BOC has fully implemented the checklist elements set out in the Section 271(c)(2) checklist. H.R. Conf. Rep. No. 104-458, at 148 (1996).¹⁴

¹⁴ As SBC notes in its Opposition to ALTS' Motion to Dismiss, Congress rejected proposals to require the BOCs to wait until various "metric" tests of the substantiality of the competition were satisfied. Opposition of Southwestern Bell to ALTS' Motion to Dismiss and Request for Sanctions, CC Docket No. 97-121 ("SBC Opposition to ALTS' Motion"), at 5-7 (Apr. 28, 1997). But Congress was clear that there must be some operational facilities-based competition for business and residential subscribers under Track A.

The approach that is now embodied in Track A was the only path to approval of in-region interLATA services for the BOCs in the Senate bill.¹⁵ The House Committee's Report confirms its concurrence in this approach, emphasizing that "[t]he Committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance." H.R. Rep. No. 104-204, pt. 1, at 77 (1995).

The House, however, added a new provision, which ultimately became Track B.¹⁶ The Conference Report explains that this provision was designed "to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in [Track A] has sought to enter the market." H.R. Conf. Rep. No. 104-458, at 148 (1996). For, if Track A were the only entry path available, a BOC could find itself permanently barred from providing in-region interLATA services simply because no competitor wished to provide the kind of facilities-based business and residential competition that would satisfy Track A.

In short, Track B provides a limited exception to the Track A requirement of operational competition under an approved and implemented agreement "if, after 10 months after enactment of the Act no such provider has requested the access and interconnection described in

¹⁵ See Sections 255(b)(1) and (c)(2)(B) of S. 652, reproduced at S. Rep. 104-23, at 97-99 (1995).

¹⁶ See Section 245(a)(2) of H.R. 1555, reproduced at H.R. Rep. No. 104-204, pt. 1, at 7 (1995).

subparagraph (A) before the date which is three months before the date [of the BOC application]." Section 271(c)(1)(B). A BOC may also proceed under Track B if the State commission certifies that the only such providers requesting access and interconnection have unreasonably delayed the process by failing to negotiate in good faith as required by Section 252, or by failing to comply, "within a reasonable period of time," with the implementation schedule contained in an agreement approved under Section 252. Id. To satisfy Track B's entry requirements, the BOC must provide "a statement of terms and conditions that [the BOC] generally offers to provide such access and interconnection" (the "SGAT"), which must be "approved or permitted to take effect by the State commission under section 252(f)" in lieu of the binding and implemented agreements required by Track A.

Because Track B was added to deal with the possibility that a BOC, through no fault of its own, could find itself barred indefinitely from satisfying Track A, the term "such provider" in Track B should be interpreted with reference to the type of facilities-based competition that would satisfy Track A. Accordingly, we do not agree with the suggestion by the Telecommunications Resellers Association¹⁷ that a BOC is foreclosed from proceeding under Track B if it has received requests for access and interconnection but only from firms seeking to provide services that would not satisfy Track A, such as a carrier that does not plan to provide

¹⁷ In its Comments on ALTS' motion to dismiss SBC's application, the Telecommunications Resellers Association stated that a request by a competing carrier can preclude entry under Track B even if that carrier does not intend "to provide services either exclusively . . . or predominantly over . . . [its] own telephone exchange facilities." Comments of the Telecommunications Resellers Association, CC Docket No. 97-121, at 7 (Apr. 28, 1997).

service either exclusively or predominantly over its own facilities. See H.R. Rep. No. 104-204, pt. 1, at 77 (1995).¹⁸

But, contrary to SBC's contention, a BOC is not entitled to proceed under Track B simply because firms requesting interconnection and access for the purpose of providing services that would satisfy the requirements of Track A are not already providing those services at the time of the request. Such an interpretation of Section 271 would radically alter Congress' scheme, expanding Track B far beyond its purpose and, for all practical purposes, reading the carefully crafted requirements of Track A out of the statute. Similarly, as discussed below, a requesting potential facilities-based carrier need not even have fulfilled all of Track A's requirements at the time of the BOC's Section 271 application to foreclose the BOC from proceeding under Track B, as Congress understood that some time would be necessary before an agreement would be fully implemented and a provider would become operational.

If SBC's interpretation of Track B were correct, Track B would no longer be a limited exception applicable where a BOC would otherwise be foreclosed indefinitely from entry into in-region interLATA markets. Rather, Track B would become the standard path, allowing BOCs to seek authorization to provide in-region interLATA services even if no Section 252 agreement to

¹⁸ Since Track A, contrary to ALTS' suggestion, does not require each separate facilities-based competitor to be providing both residential and business service as long as both residential and business subscribers are being served by some facilities-based provider, it also follows that Track B can be foreclosed even if each separate provider requesting access and interconnection does not intend to provide both residential and business services, if the requesting providers as a group satisfy that requirement.

provide access and interconnection to the local network had been successfully implemented, despite would-be facilities-based competitors' timely efforts. To accept SBC's position, one would have to assume that Congress enacted Track A solely to deal with two situations of narrowly limited significance: (1) where a BOC application is filed less than ten months after enactment; or (2) where a competitor has managed to begin providing facilities-based local exchange services to residential and business customers more than three months before the BOC applies under Track B, which the BOC may do as early as ten months after enactment of the statute. There is no basis for the assumption that Congress intended Track A, the only track included in the bill as originally passed by the Senate, to play such an insignificant role.

On the contrary, Congress well understood that few, if any, would-be facilities-based competitors to the BOCs would be likely to negotiate, obtain state approval, and fully implement agreements providing for access and interconnection, and begin offering services satisfying Track A, all in the seven months (ten months less the three-month window) immediately following enactment of the statute. Indeed, Congress expected that many potential competitors would not even make their requests until the FCC's implementing rules were promulgated, within six months of enactment. See H.R. Conf. Rep. No. 104-458, at 148-49 (1996). Congress allowed state commissions 90 days to review and approve negotiated agreements, while allotting nine months for completion of arbitrations, and a further 30 days for review and approval of an arbitrated agreement. For a potential competitor merely to have an approved agreement in hand would have taken at least the full ten months after passage of the 1996 Act if arbitration were

necessary, even if the potential competitor had made its request promptly after the 1996 Act became law. Moreover, implementation of such an agreement is far from automatic; even if the BOC and competing provider cooperate fully, technical issues will inevitably impose some delay to full implementation.¹⁹

Nor is there reason to believe that Congress expected that any significant number of facilities-based competitors would be providing service to residential and business customers without an implemented agreement for interconnection and access. To the contrary, the 1996 Act was premised on Congress' understanding that, at least in the short run, such agreements will normally be an essential prerequisite to effective local exchange service competition.²⁰ Or, as the Wisconsin Public Utilities Commission aptly put it, "[i]t is not logical to expect facilities-based

¹⁹ SBC argues that a facilities-based competitor might have negotiated an interconnection agreement with the incumbent BOC and become operational prior to enactment of the 1996 Act. Such a competitor could request interconnection under the 1996 Act, "thereby allowing 'immediate' interLATA entry by the Bell company under the A Track." SBC Opposition to ALTS' Motion at 16. SBC provides no reason to believe that Congress expected such situations to be common, however. Based on the Department's experience with the implementation of the Telecommunications Act nationwide, only a small minority of states had any local exchange competition before the 1996 Act was passed, and very few providers had become operational. Indeed, the Conference Report cites only one facilities-based provider that had obtained an interconnection agreement to provide local services before the 1996 Act was passed, Cablevision in New York. H.R. Conf. Rep. No. 104-458, at 148 (1996).

²⁰ SBC suggests that a facilities-based competitor might have provided "limited types of local service to business and residential customers completely over its own network" before requesting interconnection. SBC Opposition to ALTS' Motion at 17. Once again, it suggests no reason to believe that Congress thought that this would often be the case. The Department is not aware of any provider other than the ILECs that had a significant facilities-based telephone local exchange network of its own in the United States, sufficiently ubiquitous to dispense with interconnection with the BOCs, before the 1996 Act was passed.

competition prior to interconnection being available." Findings of Fact, Conclusions of Law and Order, Matters Relating to Satisfaction of Conditions for Offering InterLATA Service (Wisconsin Bell Inc. d/b/a Ameritech Wisconsin), Wisconsin Public Service Commission, Docket No. 6720-TI-120 at 15 (Dec. 12, 1996). In sum, reading the phrase "such provider" in Track B to require not only that the firm be seeking to provide services that would satisfy Track A, but also that it already be providing them, would essentially read Track A out of the statute.

The legislative history confirms that Congress intended no such result. To the contrary, Congress assumed that firms would not yet be operational competitors when they requested the interconnection and access arrangements necessary to enable them to compete. Thus, for example, the Conference Committee described Track B as ensuring that a BOC is not foreclosed from seeking entry "simply because no facilities-based provider that meets the criteria set out in new section 271(c)(1)(A) has sought to enter..." H.R. Conf. Rep. No. 104-458, at 148 (1996) (emphasis added). It emphasized the importance of the FCC promulgating rules implementing Section 251 within six months of the statute's enactment precisely so that "potential competitors will have the benefit of being informed of the commission rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts." *Id.* at 148-49 (emphasis added). Accord, H.R. Rep. No. 104-204, pt. 1, at 77-78 (1995) (The bill would "not create an unreasonable burden on a would-be competitor to step forward and request access and

interconnection" (emphasis added)).²¹

Congress fully appreciated the procompetitive potential of permitting the BOCs to provide in-region interLATA services, and it was sensitive to the BOCs' concerns that such entry not be unreasonably delayed. But Congress was also concerned with fostering local exchange competition. Under SBC's interpretation, Section 271(c)(1)(B) would reward the BOC that failed to cooperate in implementing an agreement for access and interconnection and thereby prevented its competitor from becoming operational. Properly construed, however, the statute serves Congress' procompetitive purposes by affording the BOC a strong incentive to cooperate as would-be facilities-based competitors attempt to negotiate agreements and become operational.

Track B appropriately safeguards the BOCs' interests where there is no prospect of facilities-based competition that satisfies Track A, either because no competitor desires to provide it or because competitors cannot or will not move toward full implementation of a Section 252 agreement in a timely fashion. But Track B does not represent congressional abandonment of the fundamental principle, carefully set forth in Track A, that a BOC may not begin providing in-region interLATA services before there are operational facilities-based competitors in the local exchange market, if there are firms moving toward that goal in a timely

²¹ The legislative history that SBC cites in its Opposition to ALTS' Motion to Dismiss, at 14-15, is most reasonably understood as relating to the question whether the provider or providers requesting interconnection and access must be seeking to provide services that would qualify under Track A or whether, as ALTS argues, "such provider" may include firms seeking to provide pure resale or other services that could not ever be used to satisfy Track A.

fashion.

Given the sensible relationship between Track A and B set out above, SBC is clearly not entitled to proceed under Track B because it has received requests for interconnection and access from at least two qualifying providers, and the state commission has not certified that either delayed the negotiation or implementation process. Brooks Fiber ("Brooks") made its initial request for access and interconnection with SWBT in March 1996, and Cox Communications ("Cox") made its request on October 23, 1996, substantially more than three months before SBC's application was filed.²²

Both Brooks and Cox have manifested their intent to be facilities-based competitors and are working toward that goal.²³ Both have substantial telecommunications facilities in place in one or both of the major metropolitan areas in Oklahoma, including switches and installed fiber, that they could use to provide service to business and residential consumers. Brooks is already providing facilities-based service to business customers in Oklahoma City and Tulsa, and its intent to enter the residential market is reflected by its tariff and ongoing internal test of residential resale. As SBC itself has noted, Brooks has already invested substantial resources,

²² Comments of Brooks Fiber Properties, Inc., in Support of Motion to Dismiss and Request for Sanctions by the Association for Local Telecommunications Services, CC Docket No. 97-121 ("Brooks ALTS' Motion Comments"), at 4-5 (Apr. 28, 1997); Comments of Cox Communications, Inc., CC Docket No. 97-121 ("Cox FCC Comments"), at 1 (May 1, 1997) and Declaration of Carrington Phillip ("Phillip Decl.") ¶3, attached to Cox FCC Comments.

²³ Brooks ALTS' Motion Comments at 4 n.7; Comments of Cox Communications, Inc. on Motion to Dismiss, CC Docket No. 97-121 ("Cox ALTS' Motion Comments"), at 1-2 (Apr. 28, 1997).

and it plans to invest substantially more to become a facilities-based provider in Oklahoma.²⁴

And Cox, with an existing cable television system in Oklahoma City, is precisely the type of provider that Congress envisioned as providing meaningful facilities-based competition. See H.R. Conf. Rep. No. 104-458, at 148 (1996).²⁵

There is no reason to believe that Brooks or Cox would wish to delay becoming operational as facilities-based competitors. Neither stands to benefit from delaying SBC's entry into in-region interexchange markets because neither has significant interexchange business in Oklahoma, and Brooks' substantial investments will yield no return until it begins to serve customers. Moreover, SBC's complaints that waiting for Brooks and/or Cox to become operational would unduly delay its entry into in-region interLATA service ignore the evidence that SBC has failed to cooperate fully in that process.²⁶ And, in any event, if SBC can establish

²⁴ See Affidavit of Gregory J. Wheeler ("Wheeler Aff.") ¶7, attached to Brief in Support of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma, CC Docket No. 97-121 ("SBC Brief") (Apr. 11, 1997).

²⁵ There are also other potential competitors in Oklahoma that have installed or are constructing facilities, and have entered into agreements with SWBT; they also may provide a basis for a Track A application once they have fully implemented agreements and they have become operational. For example, SBC's application notes that the competitive access provider ACSI already has facilities in Tulsa, and that Sprint, which has an approved agreement, is constructing PCS facilities in Tulsa. SBC Brief at 93-94.

²⁶ In particular, to the Department's knowledge, SBC has provided no working physical collocation in Oklahoma. Brooks Fiber requested collocation in SWBT's central offices in Tulsa in June, 1996, but, as of the date of SBC's application, still had not received collocation. Initial Comments of Brooks Fiber Communications of Oklahoma Inc. and Brooks Fiber Communications of Tulsa Inc., OCC Cause No. PUD 97-64 ("Brooks OCC Comments"), at 3-4 (Mar. 11, 1997). Brooks has also complained that it cannot order unbundled loops because it has

that both Brooks and Cox have "violated the terms of an agreement approved under Section 252" by failing "to comply, within a reasonable period of time, with the implementation schedule contained in such agreement," it has a remedy under Section 271(c)(1)(B).

Because SBC has received timely requests for interconnection and access from potential facilities-based carriers triggering the requirements of Track A (and has not obtained a certification that the requesting carriers have failed to negotiate in good faith or have failed to implement their agreements within a reasonable period of time), it is not eligible to proceed under Track B.

B. SBC's Application Does Not Meet the Requirements of Track A Because No Operational Facilities-Based Provider Serves Residential Customers

SBC's claim that it has satisfied Track A rests on its provision of interconnection and access to Brooks Fiber, the only new operational local exchange provider in Oklahoma with whom SBC has an approved access and interconnection agreement. Although Brooks plans to offer service to residential subscribers in Oklahoma (and is doing so in other states), and has a tariff on file in Oklahoma under which it could at some point serve residential customers, it is not presently a "competing provider of telephone exchange services ... to residential ... subscribers," as required by Section 271(c)(1)(A). It is undisputed that Brooks' only residential services are provided by resale of SBC services to four Brooks employees who are participating in a very limited trial, in order to test whether such resale would work well enough to be offered

no working interconnection arrangements with SWBT. See infra Part III.C.2.

commercially.²⁷ The provision of service on a test basis does not make Brooks a "competing provider" of service to residential "subscribers," in the absence of any effort on Brooks' part to provide service on a commercial basis. Therefore, SBC does not satisfy the requirements of Track A.

III. SBC Has Failed to Show that It Has Satisfied the Competitive Checklist Requirements

A. SBC Must Provide Each of the Checklist Items in a Manner that Will Enable Its Competitors to Operate Effectively

Section 271(c)(2)(A) requires that a BOC proceeding under Track A provide access and interconnection that meets the requirements of the fourteen-point "competitive checklist" set

²⁷ See Brooks OCC Comments at 2. Administrative Law Judge Goldfield determined in the OCC's Section 271 proceeding, on the basis of the uncontroverted evidence, that "all four of the [Brooks] residential customers are provided through resale of SWBT service and on a test-basis." ALJ Report at 14, 35. In addition, the affidavit of John C. Shapleigh, Brooks' Executive Vice President-Regulatory and Corporate Development, submitted to the Commission with ALTS' motion to dismiss this application, plainly states that "Brooks is not now offering residential service in Oklahoma, nor has it ever offered residential service in Oklahoma." Mr. Shapleigh explains that Brooks' local exchange service tariffs in Oklahoma are subject to the "availability on a continuing basis of all the necessary facilities," and because "necessary facilities are not yet available, Brooks is not accepting any request in Oklahoma for residential service." Brooks' four employees testing the resold SWBT service, Mr. Shapleigh states, do not pay for the service, and the test is "in no way a general offering of residential service." Brooks, according to Mr. Shapleigh, "has made no decision yet as to the timing of an offering of residential service in Oklahoma," and has not yet gained enough experience with SWBT's resale systems "to determine whether Brooks can effectively use them on even an ancillary basis" to its planned use of SWBT's unbundled loops when those become available. Affidavit of John C. Shapleigh ("Shapleigh Aff.") ¶¶ 3-6, attached to Motion to Dismiss and Request for Sanctions by the Association for Local Telecommunications Services, CC Docket No. 97-121 ("ALTS' Motion") (Apr. 21, 1997).

forth in Section 271(c)(2)(B), pursuant to "one or more agreements."²⁸ The competitive checklist specifies a minimum set of facilities, services, and capabilities that must always be made available to competitors, thereby ensuring that a wide range of entry strategies will be available.²⁹

Because the statute allows the BOC to provide access and interconnection pursuant to "one or more agreements," it does not matter whether any single competitor requests or uses all fourteen checklist items, so long as the BOC is providing each element to at least one facilities-based competitor. Moreover, that requirement may be satisfied, at least in some instances, through the use of "most favored nation" clauses which readily allow provisions of other approved interconnection agreements to be imported into agreements with qualifying Track A competitors. Since different competitors may need different checklist items, depending on their individual business plans, such flexibility furthers the Congressional purpose of maximizing the options available to new entrants, without foreclosing BOC long distance entry simply because its competitors choose not to use all of the options.

For the same reason, we believe that, under some circumstances, a BOC may be

²⁸A BOC proceeding under Track B must be "generally offering" such access and interconnection.

²⁹ Many of the checklist items expressly require "nondiscriminatory" provision, and in addition the "nondiscriminatory" terms and conditions required by Section 251 apply both to the LECs' treatment of other competitors and to the LECs' treatment of their own affiliates, so that the LECs must provide unbundled elements at the same level of quality as they do for themselves, to the extent technically feasible. Local Competition Order at ¶¶ 217-18 (footnotes omitted).

"providing" a checklist item under an agreement even though competitors are not actually using that item, at least where no competitor is actually requesting and experiencing difficulty obtaining that item. A BOC is providing an item, for purposes of checklist compliance, if the item is available both as a legal and practical matter, whether or not any competitors have chosen to use it. If a BOC has approved agreements that set forth complete prices and other terms and conditions for a checklist item, and if it demonstrates that it is willing and able promptly to satisfy requests for such quantities of the item as may reasonably be demanded by providers, at acceptable levels of quality, it still can satisfy the checklist requirement with respect to an item for which there is no present demand.

By the same token, however, an agreement that does not set forth complete rates and terms for a checklist item, but merely invites further negotiation at some later time, falls short of "providing" the item as required by Section 271, as does a mere "paper commitment" to provide a checklist item, i.e., one unaccompanied by any showing of the actual ability to provide the item on demand.³⁰ Nor does an offer to provide a checklist item at some time in the future constitute "providing" it, if the item is not presently available. In sum, a BOC is "providing" a checklist item only if it has a concrete and specific legal obligation to provide it, is presently ready to

³⁰ In arguing that it is "providing" checklist items even though competitors are not actually using such items, SBC analogizes the provision of items under the checklist to a dinner party, contending that the host has "provided" hors d'oeuvres even if no one chooses to partake. SBC Brief at 16 n.17. We agree with SBC that it may "provide" checklist items in this sense, but only if the provided food is edible, available in adequate quantities, and if the guests are allowed access to it.

furnish it, and makes it available as a practical, as well as formal, matter.³¹

The 1996 Act provides an opportunity for state commissions to evaluate a BOC's compliance with the checklist but, as the 1996 Act makes plain, the final determination of compliance rests with the FCC. Section 271(d)(3) requires the Commission to deny BOC applications unless "it" finds that the statutory requirements have been satisfied. Similarly, Section 271(d)(2)(B) requires the FCC to "consult with the State commission . . . in order to verify the compliance" of an applicant with the checklist requirements, language which clearly indicates that verification is ultimately the FCC's responsibility.

B. The Oklahoma Corporation Commission's Opinion that SBC Satisfies the
Checklist Reflects Its Erroneous Legal Interpretations

SBC has failed to demonstrate compliance with the competitive checklist requirements in Oklahoma.³² We reach this conclusion, and believe the Commission should as well, despite the contrary conclusion of the majority in the Oklahoma Corporation Commission's split 2-1 decision.

³¹ Several state commissions and state officials have followed a similar approach to dealing with SGAT approval and checklist compliance in their Section 271 compliance proceedings. See, e.g., Hearing Examiner's Proposed Order, Investigation concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996, Illinois Commerce Commission, Docket No. 96-0404 ("ICC HEPO"), at 6-8 (Mar. 6, 1997); Order Regarding Statement, BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Georgia Public Service Commission, Docket No. 7253-U ("GA PSC Order"), at 6-7 (Mar. 20, 1997).

³² In light of the other clear deficiencies, this evaluation address only some of the substantial checklist issues raised by SBC's application.

We assume that the FCC will carefully weigh the views of state commissions, as the Department does. In this case, however, the OCC majority did not adopt detailed factual findings concerning checklist compliance issues, and their conclusions appear to rest, in large part, on what we believe to be an incorrect legal interpretation of the checklist. The OCC majority determined that all of the requisite checklist items "are either provided to or generally offered to" competitors by SBC, and also noted the absence of any filed complaint regarding provision of service, asserting that lack of entry was "not due to SWBT's failure to make available" checklist items.³³ The OCC majority, however, made no findings concerning the practical availability of checklist items.

In contrast to the OCC's limited view of what the checklist requires, the Administrative Law Judge, who presided over the OCC's Section 271 proceeding, understood Section 271 to mean that "all checklist items must be easily and equally accessible, on commercially operational terms and on equal terms as to all." He concluded that this standard had not been satisfied with respect to several checklist items, including OSS, interim number portability, collocation, and directory assistance, finding that "the evidence in this case is that SWBT does not currently provide all checklist items in such a manner." Accordingly, the ALJ determined that "[t]he evidence in this case indicates that there are currently impediments and blockades to local competition in Oklahoma."³⁴ The dissenting OCC Commissioner, as well as the Oklahoma

³³ Final Order, OCC Cause No. PUD 97-64, Order No. 411817 ("OCC Final Order"), at 2-3 (Apr. 30, 1997).

³⁴ALJ Report at 35-36.

Attorney General and the OCC staff, agreed with the ALJ's finding that the checklist had not been satisfied.³⁵ The Department concurs with their conclusions on this issue.

C. SBC Has Failed to Provide Several Checklist Items

1. SBC Has Failed to Show that Competitors Can Effectively
Obtain and Maintain Resale Services and Unbundled Elements

The competitive checklist of Section 271(c)(2)(B) requires a BOC proceeding under Track A to "provide" resale services and access to unbundled elements, among other items, pursuant to Section 251. A CLEC using these items will have to engage in multiple transactions with the BOC for each customer or access line the CLEC wins in competition with the BOC. Because each BOC has *millions* of access lines, meaningful compliance with the requirement that the BOC make available resale services and access to unbundled elements demands that the BOC put in place efficient processes, both electronic and human, by which a CLEC can obtain and maintain these items in competitively-significant numbers. The checklist requirements of providing resale services and access to unbundled elements would be hollow indeed if the efficiency of -- or deficiencies in -- these "wholesale support processes," rather than the dictates of the marketplace, determined the number or quality of such items available to competing carriers.³⁶

³⁵ Dissenting Opinion of Commissioner Bob Anthony, OCC Cause No. PUD 97-64 ("Anthony Dissenting Op."), at 1-3 (Apr. 30, 1997).

³⁶ AT&T alone has provided SBC with forecasts of over one hundred thousand resale orders per month in SBC's region. Attachment 21 to the affidavit of Nancy Dalton ("Dalton Aff."), attached to Comments of AT&T in Opposition to SBC's Section 271 Application for Oklahoma, CC Docket No. 97-121 ("AT&T FCC Comments") (May 1, 1997). Automated

A key component of the wholesale support processes necessary to provide adequate resale service and unbundled elements is the electronic access to the operations support system (OSS) functions that BOCs must provide under the Commission's rules. In its Local Competition Order, the Commission required BOCs to provide access to their OSSs—systems originally designed to facilitate practicable provision of retail services—as an independent network element under Section 251(c)(3) that the BOCs must provide under item (ii) of the checklist,³⁷ as well as a term or condition of providing access to other network elements under the checklist. In evaluating checklist compliance with regard to a BOC's OSS systems, the Department will evaluate (1) the functions BOCs make available; and (2) the likelihood that such systems will fail under significant commercial usage. Overall, the Department will consider whether a BOC has made resale services and unbundled elements, as well as other checklist items, practicably available by providing them via wholesale support processes that (1) provide needed functionality; and (2) operate in a reliable, nondiscriminatory manner that provides entrants a meaningful opportunity to compete.³⁸

ordering interfaces can take many months to develop, and several BOCs have encountered problems that extended such development over a year. Allegedly "providing" such resale services without the current capability to furnish competitively-significant numbers of such services falls short of satisfying a BOC's obligations under Section 271(c).

³⁷ Local Competition Order at ¶ 517. Because the Commission interpreted access to OSS as a term or condition of providing resale services and access to other elements in general, this requirement is also embodied in, among other items, checklist items (iv), (v), (vi), and (xiv).

³⁸ Section 251(c)(3), referenced in item (ii) of the checklist and implicated in many others, obligates an incumbent LEC to provide access to unbundled elements (OSS functions and other elements), upon request, that is "nondiscriminatory," and on rates, terms, and conditions that are

a. Checklist Compliance Requires Automated Support Systems

Under Section 271, an applicant must demonstrate that it can practicably provide checklist items by means of efficient wholesale support processes, including access to OSS functions. These processes must allow CLECs to perform ordering, maintenance, billing, and other functions at parity with the BOC's retail operations. Further, a BOC's wholesale support processes must offer a level of functionality sufficient to provide CLECs with a meaningful opportunity to compete using resale services and unbundled elements. Thus, in general, to satisfy the checklist wholesale support processes must be automated if the volume of transactions would, in the absence of such automation, cause considerable inefficiencies and significantly impede competitive entry. Appendix A describes in more detail the types of automated systems that, in the Department's experience, are likely to be necessary to provide adequate wholesale support processes.

"just, reasonable, and nondiscriminatory." Finding that "just [and] reasonable . . . terms and conditions" are those that "should serve to promote fair and efficient competition," the Commission properly has required BOCs to provide unbundled elements and resale services under "terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete." Local Competition Order at ¶ 315; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Order on Reconsideration, CC Docket Nos. 96-98 and 95-185 ("2nd Recon Order"), at ¶ 9 (specifically discussing access to operations support systems). Separately, the Commission interpreted Congress' use of the term "nondiscriminatory" in Section 251, and in particular with regard to "nondiscriminatory access" to unbundled elements, as requiring a comparison between a BOC's access to elements and the access provided CLECs (in addition to a comparison between the access afforded different CLECs). This interpretation establishes a parity requirement where a meaningful comparison can be made between a BOC's and a CLEC's access to the BOC's network elements. The Commission required such a comparison "where applicable." 2nd Recon Order at ¶ 9; Local Competition Order at ¶ 315.

b. A BOC Must Demonstrate that Its Wholesale Support Processes Work Effectively

A BOC's paper promise to provide the necessary (e.g., automated) wholesale support processes is a first step. A BOC must also, however, demonstrate that the process works in practice. Specifically, a BOC must demonstrate that its electronic interfaces and processes, when combined with any necessary manual processing, allow competitors to serve customers throughout a state and in reasonably foreseeable quantities, or that its wholesale support processes are scalable to such quantities as demand increases. By "reasonably foreseeable," we mean those quantities that competitors collectively would ultimately demand in a competitive market where the level of competition was not constrained by any limitations of the BOC's interfaces or processes, or by other factors the BOC may influence.³⁹

In determining whether a BOC's wholesale support processes can provide the necessary functionality, the Department will view internal testing by a BOC as substantially less persuasive evidence of operability than testing with other carriers, and testing in either manner as less

³⁹ See, e.g., Comments of the Wisconsin Department of Justice Telecommunications Advocate in Response to Second Notice and Request for Comments, Wisconsin Public Service Commission, Docket No. 6720-TI-120, at 7 (Jan. 27, 1997):

In order for the systems to be considered operational, they must satisfy at least two tests. First, Ameritech must demonstrate that the systems incorporate sufficient capacity to be able to handle the volumes of service anticipated when local competition has reached a reasonably mature state. . . . In addition, the systems must have been proven adequate in fact to handle the burdens placed upon them as local competition first takes root.

persuasive evidence than commercial operation. In general, the Department will consider testing evidence alone only if the more compelling evidence that can be derived from commercial operation is not available. Where such commercial operation is limited (*e.g.*, below reasonably foreseeable levels, limited to certain geographic regions, or limited to certain functions) or not expected, the Department will carefully examine the circumstances to determine whether factors under the BOC's control are responsible for the absence of significant commercial use. This approach is based on the findings and comments of states, industry organizations, experts, CLECs, and BOCs, alike, all of which reflect specific experiences in the local telecommunications industry to date, in addition to general experience in this and other industries.

c. SBC's Provision of Resale Services and Access to Unbundled Elements Fails The Statutory Checklist Standard

As Appendix A describes in detail, SBC has not demonstrated that its wholesale support processes are sufficient to make resale services and unbundled elements practicably available when requested by a competitor, as required by the checklist. Indeed, there is evidence in the record to suggest that SBC has thwarted CLEC attempts to test and commercially use the wholesale support processes SBC claims to provide, as discussed in Part IV. Most critically, however, the Department finds that SBC has failed to demonstrate even through internal testing the operation of its automated processes for making resale services and unbundled elements meaningfully available.

2. Interconnection: SBC Has Failed to Provide Requested Physical Collocation

"Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)" is part of the statutory competitive checklist in Section 271(c)(2)(B)(i). Section 251(c)(6) of the 1996 Act imposes a specific duty to provide physical collocation unless the incumbent LEC demonstrates to the state commission that this is not practical due to technical limitations or lack of space on the LEC's premises. Applying this requirement, the Commission has ruled that a requesting carrier may choose any technically feasible means of obtaining interconnection, including physical collocation.⁴⁰ 47 C.F.R. §§ 51.321(b)(1), 51.323 (1997). Accordingly, the failure to provide physical collocation upon request constitutes a failure to provide interconnection as required by the checklist, unless the BOC has demonstrated that one of the exemptions applies. The availability of physical collocation is critical to a competing local providers' ability to interconnect and to serve local exchange customers through the use of unbundled elements.

Although SBC has provisions in its SGAT and some of its agreements relating to collocation, and claims to generally offer physical collocation as an interconnection alternative, it has failed to provide adequately the physical collocation requested by Brooks, among others.⁴¹ In

⁴⁰ Local Competition Order at ¶¶ 549-551.

⁴¹ The Department is aware of no working physical collocation arrangement in any SWBT central office in Oklahoma, and very few in other SBC states. In SBC's Opposition to the ALTS' Motion to Dismiss in this docket, SBC asserts, in the affidavit of Deanna Sheffield, that it had completed and turned over four collocation cages to Brooks, as of April 25, 1997. SBC acknowledges, however, that these arrangements are not working, because Brooks has not yet

June, 1996, Brooks Fiber requested collocation in SWBT's central offices in Tulsa and Oklahoma, but, as of the date of SBC's application, Brooks still had not received collocation. Brooks OCC Comments at 3-4. SWBT's failure to provide physical collocation, which would enable CLECs to use unbundled elements and to test the OSS interfaces which support these elements, appears to be a region-wide problem.

SBC's Opposition to ALTS' Motion to Dismiss asserts, through the affidavit of William Deere, that Brooks' current virtual collocation arrangements provide access to all functions requested in the interconnection agreement, including the ability to use unbundled loops. Affidavit of William Deere ("Deere Aff."), ¶ 2, attached to SBC Opposition to ALTS' Motion. SBC, however, does not effectively respond to Brooks' position in its OCC Comments that its current virtual collocation arrangements do not give Brooks the same technically and economically feasible access to unbundled elements that its negotiated physical collocation

had an opportunity to place and test equipment. Affidavit of Deanna Sheffield ("Sheffield Aff."), ¶¶ 2-3, attached to SBC Opposition to ALTS' Motion. Similarly, in the Public Utility Commission of Texas' investigation into SWBT's entry into the interLATA market, SWBT's response to a Request for Information on April 24, 1997, indicated that it had delivered only four working physical collocations out of 59 requests in Texas. Two of the offices were delivered to Metro Access Networks, which is currently in arbitration with SWBT on the physical collocation pricing issue, and, thus, does not have an interconnection agreement with SWBT. Response of SWBT to Request for Information, Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market, Public Utility Commission of Texas, Docket No. 16251 ("Texas RFI Response"), Request No. 18-JE (Attachment E to this Evaluation. Some parts of the Texas RFI Response were submitted under claim of confidentiality by SWBT. The Department has not had access to the confidential portions of SWBT's responses and the responses offered in this attachment were not submitted under claim of confidentiality).

arrangements would provide. Brooks explains that, "[w]ith tariffed virtual collocation, the point of interconnection normally is outside of the central office, deployment of remote switching equipment is not permitted, and the interconnector designates but does not own the transmission equipment . . . This type of virtual collocation is not usable by Brooks for unbundled loop access due to both network and economic feasibility considerations." Brooks OCC Comments at 3 n.6. In its comments in this docket, Brooks continues to assert that its current tariffed virtual collocation arrangements do not technically or economically support the use of unbundled loops and, as a result, they have had to use less effective alternatives than the use of unbundled loops. Opposition of Brooks Fiber Properties, Inc., to Application of SBC Communications Inc., CC Docket No. 97-121 ("Brooks FCC Comments"), at 10 n. 6 (May 1, 1997).

In any event, regardless of the adequacy of virtual collocation, CLECs are entitled to physical collocation under the 1996 Act, and SBC must provide it when requested. The fact that potential facilities based competitors other than Brooks have requested physical collocation in Oklahoma and have yet to receive it from SWBT strongly suggests that the problems experienced are attributable to SBC rather than to any particular competitor. Cox Communications made its initial request for physical collocation in October of 1996 and it does not expect even to be able to begin placing equipment until July of 1997.⁴² Dobson Wireless ("Dobson"), in its Comments in Support of Motion to Dismiss, filed in this docket on April 28, also cites the difficulty of obtaining physical collocation from SWBT as an impediment to timely entry in Oklahoma.

⁴² See Affidavit of Jeff Storey ("Storey Aff."), ¶6, attached to Cox FCC Comments.

Dobson, despite having initially requested interconnection negotiations on December 13, 1996, is still in "negotiations" with SWBT over terms for physical collocation in SWBT's tandem central office in Oklahoma City. See Comments of Dobson Wireless, Inc., In Support of Motion to Dismiss, CC Docket No. 97-121 ("Dobson ALTS' Motion Comments") at 1-3 (Apr. 28, 1997). Thus, on the present record, it cannot be said that SWBT is either providing physical collocation or making it generally available in Oklahoma.⁴³

3. Interim Number Portability: Experience Has Shown that SBC Is Not Yet Able to Provide this Checklist Item Adequately and at Parity with Its Own Retail Services

SBC has failed to provide adequate interim number portability as required by the competitive checklist. Section 271(c)(2)(B)(xi) requires that the BOC's access and interconnection agreements or statement of terms include "[u]ntil the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing

⁴³SBC's efforts to comply with this checklist item have not been expeditious. In Oklahoma, there is no statewide tariff for physical collocation and no prices for physical collocation are listed in the SGAT. In Texas, SWBT was ordered to file a physical collocation tariff as part of implementing an arbitration award involving AT&T, MCI, TCG, MFS, and ACSI. The tariff that was filed listed many central offices as not suitable for tariffing, meaning that they would have to be negotiated on an individual case basis, and the "tariff" was only available to those three parties who specifically requested physical collocation in the arbitration proceeding. See Letter from Metropolitan Access Networks (MAN) to Donald Russell of 3/5/97 at 9 (Attachment F to this Evaluation). The problem with making physical collocation "available" on an individual case basis, as SWBT does in its Oklahoma SGAT and the Brooks agreement, is that all SBC is really providing is an invitation to do more negotiating on price and terms. This can cause further delay and may lead to more arbitration. Id. at 3-4.

trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability and convenience as possible. After that date, full compliance with such regulations." Lack of number portability or inferior quality of number portability when switching from the BOC to a competitor would constitute a major disincentive for customers to change their local exchange provider. Thus, SBC's failure to provide adequate, non-discriminatory number portability constitutes a significant barrier to the development of local competition in Oklahoma.

SBC has provisions in its SGAT and a number of its agreements with competitors purporting to provide interim number portability. This is, in fact, one of the few provisions of SBC's agreements that any competitor has had the opportunity to use in market conditions in Oklahoma, and the experience is not encouraging. Brooks, the only operational local competitor in Oklahoma, has sought to port some numbers from SWBT, but Brooks' experience in Oklahoma refutes SBC's assertion that it is providing interim number portability on a nondiscriminatory basis in accordance with the requirements of the 1996 Act.

At the time of SBC's application with the Commission, Brooks' customers had experienced delays of up to several hours between the disconnection (for billing purposes) and the reconnection of the customer's line with remote call forwarding. See Brooks Response to AT&T Request for Information, OCC Cause No. PUD 97-64, at 2 (Apr. 9, 1997). Moreover, SBC has not clearly demonstrated the ability to provision interim number portability ("INP") in a "non-discriminatory" manner such that a competitor using INP would be able to provide the same level of service to its customers that SWBT provides its own retail customers. Failures of this

sort can be very disruptive to users, especially business customers, and may discourage them from switching providers. SWBT has asserted, and Brooks acknowledges, that some recent INP conversions have been implemented without any major service disruptions, but there continue to be implementation problems for many Brooks customers. See Brooks FCC Comments at 23-24. Even if SBC were able to improve its provisioning of INP to satisfactory levels given Brooks' current level of demand, the information before the Commission would not yet justify the conclusion that SWBT has the processes or resources in place to handle a commercial quantity of INP orders in an efficient manner, once Brooks or others actually have access to unbundled elements and their demand for INP becomes significantly greater.

IV. SBC Has Failed to Meet the Public Interest Standard as its Local Markets in Oklahoma are Not Open to Competition

The public interest in opening local telecommunications markets to competition also requires that the Commission deny SBC's interLATA entry application. SBC does not presently face any substantial local competition in Oklahoma, despite the potential for such competition and the expressed desire of numerous providers, including some with their own facilities, to enter the local markets. The evidence discussed in Part III (and in Appendix A) indicates that SBC's failure to provide adequate facilities, services and capabilities for local competition is in large part responsible for the absence of substantial competitive entry. If SBC were to be permitted interLATA entry at this time, its incentives to cooperate in removing the remaining obstacles to entry would be sharply diminished, thereby undermining the objectives of the 1996 Act. Finally,

without observing commercial use or testing of SBC's wholesale support processes to ensure their adequacy and ability to meet specified performance measures, the Department cannot conclude that regulation can safeguard against any future abuse or neglect by SBC, i.e., to prevent it from taking advantage of its dominant position in the market. Accordingly, as the local market in Oklahoma has not been irreversibly opened to competition, it would not be in the public interest to grant SBC's application for interLATA authority.

A. The Public Interest Requirement and the Department of Justice's
Competitive Assessment

Congress supplemented the threshold requirements of Section 271, discussed in Parts II and III above, with a further requirement of pragmatic, real world assessments of the competitive circumstances by the Department of Justice and the Commission. Section 271 contemplates a substantial competitive analysis by the Department, "using any standard the Attorney General considers appropriate," 47 U.S.C. § 271(d)(2)(A)(1997). The Commission, in turn, must find before approving an application that "the requested authorization is consistent with the public interest, convenience, and necessity," 47 U.S.C. § 271(d)(3)(C)(1997), and, in so doing, must "give substantial weight to the Attorney General's evaluation." 47 U.S.C. § 271(d)(2)(A)(1997). The Commission's "public interest" inquiry and the Department's evaluation thus serve to complement the other statutory minimum requirements, but are not limited by them.⁴⁴ As we

⁴⁴ Congress' desire not to limit the Department's and the Commission's review to a mechanical approval process is consistent with the proviso in Section 271(d)(4) of the 1996 Act, which states that "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)." This provision by its express terms

explain below, the requirement of a DOJ evaluation under "any standard" and a "public interest" finding by the Commission both reflect a Congressional judgment that Section 271 applications should be granted only if the BOC's entry at the time it is sought is consistent with Congress' goal of opening local telecommunications markets to competition.

In vesting the Department and the Commission with additional discretionary authority, Congress addressed the significant concern that the statutory entry tracks and competitive checklist could prove inadequate to open fully the local telephone markets. Although some had suggested that Congress adopt additional fixed criteria -- which could have needlessly blocked procompetitive BOC entry -- to accomplish this objective, Congress instead chose to rely on the Commission's and the Department's expertise and discretion. To underscore this decision, Congress made satisfaction of the "public interest" criterion a minimum statutory precondition for relief under Section 271.⁴⁵ Consequently, it is the Department's responsibility to provide a

limits the Commission's actions only with regard to the competitive checklist. It does not limit the Commission's authority or responsibility to carry out its other responsibility under Section 271, *i.e.*, to consider whether Section 272 requirements have been satisfied and to conduct its public interest inquiry, giving substantial weight to the evaluation of the Attorney General. Section 271(d)(4), in other words, prohibits the Commission from promulgating additional inflexible and mandatory access and interconnection requirements as prerequisites for approval of applications under Section 271, or from ignoring noncompliance with any of the requirements of the checklist. The Commission is not restricted, however, in determining whether particular access and interconnection arrangements are consistent with the requirements of Section 272, or in weighing public interest factors or the Attorney General's recommendations. Section 271(d)(4) encourages the exercise of such discretionary judgments by limiting the Commission's authority to impose or reduce the non-discretionary requirements of Section 271.

⁴⁵ It is a basic rule of statutory construction that every provision is to be given meaning. *See e.g., Dep't of Revenue of Oregon v. ACF Industries*, 510 U.S. 332, 340-341 (1994). Thus, while the Commission may have greater discretion to interpret the public interest requirement

practical evaluation of the degree to which the local telephone markets in a particular state have been opened to competition,⁴⁶ and it is the Commission's responsibility to give that evaluation substantial weight in applying the statutory public interest standard.

As the Supreme Court has made clear, the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare, but "the words take meaning from the purposes of the regulatory legislation." NAACP v. Fed. Power Comm'n, 425 U.S. 662, 669 (1976). The term "public interest" in Section 271(d)(3) of the 1996 Act must derive its "content and meaning" from "the purposes" for which it was "adopted." Id. The "public interest" standard under the Communications Act is well understood as giving the Commission the authority to consider a broad range of factors,⁴⁷ and the courts have repeatedly recognized that competition is an important aspect of that standard under federal telecommunications law.⁴⁸ The 1996 Act reinforces the central importance of competitive

than the other statutory minimums, it may not fail to apply it.

⁴⁶ The legislative history of the Telecommunications Act clearly indicates that Congress contemplated that the Department would be undertaking a substantial competition-oriented analysis of Section 271 applications, not limited to compliance with checklist requirements, for which the Commission is separately required to consult with the state regulatory authorities. The illustrative examples of possible standards mentioned by Congress all were drawn from the antitrust laws and antitrust consent decrees, under which such a competition analysis would be performed by the Department drawing upon its special expertise. H.R. Conf. Rep. No. 104-458, at 149 (1996).

⁴⁷ See, e.g., FCC v. WNCN Listeners Guild, 450 U.S. 582 (1982).

⁴⁸ FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1953) ("there can be no doubt that competition is a relevant factor in weighing the public interest"); United States v. FCC, 652 F.2d 72, 81-82 (D.C. Cir. 1980) (en banc) ("competitive considerations are an important element

analysis, for its core purpose, as explicitly stated in the House Conference Report, is "opening all telecommunications markets to competition."⁴⁹ Highlighting its focus on promoting competition in telecommunications, Congress as well as the President envisioned a substantial role for the Department's expert evaluations, based on the competitive consequences of granting or denying a BOC's application.⁵⁰

of the public interest standard"). Where a term has been authoritatively construed in a parallel statute before enactment of legislation, as with the previously existing "public interest" standard in the Communications Act, it is ordinarily presumed that Congress knew of the prior construction and intended for the term to have the same meaning in the new legislation. See Cannon v. University of Chicago, 441 U.S. 677, 696-98 (1979). In fact, Congress explicitly intended to preserve the preexisting public interest standard, as explained in the Committee report on the Senate bill, from which the public interest standard in Section 271 of the 1996 Act was taken. S. Rep. 104-23, at 43-44 (1995).

The Commission has specifically considered the openness of related vertical foreign telecommunications markets in determining whether it would be in the public interest to permit entry by the vertically integrated provider into U.S. long distance telecommunications markets. Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 11 FCC Rcd 1850 (1996) (FCC found "critical component" of granting approval under the public interest standard was commitment of French and German governments to open their telecommunications markets to full competition, and that additional conditions would be necessary to prevent anticompetitive conduct and protect against risk that liberalization would not occur on schedule); MCI Communications Corporation British Telecommunications plc Joint Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) of the Communications Act of 1934, as amended, Declaratory Ruling and Order, 9 FCC Rcd 3960 (1994) (considering liberalization of United Kingdom telecommunications market and balance of anticompetitive risks and competitive benefits from transaction, without the specific comparable market openness criteria later adopted in the Sprint decision).

⁴⁹ H.R. Conf. Rep. No. 104-458, at 1 (1996). This purpose to "promote competition" is also acknowledged in the caption of the statute itself. 110 Stat. 56.

⁵⁰ See, e.g., 142 Cong. Rec. H.1152 (daily ed. Feb. 1, 1996) (statement of Congressman Hastert) ("the FCC must give substantial weight to comments from the Department of Justice about possible competitive concerns when BOCs provide long-distance service"); 142 Cong.

In performing its competitive analysis, the Department seeks to determine whether the BOC has demonstrated that the local market has been irreversibly opened to competition. To satisfy this standard, a BOC must establish that the local markets in the relevant state are fully and irreversibly open to the various types of competition contemplated by the 1996 Act -- the construction of new networks, the use of unbundled elements of the BOC's network, and resale of the BOC's services. If this standard is satisfied, local entry will be constrained only by technological limits and the inherent capabilities and resources of the potential competitors, and not by artificial barriers. In applying this standard, the Department will look first to the extent to

Rec. H.1165 (daily ed. Feb. 1, 1996) (statement of Rep. Berman) ("requirement designed to ensure that the FCC gives proper regard to the Justice Department's special expertise in competition matters and in making judgments regarding the likely marketplace effects of RBOC entry into the competitive long distance markets . . . acknowledging the importance of the antitrust concerns raised by such entry and to check any possible abuses of RBOC market power, the bill specifically provides that the FCC accord substantial weight to the DOJ's views on these issues"); 141 Cong. Rec. S.7970 (daily ed. June 8, 1995) (statement of Sen. Kerrey) ("I have one final test [the public interest test] that, by the way, has been litigated many, many times over the course of time. The Supreme Court has spoken many times on this issue.... This is an effort to make certain that in fact we do get competition at the local level."); 141 Cong. Rec. S.8224 (daily ed. of June 13, 1995) (statement of Sen. Thurmond) ("FCC consideration of the public interest includes antitrust analysis, as indicated by the courts and reiterated by FCC Chairman Hundt in testimony last month before the Congress"). The President also recognized in his statement issued upon signing the Telecommunications Act that "the FCC must evaluate any application for entry into the long distance business in light of the public interest test, which gives the FCC discretion to consider a broad range of issues, such as the adequacy of interconnection agreements to permit vigorous competition . . . the FCC must accord "substantial weight" to the views of the Attorney General. This special legal standard, which I consider essential, ensures that the FCC and the courts will accord full weight to the special competition expertise of the Justice Department's Antitrust Division -- especially its expertise in making predictive judgments about the effect that entry by a Bell company into long distance may have on competition in local and long distance markets." Statement at 2 (Feb. 8, 1996).

which competitors are entering the market. The presence of commercial competition, at a nontrivial level, both (1) suggests that the market is open; and (2) provides an opportunity to benchmark the BOC's performance so that regulation will be more effective. See Schwartz Aff. ¶¶ 20, 170-178. If such commercial entry has not occurred, the Department will then consider whether the lack of entry reflects the continued existence of significant barriers to competition, or results from the independent business decisions of competitors not to enter the market.

B. Issues that Should be Considered in Determining whether Markets Are Open

1. Each of the Three Entry Paths Created by Congress
Must be Available to Competitors

As the Commission has recognized, the 1996 Act is designed to facilitate entry into local exchange and exchange access markets -- along the entry paths of facilities-based services, the use of unbundled elements, and resale services -- by mandating that the most significant economic, as well as legal, impediments to efficient entry into the monopolized local market be removed.⁵¹ Since the three entry paths serve distinct and complementary purposes, local markets

⁵¹ "The incumbent LECs have economies of density, connectivity, and scale . . . The local competition provisions of the Act require that these economies be shared with entrants . . . in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of cost-based prices. . . . The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each . . . Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference . . . may have unintended and undesirable results. Rather, our obligation . . . is

should not be considered to be practicably open to competition unless each of these paths is fully available to local entrants.

2. The Existence or Lack of Actual Competition

a. Significant Competitive Entry Suggests that the Market Is Open

In evaluating whether the necessary market-opening steps have been accomplished, the Department will look, first and foremost, to the nature and extent of actual local competition. If actual, broad-based entry through each of the entry paths contemplated by Congress is occurring in a state, this will provide invaluable evidence supporting a strong presumption that the BOC's markets have been opened. See Schwartz Aff. ¶¶ 24, 170-182. The lack of competitive entry into local markets, however, suggests that local markets are not yet fully open, and it will be necessary to ask why entry is not occurring. If practical opportunities are available for resale, the use of unbundled elements, and full facilities-based competition, the decisions of competitors not to adopt particular strategies in a state for certain areas or groups of customers should not preclude long distance entry by a BOC in that state, provided that all of the minimum requirements of Section 271 have been satisfied.⁵² But if the BOC's failure to provide what is needed, or other artificial and significant barriers to entry, are wholly or partly responsible for the

to establish rules that will ensure that all pro-competitive entry strategies may be explored." Local Competition Order at ¶¶ 11, 12.

⁵² Entry under Section 271(c)(1)(A), for example, requires the presence of one or more competitors serving both business and residential customers which "exclusively . . . or predominantly" use "their own" facilities.

lack of entry, the Department would view a BOC's interLATA entry as contrary to the public interest.

Actual evidence of competition is much more persuasive and informative than theoretical claims that markets are open to entry, for there have been erroneous predictions of the imminence of local competition ever since the AT&T divestiture. Important legal issues affecting how competition will develop remain unsettled, while local exchange and switched access competition today remains in a nascent stage. On a nationwide basis, most customers still lack any alternative to the incumbent LEC for local exchange or switched access services. Most potential new local entrants are still in the process of preparing to compete on a significant scale, rather than actually doing so, and many of the arbitrated agreements under Section 252 of the 1996 Act have not yet been implemented. This does not mean that it is necessary for BOC interLATA entry to wait until local competition has become fully effective.⁵³ As Dr. Schwartz explains in his affidavit, the economic balance of benefits and harms from BOC interLATA entry strongly favors withholding such entry until the BOC's local markets are "irreversibly opened to local competition," but not postponing BOC entry into interLATA markets until local competition has become fully effective. Schwartz Aff. ¶¶ 19, 149-169.

⁵³ Although Congress required that local markets be open to competition before BOC long distance entry, some of the provisions of the 1996 Act indicate that Congress envisioned a transitional period after entry before local competition became fully effective. The protections of Section 272, which must be retained for at least three years after long distance entry, would have been unnecessary if Congress had wished to require fully competitive local markets as a precondition to long distance entry.

b. Competitive Entry Is Important to Setting
Basic Performance Standards

Conversely, initial entry efforts may reveal that in spite of paper assurances, the BOC is unable or unwilling to provide the inputs needed by competitors in a timely and reliable manner, in the quantities needed to permit effective competition. In such a case, the Department would oppose a BOC's long distance entry. If entry were permitted under those circumstances, the BOC would have significantly diminished incentive thereafter to further improve or more fully implement access for competitors to their wholesale support processes, and indeed could have substantial incentives to discriminate, for example by delaying the full development and implementation of support system functions.⁵⁴ See Schwartz Aff. ¶¶ 149-197. In such a case, it would surely be difficult for the Commission, or state regulators, to compel adequate wholesale support processes to be developed on an efficient and nondiscriminatory basis through regulation alone.⁵⁵ Regulatory and judicial proceedings over claims of discrimination and failure to provide

⁵⁴ The Telecommunications Act requires incumbent LECs to provide facilities and services to their competitors at prices lower than the monopoly price of those facilities and services. Competitors can use these inputs to compete against the incumbent LECs in providing services (e.g., interLATA toll, intraLATA toll, and bundles of local and long distance service) that are much less stringently regulated than are these inputs. By discriminating in the quality of the inputs provided to competitors, e.g., by providing inferior operations support systems, the LECs can better protect supracompetitive pricing in the retail markets in which they face competition. See Schwartz Aff. ¶¶ 101-103, 115-117, 119-120.

⁵⁵ In this context, "non-discriminatory" provision of access will be dependent on the BOC's development and implementation of complex technology that differs in important respects from anything done before, and does not merely involve the provision of simple, well-established services that have been operating for some time. The BOCs have already experienced substantial problems making access to wholesale support systems available and have repeatedly had to delay their entry plans due to these difficulties. After a BOC enters the

access can be drawn out for years by BOCs unwilling to cooperate with competitive entry into their local markets. The difficulty of effectively regulating against discrimination in this context is well documented in practice,⁵⁶ and in economic literature.⁵⁷ In contrast, regulation has better

interLATA market, however, the burden will shift in practice to the competitors and regulators, who will find it very problematic to prove whether a BOC's failure to develop and implement such technology is due to the inherent difficulty of the project or to a failure of the BOC legitimately to use its best efforts to do so. And if regulators conclude that the latter has occurred, their ability to provide effective remedies against such discrimination, *i.e.*, effectively to require best efforts, will be limited if adequate benchmarks have not already been established before BOC interLATA entry.

⁵⁶ For example, BOCs and other LECs were able to delay significantly or prevent the option of 1+ dialing parity for intraLATA toll services in most states before the passage of the 1996 Act, thereby preserving a discriminatory advantage and a dominant market position for their own intraLATA toll services. See Schwartz Aff. ¶¶ 141-144.

The difficulty of opening networks to competition through the regulatory process alone is well illustrated by the Commission's efforts over several years to achieve network unbundling through "Open Network Architecture" (ONA) for enhanced services, which fell well short of the original objective. See Schwartz Aff. ¶¶ 145-148. Beginning in the mid-1980s, the Commission sought to require the BOCs to provide unbundled service 'building blocks' for competitors, including a wide range of capabilities. See Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Report and Order, 104 FCC 2d 958 (1986), on reconsideration, 2 FCC Rcd 3072 (1987), vacated, 905 F.2d 1217 (9th Cir. 1990). But the BOC's ONA plans, even after being amended, only offered part (60%, according to the Commission's estimate) of the interconnection arrangements and transmission facilities that competitors had requested, and the Commission accepted the BOCs' claims that it was not feasible to provide the requested unbundling and declined to require "fundamental unbundling" prior to eliminating structural separation, instead treating ONA as a "long-term" goal. Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, at 42, 200 (1988); Filing and Review of Open Network Architecture Plans, 5 FCC Rcd 3103, at 3116, 3122 (1990), aff'd California v. FCC, 4 F.3d 1505 (9th Cir. 1993). Ten years after ONA was first ordered, it has still not been fully implemented, as made clear by the appellate decisions finding that the Commission's lifting of structural separation requirements to have been arbitrary and capricious due in part to the failure of the BOCs to unbundle their networks. See California v. FCC, 905 F. 2d 1217, 1232-38 (9th Cir. 1990) (FCC decision to abandon structural separation in favor of accounting safeguards was arbitrary and capricious); California v. FCC, 4 F.3d 1505, 1509-10 (9th Cir. 1993); California v. FCC, 39 F.3d 919, 929 (9th Cir. 1994).

prospects of providing effective constraints on competitive misconduct and backsliding by the incumbent LEC where stable arrangements with competitors are already in place and performance measures have been established based on competitive experience. See Schwartz Aff. ¶¶ 77, 127-136, 175.

The establishment of such performance measures will ensure the continued availability of functional and operable wholesale support processes and signal to competitors and regulators that the market has been irreversibly opened to competition. With clear performance benchmarks in place, both competitors and regulators will be better able to detect and remedy any shortcomings in the BOC's delivery of wholesale support services to its competitors. Although checklist compliance only requires a demonstration that a BOC's wholesale support processes provide adequate functionality and operability,⁵⁸ a record of performance benchmarks measured in an objective fashion -- and, if possible, commitments to maintain such standards -- is key to preventing the BOC from backsliding relative to its pre-entry performance. Without such benchmarks in place, competitors and regulators will have considerable difficulty in detecting

In addition, the Department understands from prior investigations and interviews that cellular telephone companies experienced years of problems obtaining satisfactory interconnection with the BOCs. These problems were only resolved by the early 1990s.

⁵⁷ See, e.g., Jean Jacques Laffont and Jean Tirole, A Theory of Incentives in Procurement and Regulation (The MIT Press 1993).

⁵⁸ Even if the Commission were to interpret the checklist as requiring a showing less than the "meaningfully available" inquiry set forth in Part III, *supra*, we believe that, for the same reasons outlined above with respect to the establishment of basic performance standards, such an inquiry would still be a necessary part of a competitive assessment and public interest determination.

deterioration of wholesale support processes after the incentive of long distance entry is removed.⁵⁹ As Dr. Schwartz explains in his affidavit, it is difficult for competitors and regulators to detect BOC discrimination against competitors in *developing* new processes, such as automated wholesale support processes, because the development of the necessary processes is entirely within the BOCs' control and there is little precedent to indicate what is appropriate. Schwartz Aff. ¶¶ 134-136, 155-156, 180-182. In contrast, competitors and regulators are better able to detect active BOC discrimination against competitors in the *operation* of such processes by reference to established performance benchmarks. Thus, the Department will pay close attention to the adequacy of a BOC's established performance measures.⁶⁰

c. The Department's Inquiry In the Absence of Significant
Competitive Entry

Where a BOC seeks to provide interLATA service despite the absence of successful entry, it will be necessary to take a much harder look at the record to determine whether it has cooperated fully and done everything needed to make entry possible, or whether any barriers to entry still exist. Section 271 does not foreclose the possibility of BOC interLATA entry, even if the BOC faces no significant local competition in a state. That possibility, however, is properly limited to situations in which the lack of entry is not attributable in any significant part to the

⁵⁹ See generally Affidavit of Michael J. Friduss ("Friduss Aff."), Exhibit D to this Evaluation.

⁶⁰ Another factor that is relevant to this showing is whether the BOC has entered into, or is subject to, clear penalties for failing to meet basic performance benchmarks, e.g., a time interval for provisioning unbundled loops.

BOC's failures to provision needed facilities, services and capabilities as the 1996 Act requires, or to other legal or artificial economic barriers. From the Department's observations, the enactment of the 1996 Act has spurred efforts by a large number of firms to enter a large number and wide variety of local markets. In light of those efforts, the absence of successful entry in a state reasonably gives rise to the inference that the state's local markets are not yet open to competition, just as successful entry of all types would give rise to the inference that the markets have been successfully opened.

In many situations, there may be some local entry occurring in a state at the time the BOC applies for interLATA entry authority, but not enough actual entry to suggest that the markets are fully open to competition. Although the Department looks for evidence that significant commercial entry has occurred, we do not mean to suggest that such competition must be ubiquitous, involve any particular number or type of entrants or result in any particular market share. Rather, we ask only that such competition have some real value in demonstrating that the "pipeline can carry gas," without, of course, experiencing significant leakage. Under some circumstances, even entry on a small scale may be sufficient to demonstrate that entrants will be able to obtain the cooperation needed from the BOC in order to compete successfully.

A key component of the demonstration that markets are open, particularly where actual competition is still limited, will be proof that the complex systems needed to support the provisioning and maintenance of resale services and unbundled elements are sufficiently functional and operable, as those concepts are described in Section III and Appendix A of this

evaluation, and that appropriate performance measures have been established. If so (depending on the facts in a given case, of course), the Department may well conclude that these systems will permit competitors to expand their operations in response to foreseeable demand levels, and that there are sufficient benchmarks to enable regulators and competitors to protect against "backsliding" by the BOC after long distance entry is obtained, when the BOC's incentives to cooperate with local competitors will be diminished.

To the extent that any facilities based, resale, or unbundled element competition is lacking in a state, the Department will attempt in its evaluation to determine why such entry is not occurring. We will seek to determine if the BOC's wholesale support processes are sufficiently functional and operable, and measurable in performance, to support competitive entry. We will also seek to determine whether the prices for relevant facilities and services that entrants must obtain from the BOC have been established and will remain available at appropriate cost-based levels, so as to provide the opportunity for economically efficient entry. And we will ask whether other entry barriers have been created by anticompetitive BOC behavior or by state laws or regulatory policies that may be inconsistent with the 1996 Act's requirements. On the other hand, if the absence or limited nature of local entry appears to result from potential competitors' choices not to enter -- either for strategic reasons relating to the Section 271 process, or simply because of decisions to invest elsewhere that do not arise from the BOC's compliance failures or barriers to entry in the state -- this should not defeat long distance entry by a BOC which has done its part to open the market.

This Department's approach to evaluating Section 271 applications has been reviewed by Dr. Schwartz, who has concluded that "[b]y far the best test of whether the local market has been opened to competition is whether meaningful local competition emerges," and that where such competitive evidence is lacking, "insist[ing] on offsetting evidence that the market indeed has been irreversibly opened" would be necessary and greater caution would be called for in approving any BOC entry. Dr. Schwartz also has concluded based on his economic analysis that the Department's standard "strikes a good balance between properly addressing the competitive concerns raised by BOC entry, and realizing the benefits from such entry as rapidly as can be justified in light of those concerns," and "serves the public interest in competition." Schwartz Aff. ¶¶ 20, 24, 192.

C. SBC Has a De Facto Monopoly in Local Exchange
Telecommunications in Oklahoma and Dominates
Exchange Access and IntraLATA Toll

Although the Oklahoma Corporation Commission took steps to establish a legal framework for local competition in Oklahoma in March 1996, shortly after the passage of the 1996 Act,⁶¹ SBC still faces no real competition in local exchange services in Oklahoma today,

⁶¹ OCC, Telephone Rules, Okla. Admin. Code Section 165:55-17 (1996). Oklahoma's rules dealing with interconnection, unbundled elements and resale, OAC 165:55-17-5, substantially parallel Section 251 of the 1996 Act. All incumbent local telecommunications carriers in Oklahoma, including SWBT, still have their retail rates set by rate of return regulation, but this could change as a result of a pending Oklahoma Corporation Commission rulemaking proceeding on alternative price cap, regulation. Pending legislation, Okla. H.B. 1815, could eliminate the regulation of prices for SWBT and other LECs for all products (except basic local, which is capped for 2 years), in any exchange where a competitive local exchange carrier is

more than a year later. Its local exchange market share in Oklahoma is so near 100% as to be practically indistinguishable from a complete monopoly. Indeed, SBC's revenues are continuing to increase and have not been significantly affected by competition in any of its major regulated service categories in Oklahoma, including exchange access and intraLATA toll.⁶² SWBT is the

certificated, regardless of whether any actual competition exists. *Id.* at Section 7D. This could give SBC relative freedom in pricing intrastate access to interexchange carrier competitors. For possible competitive consequences, *see* Schwartz Aff. ¶ 100, 103, 123.

⁶² SBC's total revenues in Oklahoma were \$852,387,000 in 1995 and \$1,074,510,000 in 1996, about 10% of SBC's total revenues in its region. FCC Report 43-01, ARMIS Annual Report for Southwestern Bell Telephone Co., 1995 and 1996. SWBT's basic local revenues in Oklahoma were \$447,604,000 in 1995 and \$480,375,000 in 1996. *Id.* This continued growth, according to SBC's 1996 annual report, comes from a combination of increases in access lines and sales of vertical services.

SWBT's Oklahoma access revenues were \$254,528,000 in 1995 and \$264,573,000 in 1996, 8% of the total for the SBC region. *Id.* Oklahoma is the third most significant SWBT state in interLATA traffic, after Texas and Missouri (and not counting SBC's recently acquired PacTel states). In 1995 5,356,983,000 interLATA long distance access minutes originated and terminated in Oklahoma, .97% of such minutes in the U.S. and 8.7% of such minutes in the SWBT region. FCC 1996 Common Carriers Statistics at Table 2.6. SBC's average interstate access charge per minute (originating or terminating) was 2.6 cents in 1995 (around the national average), declining to 2.5 cents in 1996 under price caps. In Oklahoma, SBC's intrastate interLATA charges mirror the federal ones, for a total of 5 cents per minute (originating and terminating). This contrasts with the situation in all of SWBT's other states, where SWBT's intrastate interLATA access charges are higher than the interstate ones, and indeed SBC has the highest average intrastate interLATA access charges of any of the BOCs other than US West. *Id.* SWBT's intraLATA access charge in Oklahoma is higher than the interLATA one, at 7 cents per minute (combining both ends). *See* Statement of Steven E. Turner on Behalf of AT&T Communications of the Southwest, OCC Cause No. PUD 97-64, at ¶ 16 (Mar. 6, 1997).

SWBT's intraLATA toll revenues in Oklahoma were \$77,021,000 in 1995 and \$173,641,000 in 1996. FCC Report 43-01, ARMIS Annual Report for Southwestern Bell Telephone Co., 1995 and 1996. This large increase was mainly attributable to a one-time adjustment, but unlike several of the other BOCs, SBC's regionwide intraLATA toll revenues actually grew between 1995 and 1996, by 7.4% according to its 1996 annual report. SBC states that intraLATA revenues regionwide would have "decreased slightly" between 1995 and 1996 due to intraLATA competition were it not for special revenue adjustments in Oklahoma and

principal provider of local exchange and access services in Oklahoma, serving approximately 92% of the access lines in the state, 1,421,357 million (389,005 business, 1,032,353 residential) out of the total of 1,543,696 switched access lines as of 1995, and 1,470,000 as of 1996.⁶³ The remaining customers are served by independent LECs in separate geographic areas, such as GTE.

Only one local exchange competitor, Brooks Fiber, is operational in Oklahoma. Brooks is serving a very small number of business customers over its facilities, 20 as of the most recent information available when SBC filed this application. All of these customers are located in the two metropolitan areas in Oklahoma, Tulsa and Oklahoma City. While SBC claims that Brooks also serves residential customers, those "customers" are merely four employees of Brooks using resold SBC local service on a trial basis. No CLEC is actively competing for local residential customers in Oklahoma today, using either facilities or resale. SBC has so far provided no unbundled loops to any entrant, in sharp contrast with most of the other BOCs including Ameritech, PacTel, NYNEX, BellSouth and Bell Atlantic. SBC had 253 local switches installed throughout the state in 1996,⁶⁴ while local competitors in total have only three local switches based on the most current information. Brooks has one switch each in Oklahoma City and Tulsa, and Cox has one switch in Oklahoma City that is not yet operational. See Appendix B.

elsewhere. 1996 10-K Annual Report for Southwestern Bell Telephone Company. Oklahoma does not yet have intraLATA toll dialing parity and could not require it before SBC provides interLATA services due to the Telecommunications Act's restriction in Section 271(e)(2).

⁶³ FCC 1996 Common Carriers Statistics at Table 2.4; ARMIS 4305, Annual Service Quality Report, Southwestern Bell Telephone Company, 1995 and 1996.

⁶⁴ ARMIS 4305, Annual Service Quality Report, Southwestern Bell Telephone Co., 1996.

In sum, none of the three entry paths specified by the 1996 Act are receiving any significant use for local competitive entry in Oklahoma today. Important categories of customers -- residential subscribers statewide, and all users outside the two major metropolitan areas -- have no real competitive choices. These circumstances give rise to the inference that the local markets served by SBC are not yet fully open to competition in Oklahoma.

D. The Absence of Local Competition in Oklahoma Can in Large Part Be Attributed to SBC's Failure to Provide What Competitors Need to Enter the Market

1. Potential Competitors Are Seeking to Enter Local Markets in Oklahoma But Have Not Yet Been Able to Do So

SWBT states in its application that it has approved, negotiated interconnection agreements with Brooks Fiber, Dobson Wireless, IntelCom Group (ICG), Sprint, U.S. Long Distance, and Western Oklahoma Long Distance. In addition, 10 other agreements have been signed but are not yet approved. In total, so far SBC has 17 agreements, including its most recent one with Cox (which was reached after SBC prepared this application), of which 6 are interconnection and 11 are purely resale agreements. Zamora Aff. ¶24 ; Phillip Decl. ¶ 3. The experiences and business decisions of these potential competitors illuminate the prospects for local competition in Oklahoma. In summary, of its 16 agreements as of the time SBC prepared its filing, SBC has 4 OCC approved interconnection agreements, and 2 OCC approved "resale" agreements. SBC Brief at 4; Zamora Aff. ¶24. SBC has filed three other interconnection agreements, with ACSI, Intermedia Communications and Cox Communications, that are

awaiting approval from the OCC. Other carriers have made requests but have not yet been able to reach interconnection agreements with SWBT, which states that requests for negotiations to date in Oklahoma have the potential to produce 44 agreements. Zamora Aff. ¶ 22. Of all the providers who have sought or received agreements, only one, Brooks Fiber, is operational and serving any local customers. AT&T is the only provider that has completed an arbitration, but this has not yet led to a signed agreement, so it is unclear when AT&T will be in a position to compete with SWBT. The five providers apart from Brooks who have approved interconnection agreements with SWBT in Oklahoma are either not ready to begin operations in the state and so do not know whether SWBT can actually provision services and elements, or are involved in disputes with SWBT on the application of certain charges and provisions of their agreements. See Appendix B.

2. Reasons Why Significant Entry Has Not Taken Place in Oklahoma

The present lack of competition in Oklahoma does not mean that the demographics of the state make efficient facilities-based local competition implausible. The places most likely to attract facilities based entry in Oklahoma are the state's two metropolitan areas, Tulsa and Oklahoma City, both of which are in SWBT's service area, and each of which is the core of one of the two separate LATAs SBC serves.⁶⁵ 67.7% of Oklahoma's population of 3.2 million lives in metropolitan areas, based on U.S. census data. SWBT has said that 55% of its Oklahoma local

⁶⁵ The third LATA in Oklahoma, in the panhandle, overlaps the state border and is mostly in Texas. SWBT has no local service territories in the Oklahoma part of this LATA.

exchange service revenues come from Oklahoma City and Tulsa.⁶⁶ Since about 68% of the access lines in SWBT's service area in Oklahoma are in the metropolitan areas, some two-thirds of customers in the SWBT service area could potentially be served by facilities-based local telephone competitors even if facilities-based competition were only to prove feasible in metropolitan areas.⁶⁷

There appear to be two reasons that local competition has not yet developed in Oklahoma. One is the time needed to secure an agreement with SBC, and then to fully implement it and become an operational provider. Notwithstanding SBC's suggestions that the competitors have only themselves to blame, the Oklahoma Corporation Commission has not found, and SBC has not even tried to prove, that any particular competitor has negotiated in bad faith or unreasonably delayed in implementing its agreement. The other reason is that, as the Department's analysis in Part III and Appendix A of this evaluation and the comments of other parties demonstrate, SWBT has failed to provide adequate, nondiscriminatory access to essential checklist items that potential competitors have requested. If competitors cannot even get over the first hurdles with SBC, it is not surprising that they are not ordering the remaining services and facilities that they

⁶⁶ Wheeler Aff. ¶ 6.

⁶⁷ SBC had 1,047,000 residential and 423,000 business access lines in Oklahoma as of 1996, of which 699,000 residential lines and 303,000 business lines were in metropolitan areas (MSAs), a total of 1,002,000 metropolitan access lines. ARMIS 4305, Annual Service Quality Report, Southwestern Bell Telephone Co., 1996. In 1995, there were 407,000 residence and 154,000 business lines in Oklahoma City, and 284,000 residence and 126,000 business lines in Tulsa, giving these two cities in combination 971,000 access lines. "Southwestern Bell Territory Local Competition Review," AT&T Presentation to the Department of Justice (Aug. 13, 1996) (based on ARMIS data).

would need to compete effectively.

SBC evidently agrees that facilities-based competition could happen in Oklahoma, and its own evidence refutes any claim that if it were not allowed in now, its interLATA entry would be deferred indefinitely for want of facilities-based competition. SBC affiant Michael L. Montgomery asserts that large numbers of SWBT business and residential customers are at risk to competitive providers, based on his estimates of the numbers of customers within 500 and 1000 feet of "competitive" providers' facilities in Oklahoma City and Tulsa. Using just information on Brooks, Montgomery asserts that 40% of SWBT's business lines are within 500 feet of Brooks' fiber facilities and that 56% of SWBT's Tulsa business lines are within 1000 feet of Brooks' facilities in Tulsa. Similar analysis was done for residential customers in Tulsa and both business and residential customers in Oklahoma City.⁶⁸ SBC also notes the large amount of resources that Brooks has already invested and plans to invest in Oklahoma as a facilities based local provider.⁶⁹ Yet it is uncontroverted that Brooks has only a handful of local exchange customers, raising the obvious question of why local competition has not yet begun to develop.

Brooks' very limited entry into business markets to date, and its lack of entry into

⁶⁸ Affidavit of Michael L. Montgomery on Behalf of Southwestern Bell Telephone Company ("Montgomery Aff.") ¶¶4-5, 8, attached to SBC Brief. Two of the "competitive" providers Montgomery cites as having facilities near current SWBT customers (Cox and ACSI) do not currently have approved interconnection agreements.

⁶⁹ Wheeler Aff. ¶ 7, citing The Sunday Oklahoman (3/20/95), notes that Brooks plans to spend an additional \$20 million over the next 10 years to upgrade its Oklahoma network from 50 fiber optic route miles to 88. This is in addition to the unknown amount already invested in a 200 fiber optic route mile network in Tulsa. Wheeler ¶14, citing Tulsa World (8/29/96).

residential markets, can be attributed to SBC's lack of full implementation of its interconnection agreement with Brooks. Brooks' witness Ed Cadieux cogently explained at the OCC's Section 271 hearing why, in spite of having facilities in such close proximity to substantial numbers of residential customers, Brooks is serving no residential customers on a facilities basis:

. . . Brooks has never intended to be in the resale business on any pervasive, broad sense. As a result of that, our primary methods of accessing customers are either connecting customers directly to our fiber or connecting customers through the use of unbundled loops. We are not serving customers currently through use of unbundled loops for reasons that I described in my testimony because we have not completed the collocations as yet.

Transcript of Proceedings, OCC Cause No. PUC 97-64 ("OCC Transcripts, Apr. 14, 1997"), at 66 (Apr. 14, 1997). For both Tulsa and Oklahoma City, Brooks facilities do appear to pass near a large number of customers, but that does not mean that Brooks could actually serve all of those customers directly without key unbundled elements from SWBT, such as local loops to connect the fiber rings to customer premises. It is not the desire of CLECs to refuse to use their own facilities that has lead to SBC's current inability to demonstrate checklist compliance on many items.⁷⁰

⁷⁰ During the Oklahoma 271 hearings, SWBT attorney Roger Toppin questioned Cadieux as to why Brooks was not offering local service to residential retail customers, in spite of the tariff Brooks had filed. Cadieux explained, "We have indicated all along that we do not intend to provide service on a resale basis to any significant extent. If we were to try to get into residential service on any broad scale immediately, we would have to do it on a resale basis because we don't have the availability of what is our preferred method of operation, the unbundled loop availability." OCC Transcript, Apr. 14, 1997, at 69. The affidavit of Liz Ham, SBC's OSS affiant, makes no mention made of Brooks' use of any SBC OSS interface. This is not surprising, given the unavailability of Brooks' preferred entry vehicle--unbundled loops.

The suggestion, arising from the absence of local competition, that SBC's local markets are not fully open to competition in Oklahoma, is confirmed by the experiences of the potential local competitors in dealing with SBC. SBC has failed to overcome the substantial evidence, introduced in comments in the Oklahoma Section 271 proceeding and before the Commission, that its own failure to provide adequate physical collocation, interim number portability, and wholesale support systems are, in large part, responsible for the current lack of local competition in Oklahoma. Moreover, there is significant evidence in the record to suggest that SBC has actively thwarted competitor attempts to develop and test interfaces to SBC's OSSs. SBC has refused to allow MCI to submit test orders to SBC interfaces until MCI both signed interconnection agreements and was certified in SBC states.⁷¹ MCI, AT&T, and Sprint, the last being the one carrier with whom SBC is currently testing an application-to-application interface (DataGate), have complained of significant delays in SBC's provision of information needed to begin development of CLEC interfaces to SBC.⁷² Sprint contends that SBC has failed to provide adequate documentation on operational interfaces and service availability in each of SBC's local switches, information Sprint will need to build an interface to SBC and market to consumers.⁷³

⁷¹ Affidavit of Samuel L. King ("King Aff."), ¶35, attached to Comments of MCI Telecommunications Corporation, CC Docket No. 97-121 ("MCI FCC Comments") (May 1, 1997).

⁷² *Id.* at ¶36; Dalton Aff. ¶8; Affidavit of Cynthia Meyer ("Meyer Aff."), ¶32, attached to Sprint Communications Company Petition to Deny, CC Docket No. 97-121 (May 1, 1997).

⁷³ Meyer Aff. ¶32.

Further, according to AT&T, with whom SBC is scheduled to begin testing of its EDI interface, SBC "is still in the process of clarifying and supplementing its own interface specifications."⁷⁴ Finally, one small carrier has stated that it was not even apprised of the availability of SBC's systems despite repeated requests over the course of a five month negotiation.⁷⁵

Related to SBC's resistance to conducting carrier-to-carrier testing is its resistance to adopting a set of performance measures to ensure the continued, reliable performance of its wholesale support processes. Because none of SBC's automated wholesale support processes are operational -- commercially or otherwise -- SBC cannot make a demonstration of reliable performance and establish performance measures to ensure reliable support services post-entry behavior. More importantly, even if SBC's processes were operating at some level, SBC has not established a sufficiently comprehensive set of performance standards, nor supplied its own retail performance information, to permit such a comparison.

As discussed more fully in Michael Friduss' affidavit, SBC has not agreed to report its performance in several areas critical to CLEC competitive entry. Mr. Friduss finds, for example, that SBC has not included critical performance standards with which to compare SBC's retail and wholesale installation intervals, repair frequency and intervals, and the percentage of orders flowing through SBC OSSs without human intervention. Mr. Friduss' affidavit reveals serious deficiencies in SBC's proposed standards that would substantially undermine competitors' and

⁷⁴ Dalton Aff. ¶8.

⁷⁵ Letter from Valu-Line of Kansas President Rick Tidwell to the Department of Justice of 5/8/97 at 1, Attachment G to this Evaluation.

regulators' ability to determine performance parity and adequacy either before or after interLATA entry.

Even if the issue related to SBC's support processes were adequately addressed, there could still be other obstacles to competitive entry in Oklahoma, which competitors would have to confront if they are ever able to cross the initial thresholds. For example, SBC has failed to show that its rates for unbundled elements, as established in the AT&T arbitration and used in its SGAT, are consistent with its underlying costs.⁷⁶ The Oklahoma Corporation Commission has never found SBC's SGAT rates for unbundled elements and interconnection, or the interim arbitrated rates from which they were derived, to be cost-based. The OCC arbitrator's decision on the AT&T application did not recommend "any particular methodology or cost study be adopted at this time," and the OCC did not even review cost studies in the arbitration to determine the interim rates. Rather, the arbitrator simply decided to "adopt SWBT's proposed rates on the basis that if a true-up is needed in the future it would be easier to explain to customers rather than trying to explain a lower price being trued-up to a higher price."⁷⁷ The

⁷⁶ If SBC relies on the rates for unbundled elements in its agreement with Brooks, which are lower than those in the AT&T arbitration or the SGAT, as its basis for showing checklist compliance, it must demonstrate that those rates are available on a nondiscriminatory basis to satisfy Section 271(d)(2)(B)(ii). It is hard to see how SBC could do so, having put forward the SGAT rates as its generally available terms. Other providers that have entered into agreements since the AT&T arbitration, such as Sprint, have had to take the higher arbitrated interim rates rather than the Brooks prices.

⁷⁷ Report and Recommendations of the Arbitrator, Application of AT&T Communications of the Southwest, Inc. for a Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996, OCC Cause No. PUD 96-218 ("OCC Arbitration Decision"), at 19-20 (Nov. 13, 1996).

OCC's proceeding to examine SBC's costs and set final prices will not even commence until later this summer, and it is not clear when this proceeding will be completed. Since it is not yet known what the final Oklahoma prices will be or how they will be determined, the provision for a true-up is hardly sufficient assurance that competitors will in fact be charged cost-based prices now or later.

There are serious disputes between SBC and some potential competitors in Oklahoma, as in other states throughout the SBC region, as to what would constitute cost-based wholesale rates.⁷⁸ There is also some reason to suspect that SBC's SGAT prices in Oklahoma exceed its true costs, given the history of how loop prices were negotiated and the interim rates determined.⁷⁹ These interim rates also are higher than loop rates set so far in the few states that

⁷⁸ See, e.g., Affidavits of Daniel P. Rhinehart and Steven E. Turner, attached to AT&T FCC Comments.

⁷⁹ Brooks states in its comments that it had reached closure with SBC on a loop price lower than the Commission's Oklahoma loop proxy of \$17.63 before the Commission's decision was issued. Following the Commission's decision, SBC increased its price offer in the final Brooks agreement to the full proxy "ceiling" level, before executing the agreement. Brooks OCC Comments at 7 n.7. After reaching its agreement with Brooks, and after the pricing provisions of the Commission's August 8 Local Competition Order were stayed, SBC then pressed for still higher loop prices beyond the proxy "ceiling" in its arbitration with AT&T. These rates, which were uniformly higher than the geographically averaged recurring loop price in the Brooks agreement submitted for OCC approval, and were 17% above the averaged proxy level for even the cheapest deaveraged urban loop at \$20.70, were set on an interim basis in the arbitration award, and used in SBC's SGAT.

have completed cost proceedings.⁸⁰ Though no state in the SBC region has yet completed its final pricing proceedings to determine cost-based rates, there is substantial variation between the interim rates adopted in Missouri and Texas for unbundled elements, which were more in line with what competitors proposed or were an average of SBC's and competitors' proposals, and those in the SGATs in Oklahoma and Kansas, which simply followed SBC's proposals.⁸¹ SBC has not presented an adequate evidentiary record here from which the Commission could determine if the interim arbitrated and SGAT rates in Oklahoma are cost-based, even assuming that the Commission were willing to engage in that inquiry now rather than awaiting the results of the final Oklahoma pricing proceeding.⁸²

⁸⁰ For example, New York, which used two density zones for loop prices, has set the prices at \$12.49 and \$19.24.

⁸¹ To illustrate, the three deaveraged zone rates for a two-wire analog loop in the Oklahoma SGAT are \$20.70, \$27.75, and \$49.30. The lowest of these rates is above the FCC's averaged proxy price of \$17.63. In SBC's Kansas SGAT, the three deaveraged zone rates for the same loop are \$19.65, \$26.55, and \$70.30, putting the lowest of these rates slightly below the FCC's averaged proxy price of \$19.85, while the others are above it. In contrast, in Missouri, the three deaveraged zone rates for the same loop set in arbitration by the state commission (and challenged by SBC on appeal) are \$9.99, \$16.41, and \$27.12, putting two of the three zones below the FCC's averaged proxy rate of \$18.32. In Texas, the deaveraged rates for the same loop in the ICG agreement are \$15.50, \$17.30, and \$23.10, compared with the FCC averaged proxy of \$15.49, about the same as the lowest zone. These rates only reflect recurring monthly charges, and not the additional interim nonrecurring charges that also apply in each SBC state, and vary substantially among the states as well.

⁸² In the AT&T arbitration in Oklahoma, SBC presented supplemental testimony through one witness, Eugene Springfield, but SBC has not made the cost study underlying his testimony part of its filing in this proceeding. Some of SBC's proposed interim rates were not even claimed to be based on a cost study, but were derived from previous tariffs or contracts. OCC Arbitration Decision at 20. SBC has not presented any affidavit by Mr. Springfield in this

There are also serious concerns about SBC's limitations on the availability of unbundled elements in its SGAT, which requires parties interested in taking unbundled elements to provide indemnification for any infringement of intellectual property rights that may result from combining or using services or equipment provided by SWBT. SGAT, § XV, ¶ A. 7, at 19. In order to assure SWBT that it has no liability for intellectual property claims, users of unbundled elements will have to obtain licenses from approximately 40 equipment vendors, resulting in delay and additional expense. *Id.* ¶ A. 6, at 18. SWBT has told AT&T that it will not provide any unbundled element for which it believes a license is required, until AT&T obtains such a license or a certification that a license is not required from the third party owner. Affidavit of Thomas C. Pelto ("Pelto Aff.") ¶ 3, attached to AT&T FCC Comments. Additionally, if SBC's competitor is sued by a third party over the use of this intellectual property, the SGAT provides that "SWBT shall undertake and control the defense and settlement of any such claim or suit and LSP [Local Service Provider] shall cooperate fully with SWBT in connection herewith." SGAT, ¶ A. 7.

It is far from clear that there are legitimate third party intellectual property rights that

proceeding, and it offered no witnesses for cross-examination in the state Section 271 proceeding in Oklahoma. With this application, SBC has presented only a summary affidavit by J. Michael Moore, purporting to describe in general terms some parameters and assumptions of SBC's cost studies, but not actually disclosing the underlying studies themselves, and simply asserting the conclusion that "the costs provided by SWBT meet the requirements of the Act" and the Commission's regulation and "provide a suitable basis for rates." *See* Affidavit of J. Michael Moore, attached to SBC Brief. AT&T has an alternative cost study which concludes that SBC's prices significantly exceed costs.

would be affected by the sale of an unbundled network element functionality.⁸³ But whether there are such rights or not, SBC's use of the claim of such rights to place burdens on parties seeking access to unbundled elements has unreasonable consequences, potentially delaying and increasing the expense of entry. The Commission has already articulated procedures, in its Order implementing the infrastructure sharing obligations imposed by Section 259 of the Act,⁸⁴ by which an ILEC, CLEC, and third party vendor could work together, in the case of legitimate third-party claims of intellectual property rights, to assure that the vendor's rights are protected and that the CLEC gets the non-discriminatory access required under the Act. The Commission has stated, "[i]n the ordinary course . . . we fully anticipate that such licensing will not be necessary," Infrastructure Sharing Order ¶69, but that in any event, the providing incumbent LEC

⁸³Pelto Aff. ¶¶ 30-34. AT&T presents arguments which support the view that, because most intellectual property rights are extinguished with the first sale of the product containing the intellectual property, and given that, in providing the unbundled elements the ILEC never relinquishes control of the element, it is unlikely that any real violations of a third party's intellectual property rights are at issue. AT&T and MCI have both challenged the legality of SBC's position requiring interconnectors to secure intellectual property licences from third party vendors under the Act. AT&T has challenged this requirement in federal district court in Texas. AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Co. and the Commissioners of the Public Utility Commission of Texas, Civ. Action No. A 97CA 029 (W.D. Tex. filed Jan. 10, 1997). MCI has filed a Petition for a Declaratory Ruling at the Commission. In the Matter of Petition of MCI for Declaratory Ruling, CCBPol 97-4, (filed Mar. 11, 1997). Various vendors have raised doubts about the applicability of third-party licensing rights to unbundled elements in most situations where the CLEC is not using the unbundled elements in a different manner than the ILEC. See, e.g., Comments of Northern Telecom Inc., In the Matter of Petition of MCI for Declaratory Ruling, CC Docket No. 96-98, CCBPol 97-4, at 5-6 (filed Apr. 15, 1997); Comments of Lucent Technologies Inc., CCB Pol 97-4, at 2 (Apr. 15, 1997).

⁸⁴ Report and Order, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, ("Infrastructure Sharing Order"), CC Docket 96-237 (rel. Feb. 7, 1997).

must not impose "inappropriate burdens on qualifying carriers," and if a license is required, "the providing incumbent LEC will be required to secure such licensing by negotiating with the relevant third party directly." *Id.* ¶ 70. SBC's handling of this issue, in contrast, puts the burdens and the risk on the CLEC seeking to use its unbundled elements. *Pelto Aff.*, ¶¶ 8-12.

At this time, given the lack of competition in Oklahoma and the various obstacles SBC has placed in the path of competitive entry, SBC's in-region interLATA entry in Oklahoma would not be consistent with the public interest.

Conclusion

Based on the foregoing evaluation, the application of SBC Communications Inc. et al. to provide in-region interLATA service in the state of Oklahoma should be denied. This application fails to comply with the requirements of Section 271 of the Act. It does not satisfy either of the two entry tracks set forth in Section 271(c)(1)(A) or (B), fails to comply with the statutory competitive checklist, and would not be consistent with the public interest in competition.

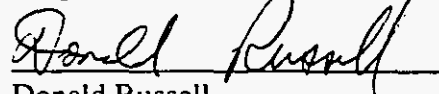
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May 16, 1997

Evaluation of the U.S. Department of Justice
Ameritech - Michigan
June 25, 1997

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

In the Matter of)	
)	
Application of Ameritech Michigan)	
Pursuant to Section 271 of the)	
Telecommunications Act of 1996 to)	CC Docket No. 97-137
Provide In-Region, InterLATA)	
Services in the State of Michigan)	
)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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SUMMARY OF EVALUATION

Based on the record before us, Ameritech's application to provide in-region interLATA service in Michigan should be denied because Ameritech has not yet satisfied the requirements of Section 271 of the Telecommunications Act of 1996.

Ameritech has made significant and important progress toward meeting the preconditions for in-region interLATA entry under Section 271 in Michigan, and has satisfied many of those preconditions, but it has not yet complied with several of the requirements of the competitive checklist. Unbundled switching and unbundled transport are not available in a manner consistent with the 1996 Act and the Commission's regulations, and as a result, local competitors cannot freely combine network elements into a "network platform" and receive access charges in connection with their provision of local service. Ameritech's wholesale support processes, including OSS, have not been shown to be adequate to handle reliably the ordering and provisioning of significant quantities of demand for resold services and unbundled elements by local competitors, although Ameritech has taken the right steps toward establishing the means by which the adequacy of these systems could be resolved in the future and has made some progress toward effective ordering and provisioning of resold services and unbundled elements. Ameritech also has not provided trunking facilities of acceptable quality to ensure nondiscriminatory interconnection.

Granting interLATA entry to Ameritech in Michigan at this time also would be inconsistent with the Telecommunications Act's objective, embodied in the Department's

competitive standard, of ensuring that local markets are "fully and irreversibly open to competition." This standard focuses on opportunities for commercial entry to serve both business and residential customers, looking first at actual entry in order to demonstrate that the market is open and that enforceable benchmarks are in place. Local exchange competition in Michigan is still on a very small scale, and the areas in which Ameritech has not fully complied with the competitive checklist constitute tangible obstacles to the growth of local competition. In addition, Ameritech's lack of fully adequate performance measures and enforceable performance benchmarks suggests that the development of local competition in Michigan has not yet been shown to be irreversible. For these reasons, Ameritech's current Section 271 application in Michigan should be denied.

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Telecommunications Act of 1996 to)	CC Docket No. 97-137
Provide In-Region, InterLATA)	
Services in the State of Michigan)	
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EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction

The United States Department of Justice, pursuant to Section 271(d)(2)(A) of the Telecommunications Act ("1996 Act" or "Telecommunications Act"),¹ submits this evaluation of the application filed by Ameritech Michigan ("Ameritech") on May 21, 1997 to provide in-region interLATA telecommunications services in the State of Michigan.²

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996)(codified at 47 U.S.C. § 151 et seq.).

² Section 271(d)(2)(A) requires the Commission to consult the Attorney General on any Bell Operating Company ("BOC") application to provide in-region interLATA services under Section 271(c)(1) of the Telecommunications Act and also requires that the Commission give any written evaluation by the Attorney General "substantial weight" in its decision. The submission of this evaluation does not affect the independent enforcement responsibilities of the Department under the antitrust laws. See, e.g., United States v. R.C.A., 358 U.S. 334, 350 n.18 (1959). See also Section 610(b) of the 1996 Act, 110 Stat. 143.

The State of Michigan has been among the leaders in removing legal and economic barriers to local competition. In some urban areas of the state, new entrants have made notable progress, though local competition is still on a very small scale and has not yet reached many areas of the state. Significantly, this emerging local competition has revealed many practical difficulties in developing and implementing the complex processes that will be needed to support competition in an environment where entrants remain dependent on nondiscriminatory access and interconnection arrangements with a dominant incumbent local exchange carrier ("ILEC").

The U. S. Department of Justice ("the Department") set out in detail the standards and criteria that it will apply in evaluating applications under Section 271 of the 1996 Act in our previous filing opposing SBC's application to provide in-region interLATA services in Oklahoma.³ Applying those standards and criteria to Ameritech's Michigan application, we observe that through its ongoing efforts as well as through its cooperation with the Department, Ameritech has made significant progress toward satisfying the requirements of Section 271, and has already successfully fulfilled many of the 1996 Act's preconditions for in-region interLATA entry. Nevertheless, based on the record before us, we believe that the Commission should deny this application on the grounds that Ameritech has yet to make the necessary showings on two important requirements. First, it has not yet satisfied all fourteen points of the competitive checklist as set out in Section 271(c)(2)(B) of the 1996 Act, a conclusion also reached by the

³ Application of SBC Communications Inc. et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma, Evaluation of the United States Department of Justice, CC Docket No. 97-121 (May 16, 1997) ("DOJ Oklahoma Evaluation").

Michigan Public Service Commission ("MPSC"). And second, Ameritech has failed to show that its local markets in Michigan are "irreversibly opened to competition," the competitive standard used by the Department in evaluating Section 271 applications, which in turn means that granting this application would not be in the public interest.

I. The Requirements of Section 271 and the
Competitive Objectives of the Telecommunications Act

Section 271 reflects Congress' commitment to the critically important goal of fully opening local telecommunications markets to competition. See Affidavit of Dr. Marius Schwartz ¶¶ 6-24, 154-159 ("Schwartz Aff."), Exhibit 1 to this Evaluation.⁴ It is widely understood that the incumbent Bell Operating Companies and other local exchange carriers ("LECs"), broadly viewed, still have virtual monopolies in local exchange services and switched access, and dominate other local markets as well.⁵ It is also widely understood that the BOCs' cooperation will be necessary, at least in the short and medium term, to assist in the development of meaningful local exchange competition, and accordingly, the 1996 Act conditioned BOC in-

⁴ This affidavit has already been filed with the Commission as an exhibit with the DOJ Oklahoma Evaluation in CC Docket No. 97-121, and so an electronic version is not provided again with this filing.

⁵ See, e.g., Federal Communications Commission, Telecommunications Industry Revenue: TRS Fund Worksheet Data, at Tables 2, 18, and 19 (Dec. 1996) ("FCC 1996 TRS Data"); Federal Communications Commission, Statistics of Communications Common Carriers, at Table 2.9 (1996) ("FCC 1996 Common Carrier Statistics"); and Schwartz Aff. ¶¶ 30-34, 38-39, 89 and Table 1. A more detailed analysis of data on revenues in local markets on a nationwide basis is contained in the DOJ Oklahoma Evaluation at 5 n.8.

region, interLATA entry on completion of a variety of steps designed to facilitate entry and foster competition in local markets. In order to ensure that the 1996 Act fulfilled its paramount goal of opening of local markets to competition, Congress chose to accept the requisite delay in achieving the benefits of BOC in-region interLATA entry, rather than allowing entry immediately or at a date certain.

Section 271 establishes the basic requirements for in-region interLATA entry.⁶ The first three such requirements -- satisfaction of the requirements of Section 271(c)(1)(A) ("Track A") or Section 271(c)(1)(B) ("Track B"), the competitive checklist, and Section 272 -- establish specific, minimum criteria that a BOC must satisfy in all cases before an application may be granted. In addition, Congress called for the exercise of discretion by the Commission in determining whether "the requested authorization is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C)(1997). Finally, Congress provided for a

⁶ Specifically, Congress required a BOC to show that:

(A) the petitioning Bell operating company has met the requirements of subsection (c)(1) of this section and -

(i) with respect to access and interconnection provided pursuant to subsection (c)(1)(A) of this section, has fully implemented the competitive checklist in subsection (c)(2)(B) of this section; or

(ii) with respect to access and interconnection generally offered pursuant to a statement under subsection (c)(1)(B) of this section, such statement offers all of the items included in the competitive checklist in subsection (c)(2)(B) of this section;

(B) the requested authorization will be carried out in accordance with the requirements of section 272 of this title; and

(C) the requested authorization is consistent with the public interest, convenience, and necessity.

47 U.S.C. § 271 (d)(3)(1997).

competitive evaluation of the application by the Department of Justice, "using any standard the Attorney General considers appropriate." 47 U.S.C. § 271(d)(2)(A)(1997) (emphasis added). In reaching its conclusion on a particular application, the Commission is required to give "substantial weight to the Attorney General's evaluation." 47 U.S.C. § 271(d)(2)(A)(1997).

II. Ameritech's Compliance with Track A (Facilities-Based Competitor)

Track A, under which Ameritech filed this application,⁷ requires a demonstration that the BOC "is providing access and interconnection," pursuant to binding agreements approved under Section 252, to "one or more unaffiliated competing providers of telephone exchange service ... to residential and business subscribers." Moreover, the competing providers must be providing local exchange service "exclusively" or "predominantly over their own telephone exchange service facilities." Section 271(c)(1)(A).

Ameritech contends that its application, based on its approved interconnection agreements with three operational providers, Brooks Fiber ("Brooks"), MFS and TCG, satisfies Track A.⁸ In our view, however, Ameritech can only rely on Brooks Fiber to satisfy Track A's

⁷ Ameritech cannot apply for Section 271 authority in Michigan under Track B, as the MPSC has refused to approve its Statement of Generally Available Terms and Conditions ("SGAT"), finding that competitive local exchange providers made timely requests for access and interconnection. Michigan Public Service Commission, In the Matter of the Application of Ameritech Michigan, Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Consultation, at 2-4 (June 9, 1997) ("MPSC Consultation").

⁸ Brief in Support of Application by Ameritech Michigan for Provision of In-Region InterLATA Services in Michigan, CC Docket No. 97-137, at 2-3, 8-14 (May 21, 1997)

requirement of a residential local exchange service competitor. Brooks, MFS and TCG are all competing in some local exchange markets in Michigan for business customers, but only Brooks is actively competing in any residential local exchange markets in Michigan.⁹ Ameritech offers no contrary evidence, admitting that it is "unaware whether any of the Michigan customers of MFS or TCG subscribe to residential service." Ameritech Brief at 7. In the absence of residential service, MFS and TCG cannot be considered facilities-based providers that can be used to satisfy Track A of Section 271.

Turning then to Brooks, which is serving both residential and business customers, we observe that Brooks is not serving any of its local customers by resale of Ameritech's services. Ameritech Brief at 12. It provides significant switching and transport of its own, separate from Ameritech, to serve all of its customers, as well as a substantial share of its own local loops for both business and residential customers.¹⁰ While the issue of "predominance" -- as required by

("Ameritech Brief").

⁹ Both MFS/WorldCom and TCG have stated that they are not providing local exchange service to residential customers in Michigan. Comments of WorldCom, Inc. in Opposition to Ameritech Michigan Application for InterLATA Authority, CC Docket No. 97-137, at 4 (June 9, 1997) ("WorldCom Comments"); Comments of Teleport Communications Group, Inc., CC Docket No. 97-137, at 39 (June 10, 1997) ("TCG Comments"). The MPSC likewise found that "MFS and TCG apparently serve only business customers in Michigan at this time." MPSC Consultation at 10. See also DOJ Oklahoma Evaluation at 20-21 (certification and tariffs not sufficient to establish residential competition in absence of any customers or active marketing). Brooks, in contrast, does serve some residential customers in Grand Rapids and Holland, Michigan. Opposition of Brooks Fiber Communications of Michigan to Ameritech's Application, CC Docket No. 97-137, at 6 n.18 (June 10, 1997) ("Brooks Opposition").

¹⁰ See Ameritech Brief at 10; Brooks Opposition at 7, 9; and MPSC Consultation at 10.

Track A -- is necessarily one of degree, we believe that on the specifics of the facts presented, it is reasonable to conclude that Brooks is predominantly a facilities-based provider in Michigan for purposes of Track A.¹¹

This conclusion, however, is only the first step of the Section 271 inquiry.

III. Ameritech's Compliance with the Requirements of the Checklist

Section 271(c)(2)(A) requires that a BOC proceeding under Track A provide access and interconnection that meets the requirements of the fourteen-point "competitive checklist" set forth in Section 271(c)(2)(B), pursuant to "one or more agreements." The competitive checklist specifies a minimum set of facilities, services, and capabilities that must be made realistically available to competitors, thereby ensuring that a wide range of entry strategies are open to competitors as a practical matter.¹²

¹¹ Given our conclusion that Track A is satisfied on the basis of Brooks' own facilities, we need not consider Ameritech's suggestion that the leasing of a BOC's unbundled network elements should be considered to be a competitive local exchange carrier's ("CLEC's") facilities for purposes of Track A. See Ameritech Brief at 12-14.

¹² Many of the checklist items expressly require "nondiscriminatory" provision, and in addition the "nondiscriminatory" terms and conditions required by Section 251 apply both to the LECs' treatment of other competitors and to the LECs' treatment of their own affiliates, so that the LECs must provide unbundled elements at the same level of quality as they do for themselves, to the extent technically feasible. See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98 and 95-185, at ¶¶ 217-18 (footnotes omitted) (rel. Aug. 8, 1996) ("Local Competition Order"). Where a BOC relies on the use of "most favored nation" (MFN) clauses to meet checklist requirements and there has been substantial doubt as to what its MFN clauses actually permit, as here, the Commission should carefully scrutinize the BOC's interpretations to ensure both that they are adequate and that they remain fully enforceable after entry authority is granted. See

The 1996 Act provides an opportunity for state commissions to evaluate a BOC's compliance with the checklist. At the same time, the 1996 Act authorizes the Commission to make the final determination of checklist compliance.¹³ In the Department's view, the MPSC has raised valid concerns, which have been echoed by other state regulatory authorities in the Ameritech region -- namely, the Public Service Commission of Wisconsin ("PSCW"), in a final decision rejecting Ameritech's SGAT,¹⁴ and the Illinois Commerce Commission ("ICC"), in a

Affidavit of Theodore A. Edwards at Schedule 3 ("Edwards Aff."), attached to Ameritech Brief, Volume 2.3 (construing scope and permitted use of MFN clauses in Ameritech's agreement with TCG); Comments of MCI Telecommunications Corporation, CC Docket No. 97-137, at 9 (June 10, 1997) ("MCI Comments"); and Opposition of the Competitive Telecommunications Association, CC Docket No. 97-137, at 8 (June 10, 1997) ("CompTel Opposition") (arguing Ameritech MFN clauses do not confer true mix and match rights on competing carriers). The MPSC has discussed the difficulties experienced by TCG in seeking to use its MFN clause and Ameritech's further clarification of its present position allowing providers to opt to adopt the rates, terms and conditions of a single contract element rather than only being able to adopt contract sections as a whole, and has said that "application of these clauses will continue to be closely monitored." MPSC Consultation at 7.

¹³ Section 271(d)(3) requires the Commission to deny BOC applications unless "it" finds that the statutory requirements have been satisfied.

¹⁴ Ameritech filed its initial SGAT in Wisconsin on October 16, 1996. The PSCW opened Docket No. 6720-TI-120 in order to analyze the offering. On December 12, 1996, the PSCW issued its First Order finding Ameritech's SGAT deficient in many respects. Ameritech filed revised SGATs in January and March. The PSCW considered all of the issues noted in its First Order and held hearings on some of them, including whether Ameritech's OSS interfaces were "tested and operational." Testimony was submitted by Ameritech, CLECs and other interested parties, and PSCW staff, and cross-examination occurred. Commissioners attended the OSS hearings on March 31-April 1, 1997, heard oral argument on April 2, 1997, and orally decided on April 3, 1997, that Ameritech had not demonstrated that its systems were tested and operational. That decision was later memorialized in the final, written order of May 29, 1997, which rejected Ameritech's March SGATs and all prior SGATs for reasons which included lack of demonstrated OSS and lack of an unbundled common transport offering. Public Service Commission of Wisconsin, Matters Relating to Satisfaction of Conditions for Offering

proposed order by the Hearing Examiner¹⁵ -- and which suggest that Ameritech has yet to make the necessary showing that it has complied with the competitive checklist.

Although Ameritech is furnishing most items on the checklist to local competitors, the Department concludes that Ameritech has not yet satisfied the competitive checklist on several grounds, including the provision of unbundled switching, unbundled transport, interconnection trunking of adequate quality, and wholesale support systems including OSS.¹⁶

InterLATA Service (Wisconsin Bell, d/b/a Ameritech Wisconsin), Docket No. 6720-TI-120, Findings of Fact, Conclusions of Law and Second Order (May 29, 1997) ("PSCW Second Order"), Exhibit 2 to this Evaluation.

¹⁵ On August 26, 1996, the ICC issued an order establishing Docket No. 96-0404, an investigation into Ameritech's compliance with the requirements of Section 271. The ICC described 30 areas of inquiry, which were addressed by Ameritech, CLECs and other interested parties, and ICC staff in testimony, at hearing, and in briefs. On March 6, 1997, a Hearing Examiner's Proposed Order ("HEPO") was issued, which found Ameritech's compliance deficient in several respects, including the provision of OSS, unbundled transport and unbundled switching. This HEPO also expressed concerns about provisioning delays for unbundled loops. Ameritech then requested the opportunity to supplement the record, which was re-opened in the interests of completeness. Following additional rounds of testimony and hearing, a second HEPO was issued June 18, 1997, and then revised June 20, 1997. See Illinois Commerce Commission, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996, Docket No. 96-0404, Hearing Examiner's Revised Second Proposed Order (Revised June 20, 1997) ("ICC Second HEPO"), Exhibit 3 to this Evaluation. The only deficiencies cited in this HEPO are that Ameritech has not met the checklist items of unbundled switching and unbundled transport. This second HEPO is subject to briefs on exceptions, after which the matter will be submitted to the ICC.

¹⁶ Questions have been raised by various regulatory authorities in the Ameritech region about whether Ameritech is provisioning poles, ducts and conduits, and E911 services, on an adequate and nondiscriminatory basis. See MPSC Consultation at 34-36, 43-44; Public Utility Commission of Ohio, In the Matter of the Complaint of the Ohio Cable Telecommunications Association et al., Regarding Discriminatory Treatment of Pole Attachments by Cable Television Operators, Case No. 96-1027-TP-CSS, Opinion and Order, at 23, 25 (Apr. 17, 1997); Public Service Commission of Wisconsin, Matters Relating to Satisfaction of Conditions for Offering

**A. Ameritech Has Not Demonstrated that It Is Providing
Access to Local Switching and Transport As Required
by Sections 251 and 271 of the Telecommunications Act**

Section 271(c)(2)(B)(ii) sets forth the general requirement that the BOC's access and interconnection agreements or statement of terms include "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." In addition, the competitive checklist specifically requires the provision of "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services" (Section 271(c)(2)(B)(iv)), "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services" (Section 271(c)(2)(B)(v)), "[l]ocal switching unbundled from transport, local loop transmission, or other services" (Section 271(c)(2)(B)(vi)), and "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion" (Section 271(c)(2)(B)(x)).

Ameritech's application acknowledges that it is not actually furnishing unbundled local switching to any of its local exchange competitors. Ameritech Brief at 15. Some potential competitors, including AT&T, MCI, and LCI, have sought extensive unbundled switching arrangements as part of their requests for interconnection agreements. Ameritech represents that

InterLATA Service (Wisconsin Bell Inc. d/b/a Ameritech Wisconsin), Docket No. 6720-TI-120, Findings of Fact, Conclusions of Law and Order, at 50 (Dec. 12, 1996) ("PSCW First Order"); and PSCW Second Order at 34. The Department does not have sufficient independent information at this time to conclude whether or not these checklist items are being satisfied in Michigan.

no CLEC has chosen to order unbundled local switching, but that it is making this item available through its interconnection agreements and would provide it if it received an order. In a situation where a BOC is not furnishing a checklist item due to the absence of current orders, it can still "provide" that item by making it available both as a legal matter (i.e., contractually through complete terms in binding approved interconnection agreements that comply with all applicable legal requirements) as well as a practical matter (i.e., it must stand ready to fulfill a competitor's request on demand). Based on this standard, the Department cannot conclude that Ameritech is yet "providing" the checklist elements of unbundled local switching and unbundled local transport.

At present, Ameritech is not "providing" unbundled local switching or unbundled local transport as either a legal or a practical matter to CLECs in Michigan. As a legal matter, Ameritech has refused to provide carriers purchasing unbundled switching with true shared local transport (or "common transport" as it is often described). In addition, Ameritech has, as a legal matter, not allowed users of unbundled local switching to collect the access charges for long distance service they provide through unbundled network elements, if the CLEC's calls are transported from an interexchange carrier's point of presence ("POP") to the unbundled switch over trunks that also carry Ameritech customers' calls. In our view, these restrictions are inconsistent with Ameritech's obligations under Sections 251 and 271 and the relevant orders of the Commission. Ameritech argues that these restrictions cohere with the Commission's Local Competition Order, explaining that it would drop them if the Commission rejects its position in a

pending motion for clarification and reconsideration. Moreover, Ameritech has offered to "true up" any balance of accounts between itself and a CLEC purchasing these items once the Commission has clarified the legal status of common transport, i.e., whether it is a required unbundled network element. Whatever the merits of these interim accommodations -- the need for which should be obviated once the Commission rules on the common transport issue -- the fact remains that, at this point, Ameritech still has not made the necessary showing that it possesses the technical capability of successfully provisioning unbundled local switching and transport. Given that fact, we conclude that Ameritech is not yet "providing" these items within the meaning of the checklist.

1. Ameritech Refuses to Provide Shared Local Transport

Ameritech has failed to satisfy the requirement that it provide local transport as required by the Commission's Local Competition Order. This failure stems from Ameritech's legal position that it is not required to provide "common transport" as well as dedicated transport. Ameritech has only recently begun to engage in inter-carrier testing of common transport as a network element, and, thus, at the present time is unable to demonstrate a technical ability to provide access to this network element. Since the provision of common transport requires network capabilities that are not used in connection with other network elements or functionalities, such a demonstration will be necessary before any determination could be made that Ameritech is "providing" common transport.

Ameritech's affiant Daniel J. Kocher describes the local transport options that Ameritech

is willing to sell to purchasers of unbundled switching. Affidavit of Daniel J. Kocher ¶¶ 65-68 ("Kocher Aff."), attached to Ameritech Brief, Volume 2.5. Under the first option, named Network Platform-UNE, competitors may purchase unbundled interoffice transport at Total Element Long Run Incremental Cost ("TELRIC")-based prices. Under this option, however, the unbundled local switching ("ULS") customer would not be able to have its calls routed over the same trunk groups that carry Ameritech's traffic. Rather, this option requires that such competitors establish their own separate routing tables to be placed in the switch, which must route the competitors' calls over circuits that are separate from the trunks carrying Ameritech's traffic. Ameritech claims that this arrangement satisfies the requirement for shared transport since such dedicated circuits could reside in the same cable sheathing or carrier system as Ameritech's facilities. But unless the CLECs' traffic is permitted to travel over the same individual circuits as the incumbent's traffic, the trunking efficiencies from the use of the same switch can not be achieved.

Ameritech argues that routing traffic over the same circuits amounts to "common transport" and that since this involves both transmission and switching it should be regarded as a "service" as opposed to a network element. Kocher Aff. ¶¶ 67-68. Thus, Ameritech offers a second local transport option to purchasers of unbundled local switching. This option, called Network Combination Transport Service, permits a competitor to combine unbundled switching with a wholesale usage service (the price of which is not based on TELRIC). Under this option, competitors are not entitled to collect originating or terminating access charges. *Id.*

As noted above, Ameritech views "common transport" as a wholesale service rather than an unbundled element, because, among other things, "common transport" involves the interaction of two network elements: switching and transport. This rationale, however, is not supported by the 1996 Act, the Commission's regulations, or the rulings of the MPSC.¹⁷ Section 251(c)(3) of the 1996 Act specifically provides that requesting telecommunications carriers may obtain unbundled network elements and that the incumbent LECs must provide them "in a manner that allows requesting carriers to combine such elements." Moreover, the Commission's implementing regulations that are in effect -- i.e., have not been stayed in judicial proceedings -- require that such combinations of elements be provided, stating that "[e]xcept upon request" the BOC cannot separate "requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(a), (b) (1997). Thus, as the Commission has emphasized,¹⁸ the ability of new entrants to compete with incumbent LECs ("ILECs") by using combinations of network elements, including the ILEC's shared transport networks, is an important mode of entry provided by the 1996 Act that should increase the speed with which competitors can enter the market. The Commission's Local Competition Order specifically allowed new entrants to "purchase all interoffice facilities on an unbundled basis as part of a competing local network," or "combine its own interoffice facilities with those of the incumbent LEC."¹⁹ This requires BOCs

¹⁷ See MPSC Consultation at 38.

¹⁸ Local Competition Order at ¶ 441.

¹⁹ *Id.* In so doing, the Commission explicitly determined that it was necessary for new entrants to be able to take advantage of the economies of scale that exist in the local networks.

to provide what has often been referred to as the "network platform." Noting the competitive significance of the "network platform," both the MPSC and the PSCW have rejected Ameritech's refusal to provide common transport.²⁰

As outlined in Part V, the Department agrees that the "platform" concept provides an important mode of CLEC entry and, as both Ameritech and the CLECs have recognized, this concept is most feasibly based upon the use of common transport. Thus, unless the Commission decides in the pending motion for clarification on this issue that Ameritech is not obligated to provide common transport, Ameritech cannot receive Section 271 authority unless it makes common transport available, in conjunction with both unbundled switching and the "network platform," as both a legal and a practical matter.

See *id.* at ¶ 11.

²⁰ The MPSC also "determined on the issue of shared versus common transport that AT&T's proposal was appropriate and the prices resulting therefrom should apply." MPSC Consultation at 38 (citing November 26, 1996 Order in Case Nos. U-11151 and 11152). The PSCW also determined that "Ameritech's proposal only offers dedicated unbundled transport and does not offer shared unbundled transport as required by 47 CFR §51.319(d). . . . Shared transport must use Ameritech's routing tables and not require engineering or dedicated ports." PSCW Second Order at 44-46. In rejecting the argument that a network element must be a discrete facility that could be dedicated to a user, the PSCW invoked the Commission's concept of "functionality," see Local Competition Order at ¶ 258, explaining that the purchase of "shared facilities such as common transport" is "essentially purchasing access to a functionality of the incumbent's facilities on a minute-by minute basis." PSCW Second Order at 48. Accordingly, the PSCW found Ameritech's transport offering deficient and directed it to "offer shared transport with the meaning of shared transport being that it uses Ameritech's routing tables and it does not require separate engineering or dedicated ports." *Id.* at 49.

2. Ameritech Has Imposed Improper Restrictions on The Ability of Unbundled Local Switching Customers to Collect Access Charges for Calls Carried by Their Unbundled Elements

The Department also concludes that Ameritech has not provided access to the unbundled local switching element in accordance with the Commission's regulations because it has failed to clearly allow ULS purchasers to receive access charges. Like Ameritech's position on the "common transport" issue, Ameritech's legal position here is, in our view, not consistent with the 1996 Act's requirements as interpreted in the Commission's regulations. The Commission has ruled that purchasers of unbundled elements have the right to provide access to the customer served by those unbundled elements.²¹ 47 C.F.R. § 51.309(b) (1997). Moreover, the Commission's recent decision reforming access charges reaffirmed that ILECs may not collect such interstate access charges where the service is provided by purchasers of unbundled network elements. Access Charge Reform, Second Report and Order, CC Docket No. 96-262, at ¶ 337

²¹ Local Competition Order at ¶ 363 n.772; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration, CC Docket Nos. 96-98 and 95-185, FCC 96-325, at ¶ 11 (rel. Sept. 27, 1996) ("Thus, 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."). In addition, the Commission's regulations provide that "[a] telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers." 47 C.F.R. § 51.309(b) (1997). See also 47 C.F.R. § 51.307(c) (1997). This part of the Commission's rules was not subject to the temporary stay issued by the Court of Appeals.

(rel. May 21, 1997).²²

Ameritech describes the conditions under which it would permit purchasers of unbundled switching to collect access charges in the Kocher and Edwards Affidavits. Ameritech's position is that competitors purchasing the Network Combination- Common Transport Service would not be entitled to collect access charges.²³ This restriction appears to mean that such purchasers of unbundled switching will not be able to collect access charges for traffic originating or terminating on their line ports unless such traffic is also routed to a POP over trunks that do not also carry Ameritech subscribers' traffic. This position is apparently based on Ameritech's theory that the trunk port through which its access calls travel should be exclusively dedicated to Ameritech.²⁴ Under this approach, competitors are barred from collecting any of the access

²² In neighboring states where Ameritech has advanced its same arguments against the platform both Illinois and Wisconsin have also rejected these claims and have ordered that Ameritech permit purchasers of network elements to collect the relevant access charges. PSCW Second Order at 43-50; Illinois Commerce Commission, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271(c) of the Telecommunications Act of 1996, Docket No. 96-0404, Hearing Examiner's Proposed Order, at 36 (Mar. 6, 1997) ("ICC First HEPO"). The second Illinois HEPO concludes that, since the date of the first HEPO in March 1997, the contested issues associated with access have been resolved by the Commission's access charge reform order. ICC Second HEPO at 77.

²³ Kocher Aff. ¶¶ 66, 68; Edwards Aff. ¶ 116.

²⁴ Kocher Aff. ¶¶ 67-69, 77-78. See Affidavit of Robert V. Falcone and Robert A. Sherry ¶ 72, attached to AT&T Comments, Exhibit J. In effect, it appears that Ameritech is asking that the Commission reverse its decision that the local switching element includes the "line side and trunk side facilities plus the features, functions, and capabilities of the switch." Local Competition Order at ¶ 412.

charges where Ameritech provides the transport segment.²⁵ This restriction (1) denies to entrants crucial economies of scale in the trunking network between the switch and the POP, and (2) effectively negates the Commission's policy of allowing competitors using unbundled network elements to compete for the provision of exchange access service. Thus, unless the Commission decides that Ameritech's restrictions on the receipt of access charges by ULS purchasers are appropriate, Ameritech must allow the purchasers of ULS to collect access charges without restriction in order to receive Section 271 authority.

As a practical matter, Ameritech's restrictions on the ability of ULS customers to self-provide or collect access charges effectively deter the purchase of ULS.²⁶ Accordingly, Ameritech cannot point to any actual commercial use to demonstrate that it would be able to provision the ULS element. In the case of ULS, it is important to observe actual commercial use, or at least convincing testing evidence, because this element requires significant network capabilities that are not used in the provision of other network elements. Thus, unless the Commission significantly narrows the ULS element from what the Department and several state regulatory commissions understand it to represent, Ameritech cannot be found to have made the

²⁵ Edwards Aff. ¶ 116.

²⁶ As the PSCW observed, "[a]ccess revenues constitute a significant portion of a local exchange carrier's total revenues. If competitors are unable to provide access services, and therefore do not have an opportunity to tap into this revenue stream, the competitor is unlikely to be able to succeed." PSCW Second Order at 59. The PSCW found that Ameritech's proposal for ULS would permit it to get "access revenues in all cases where access services are provided jointly." *Id.* at 60. Thus, it found this position "unreasonable and discriminatory" and in violation of §251(c)(3) of the 1996 Act. *Id.*

necessary showing that ULS is being "provided" as required by the checklist.

3. Ameritech Has Not Yet Demonstrated the Capability to Provide Unbundled Switching and Transport in a Reliable Manner.

In its application, Ameritech states that if it is ordered by the Commission to provide common transport as a network element it will do so in accordance with billing settlement procedures set forth in the Kocher Affidavit, at ¶¶ 70, 73, 77. These settlement procedures would be necessary because Ameritech has not yet developed the capability to measure and record the call data needed for the provision of common transport or to permit the CLECs to bill access charges. In addition, Ameritech proposes to offer a combination of local switching and transport with the capability to perform a "true up" that would account for the different revenue flows that would occur if the AT&T version of the platform were adopted by the Commission after it approved Ameritech's Section 271 application. Stated simply, this proposal, which would become effective on the date that Ameritech is authorized to provide interLATA services in Michigan, calls for Ameritech to bill CLECs for transport at the wholesale usage rate and collect the access revenue for itself, but to maintain the appropriate records of this usage and the relevant access charges until the Commission rules on the pending motion for clarification and reconsideration of Ameritech's position on interoffice transport. If Ameritech's position were to be rejected by the Commission, it would "true up" its balance of accounts with the CLECs by offering a credit for the access revenue and for the overcharges for transport. Ameritech further states that, at that time, it would begin developing a long-term solution for the appropriate billing

systems to allow CLECs to bill the appropriate access charges. Kocher Aff. ¶¶ 75-78. Whatever merits it might otherwise have, this "true-up" proposal still does not deal with the other critical issue here -- i.e., Ameritech's failure to demonstrate its technical ability to provide this element.

In order to provide new entrants with a combination of local switching and transport as required by the Commission's regulations, Ameritech will have to configure its switches and support systems in a manner that is not used for its own services or for the resale of its services. In addition, it will have to establish systems and procedures for the ordering and provisioning of these elements. Ameritech has not yet demonstrated that it possesses the technical capability to do so in a reliable, commercially acceptable manner. Ameritech has, however, begun a technical trial to provide evidence that it can provision these elements.

To demonstrate that it will eventually be in a position to provide shared transport and to allow ULS purchasers to bill access if ordered to do so, Ameritech's application includes an outline of an ongoing technical trial with AT&T. As described in the Affidavit of Daniel J. Kocher,²⁷ this trial would proceed in two phases. The first phase of the trial would employ a single switch in Chicago and would involve the receipt of orders from AT&T for 20 lines using the EDI interface.²⁸ The single switch trial is intended to test the ordering process and several functions of the switch which are needed for the platform, such as customized routing and the recording of call detail needed for the platform customer to bill end users but not other carriers.

²⁷ Kocher Aff. ¶¶ 71-74.

²⁸ The test plan for phase one is Attachment 7 to the Kocher Affidavit.

Ameritech's submission also describes its proposal for the second phase of the trial using multiple switches.²⁹ In its comments, AT&T proposes a substantially more robust second phase trial designed to determine whether the platform is ready for commercial use. Specifically, AT&T's experts assert that it is necessary to conduct testing which includes, among other features, orders with a larger number of line class codes, and switches located in different states.³⁰ The Department understands that the parties are still in the process of attempting to agree upon a test plan for the phase two trial, which would obviously be relevant to making a determination of Ameritech's practical ability to provision the network platform. Thus, Ameritech has yet to demonstrate its practical ability to provide these elements as required by the checklist.³¹

B. Wholesale Support Processes for Provision
of Unbundled Network Elements and Resale Services

Efficient wholesale support processes -- those manual and electronic processes, including access to OSS functions, that provide competing carriers with meaningful access to resale services, unbundled elements, and other items required by Section 251 and the checklist of

²⁹ Kocher Aff. ¶¶ 72-73.

³⁰ Affidavit of Robert V. Falcone and Maureen E. Gerson ¶¶ 29-30, attached to AT&T Comments, Exhibit I.

³¹ Without a completed trial to review, the Department cannot assess the technical capability of Ameritech's systems or the saliency of other commenters' concerns. See, e.g., Comments of LCI International Telecom Corp. in Opposition to Ameritech Michigan's Section 271 Application, CC Docket 97-137, at 7-9 (June 10, 1997) ("LCI Comments") (noting that Ameritech's technical trial does not allow for full participation of other carriers).

Section 271 -- are of critical importance in opening local markets to competition. Where high volumes of transactions are expected for particular processes, the Department has highlighted two general areas where automation is likely to be necessary to a practical offering: the interfaces between a BOC and competing carriers; and, to a great extent, the interaction of these interfaces with a BOC's OSSs. Experiences in local competition to date make it clear that successful commercial operation is by far the most persuasive evidence that these wholesale support processes provide needed functionality and will operate at forecasted volume levels.

The Department finds that, while Ameritech has clearly made progress in this area, it has not yet fully complied with the competitive checklist's standard for the wholesale support processes necessary to provide adequate resale services and access to unbundled elements. Appendix A to these comments provides a more detailed analysis of Ameritech's wholesale support processes, but we provide below a general overview of that analysis.

As an initial matter, the Department agrees that Ameritech has generally followed what we believe to be the appropriate approach for demonstrating that it can provide adequate resale services, unbundled elements, and other checklist items -- i.e., Ameritech has sought to provide concrete evidence, rather than paper promises. Thus, in its application, Ameritech provides detailed internal and carrier-to-carrier test results of automated processes, allowing all interested parties to lend their expertise to the Commission's analysis. In many cases, Ameritech has actively sought out testing with competing carriers and worked through problems as they have inevitably occurred. In particular, Ameritech has identified shortcomings in the operation of its

automated and manual processes, the absence of which at this nascent stage would itself raise suspicions, and provided detailed assessments of their causes and proposed solutions.

Ameritech's approach is clearly a desirable, procompetitive way to proceed. The Department would urge other BOCs to adopt the same approach. In order to facilitate competition effectively, complex systems must work in practice, not merely in theory, a point that Ameritech's extensive efforts clearly reflect. Nevertheless, on the basis of the evidence currently in the record, Ameritech has not satisfied its burden of demonstrating the successful operation of its POTS resale preordering, ordering, and provisioning processes. Further commercial use and clearer reporting of the results of such use, when supported by the type of detailed evidence Ameritech has already provided, will be needed to establish that Ameritech has satisfied the competitive checklist with regard to providing adequate resale services.

With respect to its provision of unbundled local loops, Ameritech's performance is the subject of considerable dispute. While Ameritech has been able to provision a significant number of loops, and competitors have been able to compete to a limited degree in a few local markets using such loops, Ameritech's largest loop customer, Brooks Fiber, disputes Ameritech's ability to meet due dates and installation intervals. It is the Department's understanding, however, that Ameritech and Brooks are progressing in establishing a clearer understanding of Ameritech's performance, which should permit a better assessment of Ameritech's performance at a later date.

Finally, as is reflected in the discussion above in Section III.A, the Department believes

further testing and operation of Ameritech's ability to provide local switching in combination with other elements is necessary. The results of trials currently underway or planned should shed important light on Ameritech's abilities in this area. Further discussion of these and other remaining issues is provided in Appendix A as well as in Section V.B.

C. Adequacy of Interconnection Trunking Facilities

The competitive checklist requires BOCs to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)," which set forth the relevant technical and pricing standards. Section 271(c)(2)(B)(i). In light of the concerns outlined below, we conclude that Ameritech has failed to provide sufficient evidence to demonstrate that it is providing adequate interconnection in accordance with the technical standards set forth in the 1996 Act.

It is undisputed that Ameritech is exchanging significant volumes of traffic with CLECs through end office integration trunks. It is disputed, however, whether Ameritech provides interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself..." (Section 251 (c)(2)(C)) and "on rates, terms and conditions that are just, reasonable, and nondiscriminatory" (Section 251 (c)(3)) as required by the 1996 Act. The MPSC found that Ameritech provides interconnection, in that it exchanges traffic with CLECs pursuant to interconnection agreements, but it made no determination as to whether the interconnection provided satisfied the quality and nondiscrimination requirements of the 1996 Act and the

Commission's Local Competition Order.³² Other relevant regulatory proceedings have similarly failed to resolve whether Ameritech is providing interconnection at parity.³³

Ameritech's interconnection performance data clearly show that the end office integration (EOI) trunks used by CLECs to interconnect with Ameritech experience higher blocking rates than do the trunks used within Ameritech's own network. During March and April of 1997, 9.4% of the EOI interLATA trunk groups were blocking more than 2% of the traffic routed to the group. Over the same period, 6.6% of the EOI trunk groups used to transport local and intraLATA calls exceeded the 2% threshold that Ameritech reports.³⁴ The comparable blocking rate for Ameritech retail was 1.5%. Mickens Aff. ¶ 49.

Because the record is clear that the EOI trunk groups are blocked more frequently than Ameritech's retail trunks, the relevant question is whether the difference between the competitors' experience and Ameritech's own retail blocking rate is sufficiently significant as to

³² Local Competition Order at ¶¶ 221-225. The MPSC specifically noted that Brooks Fiber disputes the quality of the interconnection it is receiving from Ameritech, but it did not provide any evaluation of this dispute. MPSC Consultation at 12. Further, it found that Ameritech's performance measures for interconnection are inadequate because they "do not distinguish things over which Ameritech has control so deviations from the goal can be explained away." *Id.* at 23-24, 26.

³³ In finding that Ameritech is providing interconnection, the Illinois HEPO provided no discussion of Ameritech's interconnection performance. ICC Second HEPO at 23-24. Likewise, the order from the PSCW evaluating Ameritech's SGAT in that state does not address performance issues. PSCW Second Order at 13-14.

³⁴ Affidavit of Warren Mickens ¶ 49 ("Mickens Aff."), attached to Ameritech Brief, Volume 2.10. The Department notes that the some of the charts and underlying raw data presented in Schedule 17 of Mickens proprietary testimony are inconsistent.

deviate from Section 251(c)(2)'s mandate that CLECs be afforded interconnection arrangements on "nondiscriminatory" terms. On this point, Ameritech asserts that EOI traffic tends to be more volatile than Ameritech's retail traffic and concludes that because of this volatility, the disparity between EOI trunk blocking rates and Ameritech's retail blocking rates is not a "cause for concern." *Id.* This response alone does not address our concern, especially in light of the fact that lower target trunk blockage rates have been established through negotiations with CLECs,³⁵ and that two of the three CLECs that Ameritech relies upon in this proceeding, Brooks Fiber and TCG, have offered specific complaints about excessive trunk blockage.³⁶ To the extent that Ameritech's characterization of the varying nature of the CLECs' calls or trunk groups might explain the different rates of call blockage, the record currently contains no evidence in support of this claim -- i.e., that Ameritech's internal performance standards vary by the volatility of traffic on the trunk group. Consequently, the Department cannot conclude, based upon the

³⁵ The AT&T contract, which Ameritech also relies upon in this proceeding, calls for blocking rates of less than 1%. AT&T Interconnection Agreement at Schedule 3.8-1 ("AT&T/Ameritech-Michigan Interconnection Agreement"), attached to Ameritech Brief, Volume 1.2. Importantly, there is nothing in the contract to suggest that higher blocking rates are acceptable while traffic volumes are low. In fact, the AT&T contract calls for interconnection that is "equal in quality" to that provided by Ameritech to itself, and defines "equal in quality" to mean "the same technical criteria and service standards" that Ameritech uses within its own network. *Id.* at §3.6. Ameritech has not attempted to demonstrate that the relatively high blocking rates CLECs have experienced satisfy the technical criteria and service standards that Ameritech uses internally.

³⁶ TCG Comments at 4-8; Affidavit of Michael Pelletier ¶¶ 10-24 ("Pelletier Aff."), attached to TCG Comments, Exhibit A; Brooks Opposition at 28-29; and Response to Ameritech Michigan's Submission of Additional Information in MPSC Case No. U-11104 by Brooks Fiber Communications of Michigan, Inc., at 3 (Apr. 15, 1997).

record in this proceeding, that Ameritech has satisfied the checklist standard for providing adequate interconnection.

Ameritech further states that CLECs have been reluctant to provide forecast data and that their failure to do so explains much of the blocking data disparity. The Department agrees that EOI trunk blocking rates could potentially be reduced with improved traffic forecasts, and we would urge CLECs to provide such data to the fullest extent possible. Nonetheless, we recognize that accurate prediction is not always possible, and, in those situations where predictions are unavailable or are inaccurate and blocking occurs, there should be a timely, successful resolution. The Mayer affidavit states that Ameritech's procedures for provisioning EOI trunks are being changed.³⁷ With only a cursory description of those changes in the record, and no performance data to show a lasting improvement in blocking rates, however, it is too early to determine whether these changes will be sufficient to establish compliance with this checklist item.

IV. Ameritech's Compliance with Section 272

Section 272 prohibits Ameritech from providing in-region interLATA service unless it does so through a separate affiliate for at least three years after entry, and also complies with various nondiscrimination obligations. These requirements are necessary (though not sufficient) conditions to protect against anticompetitive behavior by the BOC upon its entry into the

³⁷ Affidavit of John B. Mayer ¶ 40 ("Mayer Aff."), attached to Ameritech Brief, Volume 2.8.

interLATA market.³⁸

Ameritech asserts that it has complied and will continue to comply fully with the requirements of this section, including both accounting and non-accounting safeguards. Commenters, however, have pointed out apparent inconsistencies between Ameritech's representations in this docket and representations it previously has made in other dockets in Michigan and other states in its region.³⁹ These comments note the lack of information available regarding transactions between Ameritech and its long-distance affiliate, ACI.⁴⁰ This lack of information raises questions about whether Ameritech has sufficiently documented the affiliated transactions to allow detection of discrimination, cross-subsidization, or any other anticompetitive behavior.

With regard to at least one aspect of its relationship with ACI, Ameritech has made a commitment that the Department finds to be significant. In the affidavits of Patrick J. Earley and

³⁸ See Reply Comments of the United States Department of Justice, CC Docket No. 96-149, FCC 96-489, at 1-4 (Aug. 30, 1996).

³⁹ See, e.g., TCG Comments at 27-39; Comments of AT&T in Opposition to Ameritech's Section 271 Application For Michigan, CC Docket 97-137, at 37-39 (June 10, 1997) ("AT&T Comments"); and CompTel Opposition at 31-34.

⁴⁰ Affidavit of Lila K. McClelland and Douglas K. Goodrich ¶¶ 24-25 ("McClelland and Goodrich Aff."), attached to AT&T Comments, Exhibit O (quoting Letter from Lynn S. Starr, Ameritech to Regina Keeney, FCC, dated Apr. 21, 1997); *id.* at ¶¶ 32-33 [citing Affidavit of Paul LaSchiavza ¶ 11 ("LaSchiavza Aff."), attached to Ameritech Brief, Volume 2.7 and Affidavit of Richard E. Shutter ¶ 19, attached to Ameritech Brief, Volume 2.14.]. The business of ACI and all Ameritech telephone operating companies is controlled by Ameritech. Petition to Deny by Sprint Communications Company L.P., CC Docket 97-137, at 25 (June 10, 1997) ("Sprint Petition"); TCG Comments at 31-32, 34.

Paul V. LaSchiazza, Ameritech states that although certain customers have authorized Ameritech Michigan to share Customer Proprietary Network Information (CPNI) with Ameritech affiliates, it has not disclosed any CPNI to ACI and that it will refrain from disclosing CPNI to ACI unless and until (1) ACI has itself obtained customer authorization to receive the information and/or (2) the FCC rules in its pending CC Docket No. 96-115 [CPNI] that such information may be shared. Affidavit of Patrick J. Earley ¶ 48 ("Earley Aff."), attached to Ameritech Brief, Volume 2.2; LaSchiazza Aff. ¶¶ 22, 35. Moreover, Ameritech commits to not using CPNI on any outbound joint marketing it may do for ACI, unless one of the two above conditions apply.⁴¹ We support this commitment and believe it to be necessary given the present circumstances.

V. Evaluation under the Department's Standard

The Department has concluded that BOC in-region interLATA entry should be permitted only when the local exchange and exchange access markets in a state have been fully and irreversibly opened to competition.⁴² This standard seeks to ensure that the barriers to

⁴¹ Given Ameritech's announced intent to market for ACI, this corollary commitment is necessary in order for the underlying promise to have effective meaning. See McClelland and Goodrich Aff. ¶ 39 (The ACI/Ameritech Michigan Marketing and Sales Agreement "states that Ameritech Michigan may identify potential customers who may benefit from subscribing to and using ACI's products. If Ameritech utilizes its own Customer Proprietary Network Information (CPNI) to identify such potential customers, how does Ameritech intend to establish and charge ACI for the fair market value of this data?").

⁴² This open market standard and its relationship with the Commission's public interest inquiry is explicated more fully in the DOJ Oklahoma Evaluation at vi-vii and 36-51, and in the Schwartz Affidavit.

competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and that there are objective criteria to ensure that barriers are not imposed after BOC entry into in-region interLATA services. The Department will evaluate, among other things, whether a BOC's wholesale support systems will permit the effective provisioning of resale services and unbundled elements, and whether the continued nondiscriminatory operation of these systems can be assured after approval of a Section 271 application. Ameritech itself recognizes that "[o]ne of the goals of the 1996 Act . . . is to open local exchange service to competition." Ameritech Brief at 62.

In applying this standard, the Department will consider whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving construction of new networks, use of the unbundled elements of the BOC's network, and resale of the BOC's services -- are fully and irreversibly open to competitive entry to serve both business and residential consumers. To do so, the Department will look first to the extent of actual local competition as evidence that local markets are open, and whether such entry is sufficiently broad-based to support a presumption of openness. If broad-based commercial entry involving all three entry paths has not occurred, the Department will examine competitive conditions more carefully, and consider whether significant barriers continue to impede the growth of competition, focusing particularly on the history of actual commercial entry. We will assess the import of such entry as a means of demonstrating whether the market is open and establishing relevant performance benchmarks, but not as a way of requiring any specific level of local competition. Our standard thus seeks to

ensure that competitors presently receive -- and regulators can continue to expect (based on established performance benchmarks) -- a meaningful opportunity to compete.

While a limited amount of entry is occurring today under all three entry paths in local exchange markets in Michigan, there is not yet enough local competition in Michigan to warrant a general presumption of openness. Rather, it is necessary to investigate carefully whether any remaining barriers would impede the growth of local competition in Michigan. From the preceding evaluation of checklist compliance, however, it appears that some barriers remain in Michigan. In addition, as discussed below, Ameritech's lack of fully adequate performance measures and enforceable performance benchmarks suggests that any opening to local competition in Michigan may not yet be properly described as being irreversible.

A. Competition Exists in Local Exchange and Exchange Access
Markets in Michigan But Is Not Yet Sufficient to Warrant
any Presumption that Local Markets are Fully and Irreversibly Open

As Ameritech explains, Michigan took its first steps to authorize local competition in 1991, and in 1995, a year before the passage of the Telecommunications Act, when it substantially amended its own telecommunications laws to open local markets and impose certain unbundling and resale obligations on Ameritech. Mich. Comp. Laws, §§ 484.2103, .2355-60, .2363 (1996). These legal reforms, coupled with the market-opening measures of the 1996 Act and the steps Ameritech has taken, have produced encouraging signs of competitive entry on a small scale, as reviewed in more detail in Appendix B. Twenty-two competitive providers have been certified as local carriers, and other applications are pending. Ameritech

Brief at 74.⁴³ The Department has identified seven firms that are operational competing providers of local exchange service in Michigan, on either a facilities or resale basis, serving business and in some cases residential subscribers. It appears from the evidence provided by Ameritech and its competitors that total lines actually served by competitive providers in Michigan are still no more than 70,000-80,000. A substantial part of this total represents separate facilities of competitors, although most customer lines are served through a combination of the competitors' separate facilities and Ameritech's unbundled elements, or by resale of Ameritech's services. The local competitive entry to date is primarily located in the two largest urban areas, Grand Rapids and Detroit, but competitors have facilities in several other communities, including Lansing, Ann Arbor, and Traverse City.

Ameritech remains, however, by far the dominant provider of local exchange services, with a near monopoly in its service areas.⁴⁴ Most parts of Michigan still have no local competition, save possibly on a resale basis, since such CLEC competition as exists in Michigan is overwhelmingly concentrated in parts of the cities of Grand Rapids and Detroit and is primarily focused on business customers. The greatest degree of local competition exists in the Grand Rapids metropolitan area, where Brooks Fiber and its predecessor, City Signal, have been operating for several years.

⁴³ See also MPSC Consultation at 9 ("the MPSC has now authorized twenty-four applicants to provide basic local exchange service").

⁴⁴ Comparative data analyzing Ameritech's market position and that of its competitors in Michigan is contained in Appendix B.

Given this level of competition, we cannot presume that no barriers to entry exist. At the same time, given the successful small-scale entry that has occurred using all three paths, we cannot presume that the local markets necessarily remain closed either. In such cases, the Department's standard calls for a more careful analysis of opportunities for competitors' future entry and expansion.⁴⁵

B. Need for Further Measures to Open Local Markets

The competitive entry that has occurred in Michigan, though limited in scope, has been helpful to the process of opening local markets in Michigan. Many of the legal issues that will affect competitive opportunities have been resolved. Ameritech and several of the new entrants have finalized access and interconnection agreements and developed processes through which most of the competitive checklist elements have been furnished to the entrants to some limited extent. The initial experience with competition has also contributed to the development and improvement of the wholesale support processes that will be needed to sustain competition in the future. Indeed, the initial commercial use of Ameritech's wholesale support processes to provide and maintain unbundled elements and resale services has revealed the kind of real-world shortcomings that can be expected to arise in developing the necessary processes, and has allowed Ameritech to make many of the necessary corrections.

Despite this progress, the record submitted by Ameritech does not demonstrate that local markets in Michigan are fully and irreversibly open to competition. The obstacles to competitive

⁴⁵ DOJ Oklahoma Evaluation at 44.

entry and expansion that remain could readily impede the growth of competition in Michigan. Specifically, building on our analysis thus far, we identify the following remaining obstacles: (1) the unavailability of unbundled switching and shared transport, which are needed to support entry through the "network platform"; (2) continuing performance problems with respect to some of Ameritech's wholesale support systems, which could limit the ability of entrants to obtain resale services and unbundled elements at reasonably foreseeable levels of demand; (3) inadequate performance measures of some of Ameritech's wholesale support systems, which both preclude a determination that those systems are adequate today, and which will hamper efforts to ensure continued acceptable performance after Section 271 authority has been granted to Ameritech; and (4) troublesome indications of high blockage rates in end office integration trunks, which potentially could impair the quality of service offered by facilities-based competitors.

The Department has already discussed the compliance problems with respect to most of these issues in detail in Part III and Appendix A. It is important to appreciate, however, the competitive significance of the failure to provide these items, which precludes a determination that approval of Ameritech's application would be consistent with the public interest. With respect to unbundled switching and shared transport (as defined by the relevant orders of the Commission and the MPSC), Ameritech's failure to make these checklist requirements practically available to its competitors forecloses an important entry vehicle involving the "network platform." Given the economic and technical opportunities afforded by this entry strategy, the "network platform" provides an important entry vehicle for several potential

competitors.⁴⁶

The Department is also concerned about Ameritech's failure to provide adequate trunking facilities for interconnection, because inadequate interconnection is likely to disproportionately disadvantage CLECs in a competitive market. Only a small fraction of the incumbent's calls require transport through an interconnection trunk, while a much larger fraction of CLEC calls require such transport. Therefore, interconnection performance is of much greater consequence to the business success of CLECs than to the incumbent provider. Absent regulatory requirements, Ameritech has little or no incentive to adequately provision interconnection trunks to CLECs.⁴⁷ It follows that special emphasis should be placed on establishing satisfactory performance standards for interconnection trunks, and determining that the BOC is able to meet its own standards in actual competitive conditions, before Section 271 authority is granted.

The provisioning of wholesale support systems is central to the 1996 Act's promise of facilitating local competitive entry, since these systems are essential to enable the BOCs'

⁴⁶ For example, as the PSCW put it, "[u]nbundled network elements provide a competitive restraint on the incumbents' retail rates. With unbundled network elements priced based on cost, if Ameritech raises its retail rates excessively, competitors can chose to purchase unbundled elements and charge lower rates. In rural areas where facilities-based competition will likely be inefficient, the availability of unbundled network elements based upon cost may serve as an important restraint on retail rate increases." PSCW Second Order at 46.

⁴⁷ Local Competition Order at ¶ 218. Thus, the Department does not assume with Ameritech that "it is in the best interests of both Ameritech and the CLEC to ensure that there are sufficient facilities to handle traffic to and from the interconnected networks." Mayer Aff. ¶ 49. On the contrary, poor interconnection performance is likely to make CLECs' services less attractive to consumers, providing a competitive advantage to incumbents such as Ameritech. See Pelletier Aff. ¶ 24.

competitors to perform the necessary ordering, repair and billing functions to compete on any significant scale. The competitive significance of Ameritech's failure to demonstrate the adequacy of some of the wholesale support systems that will be required to provide adequate resale services and unbundled elements, at needed volumes and at acceptable levels of quality and timeliness, is, as discussed below, implicitly demonstrated by Ameritech's own competitive analysis.

Ameritech asserts that current market share data understate the competitive significance of CLECs because the existing facilities in Michigan, including the number of collocations in Ameritech end offices, indicate that a large share of Ameritech's customers are already "addressable" by competitors. According to Ameritech, this means that the local market is already sufficiently open to provide meaningful competitive pressure on the BOC. Joint Affidavit of Robert G. Harris and David J. Teece at 38-39 ("Harris and Teece Aff."), attached to Ameritech Brief, Volume 3.3. Ameritech's affiants argue that collocation in an Ameritech end office gives the collocater the ability to compete for every access line served by that end office, *id.* at 29-39, and based on this assertion, they claim that by the end of July competitors will be collocated in central offices that serve 42% of Ameritech Michigan's business lines (768,269 lines) and 29% of Ameritech Michigan's residential lines (948,221 lines).⁴⁸

⁴⁸ Harris and Teece Aff. at 35, Table III.2. As of April 30, 1997, CLECs were collocated in 37 Ameritech end offices and are expected to be in 42 by the end of July. These figures represent virtual collocation only, and the Department is unaware of any physical collocations currently established in Michigan.

Harris and Teece also assert that 52% of Ameritech Michigan's customers are addressable from fiber rings. *Id.* at 41, Table III.4. They reach this estimate by counting the share of access

Ameritech's "addressable market" argument assumes that CLECs have the "capacity to serve" all access lines served by collocated offices. *Id.* at 33. But capacity in this context is dependent not only on the capabilities of the CLECs, but also on the ability of Ameritech to provision unbundled loops in the collocated offices. Ameritech has not yet sufficiently demonstrated its ability to do so reliably and in significant volumes. In short, to establish that a large portion of the market is "addressable," Ameritech must first demonstrate that its processes for provisioning unbundled loops are reliable and scalable to levels substantially greater than current demand.⁴⁹ Ameritech's testimony shows, however, that the vast majority of the unbundled loops provisioned to date were ordered through manual processes,⁵⁰ which may be able to handle a very small volume of orders, but which are inherently unsuitable for dealing with large-scale competitive demand. At present, Brooks, the principal user of unbundled loops, is

lines that lie within 4 miles of CLEC fiber rings. Harris and Teece's estimate lacks any foundation in actual business practice. Experience shows that extensions to fiber rings are only economically viable for the very largest customers. The decisions of both TCG and MFS (the CLECs with the most extensive networks in Detroit) to concentrate on large customers in on-net buildings provides evidence of the difficulty and expense of extending the reach of a fiber ring. Such high use customers comprise a relatively small share of Ameritech's total access lines.

⁴⁹ Without such scalability, CLECs will be able to serve only a small fraction of the market that Ameritech describes as "addressable." As of March 1997, Ameritech Michigan had provisioned 21,321 unbundled loops, which represents only 2.4% of the 895,458 lines served by offices in which competitors were collocated as of February 1997. Harris and Teece Aff. at 28, Table III.1, and 35, Table III.2. According to Harris and Teece, *id.* at 28, Table III.1, 2452 unbundled loops were provisioned from January to March 1997, a rate of 1226 per month. At this pace, it would take 23 years (280 months) to cut-over 20% of the 1.7 million lines Harris and Teece identify as "addressable" by the end of July.

⁵⁰ Ameritech's data shows that only about 20% of the loops in service region-wide were ordered using ASR. Mickens Aff. ¶ 23, Tab 25, Section 2, at 6.

using ASR (an electronic interface) to place orders, but it continues to have problems with sending orders and receiving firm order commitments. Thus, the analysis in Part III and Appendix A shows that Ameritech's systems have not yet been proven to be able to meet the levels of customer demand that Ameritech's affiants assume in claiming that the Michigan local markets are "addressable."

Finally, there are two additional issues implicated in the Department's competitive assessment that have not already been considered in Parts III and IV: inadequate performance measures and pricing. We discuss each below in more detail.

1. Inadequate Performance Measures

Performance benchmarks serve two important purposes: (1) demonstrating that the market is currently open to competition, and (2) facilitating meaningful post-entry oversight that ensures that the market opening is irreversible.⁵¹ To serve these twin purposes, the BOC must define the relevant measures, report the appropriate data on a regular basis, and derive the applicable benchmarks from the performance so measured. That is, performance measures must be defined to cover the critical functions and defined with sufficient specificity so that the thing

⁵¹ Application of SBC Communications, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma, Addendum to the Evaluation of the U.S. Department of Justice, CC Docket No. 97-121, at 4-5 (May 21, 1997). See also Schwartz Aff. ¶ 70 ("Absent meaningful benchmarks, penalty threats are problematic, because regulators and courts lack the information about what are reasonable implementation lags for new systems"); *Id.* at ¶ 77 ("[once] a track record is created for what constitutes 'good performance[,] [p]ost-entry safeguards -- regulatory, antitrust and contractual -- then become more effective at countering BOC attempts to reduce cooperations, since the performance benchmarks can help enforcers to prevent future backsliding and to extend these arrangements to other regions or other entrants.").

measured can be understood. The benchmarks, or specific levels of performance, can then be derived from a track record of reliable service established by the BOC, from analogy to the BOC's own retail operations, or perhaps from some other alternative that would ensure a consistent level of performance. As Ameritech itself understands, without "concrete, detailed performance standards and benchmarks for measuring Ameritech's compliance with its contractual obligations and impos[ing] penalties for noncompliance," Ameritech's statutory nondiscrimination obligations are only "abstractions." Ameritech Brief at 85.

In its comments to the Commission, the MPSC agreed with the above principles,⁵² and defined a set of 12 criteria by which performance standards can be developed. MPSC Consultation at 31-32. The MPSC concluded that "complete and appropriate performance standards have not as yet been adopted which would permit determinations to be made regarding nondiscriminatory access to OSS and other unbundled network elements." MPSC Consultation at 33-34.⁵³ Although we agree with the MPSC that Ameritech's progress in this regard is

⁵² The PSCW, in its recent order rejecting Ameritech's SGAT, also recognized the importance of performance reporting, stating: "The Statement does not, however, yet specify actual performance benchmarks or parity reports. Lack of finality on these items may not in and of itself be sufficient reason to reject a Statement, although significant inadequacies in performance benchmarks and parity reports would be sufficient. The Statement under review is still too vague to meet the Commission's performance benchmark requirement." PSCW Second Order at 26-27.

⁵³ Although Ameritech asserts that its "standards, benchmarks and reporting requirements [were] carefully reviewed and approved during Section 252 arbitrations by the MPSC," Ameritech Brief at 85, the MPSC's Consultation makes it clear that the standards, benchmarks and reporting requirements have not been approved for purposes of Section 271. See MPSC Consultation at 33-34.

incomplete, it is important to note that Ameritech has proposed and begun reporting a set of performance measures that addresses many of the important criteria covering both the operation of the interfaces and the operation of the OSS and provisioning systems.⁵⁴ We fully endorse Ameritech's commitment to measuring and reporting its performance and find its efforts to be significant, especially because Ameritech appears to have implemented specific business policies consistent with that commitment.⁵⁵ Moreover, Ameritech has committed to continuing its measuring and reporting obligations into the indefinite future. Nevertheless, as discussed in Appendix A, there are important gaps in the measures proposed by Ameritech -- namely, (1) a lack of sufficient clarity in certain of the definitions presented, and (2) a failure to measure and report actual installation intervals for resale, installation intervals for unbundled loops, comparative performance information for unbundled elements, and repeat reports for the maintenance and repair of unbundled elements. Thus, although Ameritech's performance measures appear adequate in other respects, Ameritech has yet to establish all of the necessary performance benchmarks to satisfy the Department's competitive assessment.⁵⁶

⁵⁴ Indeed, the Department cited Ameritech's set of measures favorably compared with SBC's in its previous comments on SBC's Oklahoma application. See generally DOJ Oklahoma Evaluation; Affidavit of Michael J. Friduss ("Friduss Aff."), Tab D to DOJ Oklahoma Evaluation.

⁵⁵ See Mickens Aff. ¶ 34 ("As other products and services develop, Ameritech will continue to modify its existing reports to incorporate additional performance measures and tracking reports.").

⁵⁶ In highlighting the need to measure and set appropriate benchmarks for actual installation intervals for resale, installation intervals for unbundled loops, comparative performance information for unbundled elements, and repeat reports for maintenance and repair

2. Lack of Final Cost-Based Pricing

Compliance with the cost-based pricing standards of the Telecommunications Act in Section 252(d) is also relevant to the Section 271 entry process, as Congress's repeated references to Section 252(d) in the checklist items of Section 271(c)(2)(B) makes plain. For the most part Ameritech's prices in Michigan are still interim and have not been finally determined to be cost-based, though a proceeding to set final prices is already well underway and a decision could issue in the near future.⁵⁷ See MPSC Consultation at 8-9. Ameritech's interim prices determined through arbitration in Michigan are for the most part relatively low compared with those of other BOCs and ILECs, and have not generated the volume of complaints about rate levels encountered in some other regions.⁵⁸ Questions have been raised, however, about some of

of unbundled elements, we do not mean to suggest that a particular numerical performance measure is necessary to satisfy our concern. But Ameritech has failed to provide any effective mechanism for measuring levels of performance and establishing benchmarks for some of the critical wholesale support processes that will enable us to conclude that the market has been irreversibly opened.

⁵⁷ Michigan Public Service Commission, On the Commission's Own Motion, to Consider the Total Service Long Run Incremental Costs and to Determine the Prices of Unbundled Network Elements, Interconnection Services, Resold Services, and Basic Local Exchange Services for Ameritech Michigan, Case No. U-11280 (initiated Dec. 12, 1996). See also Permanent Interconnection Arrangements, MPSC Case No. U-10860.

⁵⁸ A comparison with the FCC's proxy prices, though these are stayed on appeal, illustrates the relatively favorable interim prices that have been adopted for some key elements in Michigan. For example, Ameritech's Michigan AT&T agreement has recurring prices for a two-wire analog loop range from \$9.31 to \$14.67, compared with an FCC loop proxy of \$15.27 per month. Rates for end office local termination are .3637 cents per minute, below the FCC's maximum proxy price of .4 cents per minute. See Local Competition Order at Appendix D; AT&T/Ameritech-Michigan Interconnection Agreement at Pricing Schedule - Michigan (AM-1-020258 - 266). Ameritech had proposed substantially higher loop rates, ranging from \$15.61 to

Ameritech's prices, including certain non-recurring charges for components of the service platform and charges for physical collocation,⁵⁹ as well as the accuracy and completeness of Ameritech's cost studies. The most important pricing issue raised by numerous commentators, however, is the lack of any final determination of cost-based rates in Michigan.⁶⁰

Cost-based pricing for BOC facilities and services needed by competitors, such as interconnection, transport and termination and unbundled elements, is relevant to the Department's evaluation of any BOC entry application under Section 271. We are particularly concerned where only interim prices that have not been found to be cost-based are available.⁶¹ Competitors will be reluctant to commit their resources to enter a state on a large scale if the economic conditions they will face are highly uncertain and there are incentives for backsliding on the part of the BOC once interLATA relief is granted if final prices have not already been set.

\$21.33, but these were rejected by the Michigan arbitrator in the AT&T arbitration as unreasonably high. Decision of Arbitration Panel at 8 (Oct. 28, 1996), Application Vol. 4.1, AM-4-003637 [cited in Opposition of KMC Telecom, Inc. to Application of Ameritech Michigan to Provide InterLATA Services in Michigan, CC Docket No. 97-137, at 9 n.8 (June 10, 1997) ("KMC Opposition")].

⁵⁹ See, e.g., MCI Comments at 24-25.

⁶⁰ See, e.g., Motion to Dismiss by the Association for Local Telecommunications Services, CC Docket No. 97-137, at 19-22 (June 10, 1997); AT&T Comments at 28-29; Brooks Opposition at 10; CompTel Opposition at 14-16; KMC Opposition at 4-9; Comments of the Michigan Consumer Federation in Opposition to Ameritech Michigan's Application, CC Docket No. 97-137, at 9 (June 10, 1997); MCI Comments at 23-25; Sprint Petition at 13-17; TCG Comments at 13-17; Opposition of the Telecommunications Resellers Association, CC Docket No. 97-137, at 36-37 (June 10, 1997); Comments of Time Warner Communications Holdings, Inc., CC Docket No. 97-137, at 4-7 (June 10, 1997); and WorldCom Comments at 42-43.

⁶¹ See DOJ Oklahoma Evaluation at 61-63.

In the present circumstances, however, this pricing issue need not be resolved. As we have noted, there are other grounds for denying Ameritech's application, and, consequently, the Commission can await the results of the ongoing Michigan pricing docket, which should soon reach a decision,⁶² and which may resolve the concerns raised with regard to Ameritech's pricing of its wholesale inputs.

⁶² See MCI Comments at 23.

Conclusion

Ameritech has not yet fully complied with all of the requirements of the competitive checklist, nor has it taken all measures needed to ensure, consistent with the public interest, that local markets in Michigan are irreversibly open to competition. For these reasons, Ameritech's application for in-region interLATA entry in Michigan under Section 271 of the Telecommunications Act should be denied.

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APPENDIX B

Michigan Overview and Descriptions of Local Competitors in Michigan

Michigan is the nation's eighth most populous state, with over 9.5 million inhabitants, and is the second most populous state in the Ameritech region. 70.5% of its population is in metropolitan areas, according to U.S. census data. Of Michigan's five LATAs, two contain significant metropolitan areas centered around Detroit and Grand Rapids.¹ Detroit, with a population of about 1 million, is among the ten largest cities in the U.S, and its greater metropolitan area has a population of some 5.2 million, while the city of Grand Rapids has a population of 190,000, with some 1 million persons in its metropolitan area. These urban concentrations could reasonably be expected to attract local telephone competition in the absence of entry barriers, and indeed have begun to do so on a small scale. Michigan is also the ninth largest state in terms of long distance traffic nationwide, with 17,899,649,000 interLATA access minutes in 1995, 3.25% of the total.²

As of 1995, there were over 6.1 million access lines in Michigan, including 5.5 million switched access lines.³ Of these, Ameritech Michigan had 5.5 million access lines (90% of the total), including 4.8 million switched access lines (88% of the total),⁴ the great majority of the remainder being served by independent LECs in separate service areas, rather than competitors in

¹ Two of the remaining LATAs are centered around Lansing and Saginaw, and the last is in the more rural Upper Peninsula.

² FCC 1996 Common Carrier Statistics at Table 2.6

³ FCC 1996 Common Carrier Statistics at Table 2.5

⁴ FCC 1996 Common Carrier Statistics at Table 2.10

its service area. In 1996, Ameritech Michigan served between 4.9 and 5.1 million switched access lines.⁵ Of Ameritech's access lines in Michigan, 4.5 million are located in metropolitan areas,⁶ with nearly half of Ameritech's lines, some 2.3 million, in the Detroit LATA.⁷ In 1996, Ameritech had about 1.7 million business and 3.2-3.3 million residential switched access lines throughout Michigan.⁸ Data in Ameritech's brief and supporting affidavits, together with information in the comments and other public documents of competitors, identifies a total of between 67-80,000 access lines in service or ordered by local exchange competitors in Michigan,⁹ and while service resale has grown more recently, total lines actually served by

⁵ FCC ARMIS Annual Summary Report 43-01, Michigan Bell Telephone Company, 1996, at Table II, row 2150 (4.931 million billable common lines), and FCC ARMIS Annual Service Quality Report 43-05, Michigan Bell Telephone Company, 1996, at Table II, row 0140 (5.081 million access lines). The 1996 10-K Annual Report for Ameritech Corporation, at 3, states that Ameritech had in Michigan 4.979 million access lines in service at the end of 1995, and 5.124 million access lines in service at the end of 1996, a difference of 145,000. Ameritech's own growth in access lines served in Michigan between 1995 and 1996 exceeded the aggregate number of lines served by all of its local competitors. See also AT&T Comments at 32-36, 41.

⁶ FCC ARMIS Annual Service Quality Report 43-05, Michigan Bell Telephone Company, 1996, at Table II, row 0140.

⁷ Presentation to Department of Justice by AT&T Corp., Ameritech Region (Derived from April 1996 ARMIS Report) (August 19, 1996).

⁸ FCC ARMIS Annual Summary Report 43-01, Michigan Bell Telephone Company, 1996, at Table II, rows 2090, 2120 and FCC ARMIS Annual Service Quality Report 43-05, Michigan Bell Telephone Company, 1996, at Table II, row 0140.

⁹ The highest estimate of 79,200 lines that can be derived from Ameritech's Harris and Teece Affidavit, Table III.6 (proprietary version), including separate facilities, unbundled loops, and resold lines, overstated the extent of actual competition at the time. Harris and Teece Aff. at Table III.6, 73. Harris and Teece's calculations of competitors' on-net facilities were not based on actual numbers but on estimates from a formula that produced results inconsistent with information from other parties, especially MFS, and with respect to facilities obtained from Ameritech, Harris and Teece included not only unbundled or resold loops in service but also

competitive providers in Michigan appear to still be no more than 70,000-80,000, correcting for overestimates in Ameritech's data.

Thus, the aggregate market share of CLECs, measured by total number of access lines statewide using all forms of competition (separate facilities, unbundled loops and resale), appears to be between 1.2% and 1.5%.¹⁰ The CLEC market share measured by revenues is likely slightly higher because the CLECs are focused primarily or entirely on business customers, while nearly

those on order from Ameritech but not yet delivered, which means that the customer is still with Ameritech. Brooks lists its total lines in service in Grand Rapids as of June 1997, as 21,786, Brooks Opposition at 6-7, substantially lower than the Harris and Teece estimate, and MFS/WorldCom has also strongly criticized Ameritech's data as inaccurate. WorldCom Comments at 4. The data in Ameritech's brief on competitors' lines yields a slightly smaller aggregate CLEC total of about 71,000 competitor lines, but also relies on the estimates from the Harris and Teece Affidavit that overstate the amount of competition. Ameritech Brief at 10-11, 36, 44, 54 (proprietary version). MCI states that CLECs own or lease at most 67,000 access lines in Ameritech Michigan's region, MCI Comments at 2 and Affidavit of Kenneth C. Baseman and Frederick R. Warren-Boulton ¶ 68, n.52, attached to MCI Comments, Exhibit A., while an affiant for AT&T, using Ameritech's data, has calculated the total as 76,269 lines while noting the likelihood of overestimation. Affidavit of Michael Starkey ¶ 15 ("Starkey Aff."), attached to AT&T Comments, Exhibit T. Some of the data on individual competitors has been claimed as proprietary in Ameritech's filing, and so the Department does not provide separate figures for each provider in its public Evaluation, but these aggregate totals do not reveal any particular competitor's proprietary information.

¹⁰ A market share of about 1.5% can be derived from data in Ameritech's Harris and Teece Affidavit, Table III.6 (proprietary), although this data overstated the extent of actual competition at the time. The data in Ameritech's brief on competitors' lines yields a slightly smaller market share of 1.3%, based on Ameritech's total access lines in 1995. MCI has estimated the CLECs' market share in Michigan as 1.2%, compared with Ameritech's total access lines, MCI Comments at 2, while AT&T, using Ameritech's data, has estimated the CLECs' market share as at most 1.5%. AT&T Comments at 41; Starkey Aff. ¶¶ 7, 15-17. Adjusting the totals of CLECs' lines to account both for the overestimates in Ameritech's data and further information available on the growth of resale since that data was compiled would yield a maximum aggregate CLEC market share in Michigan of about 1.5% of total access lines, based on an upper bound of 80,000 CLEC lines compared with Ameritech's 5.5 million total lines in 1995.

two-thirds of Ameritech's lines are residential.¹¹ In Grand Rapids, where the greatest degree of local competition exists, CLEC market share measured by number of lines served by central offices with collocation is 5.9%,¹² and CLEC market share, measured by revenues generated by lines in collocated central offices is approximately 11.4%.¹³

There are seven firms that the Department has identified as operational facilities-based

¹¹ For example, Brooks has reported its revenue in Grand Rapids to be \$75.37 per line, "Brooks Fiber's Properties Reports Record, First Quarter Revenues" <[www.Brooks.net, Q1_table.pdf](http://www.Brooks.net/Q1_table.pdf)> (posted Apr. 28, 1997), while the revenue per line for Ameritech can be estimated from published data at \$44.77 if only basic local service and network access service is included, or \$64.56 if all revenue sources, including intraLATA toll, are included. Based on these figures, the CLECs' aggregate share of local revenues in Ameritech's Michigan service areas is probably not more than 2-3%.

Ameritech's Michigan operations generated approximately \$2,948,826,000 in combined basic local service, network access service, and toll network service revenues in 1996, or \$3,154,539,000 in total. Basic local service revenues were \$1,408 million, network access services revenues were \$779 million, and toll network services (intraLATA toll) were \$761 million. FCC ARMIS Annual Summary Report 43-01, Michigan Bell Telephone Company, 1996, at Table I, rows 1010, 1020, 1030. Ameritech's Michigan operating company revenues represented 27.88% of its total revenues from its local operations regionwide in 1996, second only to those from Illinois. Total Ameritech revenues from its local operating companies regionwide in 1996 were \$11,312,077,000, including \$3,553,987,000 from Illinois, \$1,219,155,000 from Indiana, \$2,213,842,000 from Ohio, and \$1,170,554,000 from Wisconsin, as well as the Michigan revenues stated above. Ameritech 1996 FCC ARMIS Annual Summary Report 43-01 for Illinois, Indiana, Michigan, Ohio, and Wisconsin.

¹² 343,000 lines are served by the 11 central offices in which Brooks is collocated, according to "Brooks Fiber Reports Results of Operation of Grand Rapids, Michigan Unit for Competitive Switched Services" <www.Brooks.net> (posted Oct. 24, 1996). Brooks had 21,786 lines in service in Grand Rapids as of June 1997. Brooks Opposition at 6-7.

¹³ This estimate assumes Ameritech's revenue is uniformly distributed across lines. Brooks Fiber's annualized revenue figure is reported in its first quarter results. "Brooks Fiber's Properties Reports Record, First Quarter Revenues" <[www.Brooks.net/ Q1_table.pdf](http://www.Brooks.net/Q1_table.pdf)> (posted Apr. 28, 1997). The market share is 11.4% if only basic local service and network access, based on FCC ARMIS Annual Summary Report 43-01, Michigan Bell Telephone Company, 1996, at Table I, rows 1010, 1020, are included in the Ameritech revenue figure. This number declines to 8.4% if toll network service is included, and declines to 7.9% if all revenues are included (row 1090).

competitors or resellers in Michigan providing local exchange service -- Brooks Fiber, MFS Intelenet/Worldcom, TCG, MCImetro, USN, AT&T and LCI. Several of these competitors, including Brooks Fiber, MFS, TCG and MCImetro, have fiber networks and local switches in Michigan. In total, however, CLECs have only six local switches in Michigan -- three in Detroit (operated by MFS, TCG and MCImetro), and one each in Grand Rapids, Traverse City and Lansing, all operated by Brooks Fiber -- compared with at least 435 local switches operated by Ameritech Michigan.¹⁴ Profiles of the operational local exchange service competitors in Michigan follow.¹⁵

Brooks Fiber Communications

Brooks Fiber Communications entered the Michigan local exchange/access market in January of 1996 when it purchased City Signal. City Signal began operation in 1989, as a competitive access provider (CAP) in Grand Rapids. In 1993, City Signal installed a Nortel DMS-500 Class 3/4/5 switch, which enabled it to provide local, tandem, and carrier switching. In 1994, City Signal merged with long distance reseller, Teledial to form US Signal, which was certified to provide switched local service in Grand Rapids in October of 1994, and actually

¹⁴ Ameritech Brief at 10-11; MCI Comments at 2-3 (448 switches); Sprint Petition at 33 (440 switches). FCC ARMIS Annual Service Quality Report 43-05, Michigan Bell Telephone Company, 1996, at Table IV, rows 200, 201 identifies 435 local switches in use, while the FCC 1996 Common Carrier Statistics at Table 2.10 (1996) lists Michigan Bell as having 442 central office switches.

¹⁵ In addition to those listed below, Ameritech cites WinStar as a current, facilities-based local exchange provider, and Building Communications and Coast-to-Coast as local exchange resellers operating in Michigan. Ameritech Brief at 74. WinStar does not yet have an approved local tariff, and the Department believes the only services it currently provides are CAP or transport services, not local exchange services. The Department has no independent information on Building Communications or Coast-to-Coast, but Ameritech does not attribute to either of them any substantial activity.

began offering service in August of 1995. Teledial and the US Signal name were sold to LCI in 1995, and the local services company was renamed City Signal, which was merged into Brooks Fiber Properties in early 1996. Brooks Fiber and Ameritech entered into a negotiated interconnection agreement on August 5, 1996, which was approved by the Michigan PSC in November and filed as approved and executed in December 1996. In addition to Grand Rapids, Brooks Fiber currently has facilities in Lansing, Ann Arbor, and Traverse City, and a total of three switches statewide in Michigan. Brooks Fiber provides service to both business and residential customers primarily in Grand Rapids, through a combination of its own facilities and loops leased from Ameritech. It is not engaged in local exchange resale in Michigan. Brooks had 21,786 lines in service in Grand Rapids, its principal service area, as of June 6, 1997, including 15,876 business lines and 5,910 residential lines, making it one of the two largest local competitors of Ameritech in Michigan.¹⁶ Brooks provides 31% of its own access lines in Michigan, obtaining the remaining 69% from Ameritech, so that Brooks is the principal user of unbundled loops obtained from Ameritech in Michigan.¹⁷ Brooks relies on Ameritech for at least some facilities, primarily loops, to reach 75% of all of its customers, including 61% of its business customers and 90% of its residential customers.¹⁸ Brooks has also entered into agreements with long distance carriers, including AT&T and MCI, to provide the local exchange portion of an integrated service offering.

¹⁶ Brooks Opposition at 6-7.

¹⁷ Id. at 6-7 and n.18, 9.

¹⁸ Id. at 7; MPSC Consultation at 10.

MFS Intelenet/WorldCom

MFS is the nation's largest CAP, and has been operating in Detroit on a resale basis since 1991 and on a facilities basis since 1995. MFS has a fiber network and one switch in Detroit. It was certified to provide local service in Detroit in May of 1995, and state-wide on November 14, 1996. It has been offering switched local service and access services to business customers in Michigan since May 1996. MFS entered into a negotiated interconnection agreement with Ameritech on May 17, 1996, which was approved by the Michigan PSC and filed in approved, executed form in December 1996. MFS's recent merger with WorldCom creates an integrated, facilities-based local/LD company, and its earlier merger with UUNet allows it to include Internet access as part of a bundled offering. MFS Intelenet does not have any residential service customers in Michigan. According to MFS/WorldCom, 79% of MFS's business lines and 86% of its customers in Michigan are served on a resale basis, including resale of Centrex services, although MFS also has a small number of its loops of its own in Michigan, only 2.2% of its total, and has ordered some unbundled loops from Ameritech, accounting for the remaining 19%.¹⁹

Teleport Communications Group (TCG)

TCG is one of the nation's largest CAPs, and has been operating in that capacity in Detroit since 1993. TCG was granted certification to provide switched local service in April of 1995. TCG has a fiber network and a Class 5 switch in Detroit and is currently providing both local exchange and access services to business customers. Following a request for arbitration and a decision by the Michigan PSC, TCG and Ameritech filed an executed agreement which was approved by the Michigan PSC in February 1997. TCG has also signed an agreement with

¹⁹ WorldCom Comments at 4, 5 n.10.

AT&T to provide local network access in several markets, including Detroit. TCG concentrates on large businesses that can be served over its own facilities, and as a result, although TGC uses some facilities obtained from Ameritech,²⁰ it currently has no unbundled loops or resold lines, and does not have any residential service customers in Michigan.

MCImetro

MCImetro is a subsidiary of MCI Telecommunications, created to provide local exchange and access services, primarily over its own facilities, to business and residential customers. MCImetro has fiber rings in Detroit and its suburbs of Warren and Auburn Hills, and a class 5 switch in Detroit. MCImetro was certified to provide switched local service in Michigan in March of 1995, and has been serving some business customers in Detroit since June of 1996, making use of its own facilities and preexisting Ameritech tariffs for resale. It is conducting a trial of residential service with a few customers using loops obtained from Ameritech. MCI launched NetworkMCI on September 12, 1996 in several large cities (including Detroit, Milwaukee, and Chicago), which offers local, long distance, data, conferencing, international long distance, paging, Internet access, and cellular on a single bill. Although MCI has requested interconnection and sought arbitration, and the MPSC issued an arbitration decision in December 1996, there remained unresolved issues between Ameritech and MCI. Therefore, to date neither MCI Telecommunications, nor any of its subsidiaries, has an approved interconnection agreement with Ameritech Michigan, although an agreement was finally signed on June 13, 1997.

²⁰ TCG Comments at 25-26.

USN Communications

USN is a telecommunications reseller that was initially certified to provide service to some Detroit exchanges on August 22, 1996. On April 26, 1996, USN entered into a ten year interconnection agreement with Ameritech that commits it to be reselling a total volume of 10,000 residential lines and 100,000 business lines during each year after a "ramp-up" period ending December 31, 1997 for residential service, or 18 months after the service start date for business, subject to penalties for underutilization. USN's negotiated agreement with Ameritech was approved by the MPSC in January 1997 and filed as executed and approved in February 1997. USN markets to small and medium-sized business customers, and is currently offering service in at least four cities in Michigan: Grand Rapids, Southfield, Ann Arbor, and Flint.²¹

AT&T

AT&T, the nation's largest telecommunications company, has recently entered Michigan on a resale basis, serving residential as well as business customers. AT&T, after requesting interconnection with Ameritech and unsuccessfully attempting to negotiate an agreement, sought arbitration, and the MPSC issued an arbitration decision in November 1996. This did not lead immediately to an approved agreement, as Ameritech and AT&T continued to dispute certain issues. Ameritech and AT&T filed an executed agreement after further MPSC action in February 1997, and the MPSC approved that agreement in April 1997. AT&T's approved interconnection agreement addresses all three of the entry paths envisioned in the 1996 Act. AT&T has also begun operational testing of the facilities "platform" with Ameritech. This

²¹ Jim Harger, "Another Hopeful Courts Local Phone Customers: USN Communications Targets Small and Medium-Sized Businesses," Grand Rapids Press, Mar. 15, 1997, at C7, 1997 WL 7865202.

appears to be AT&T's preferred near-term means of entry. Over the longer term, AT&T may also become a facilities-based provider in Michigan using its fixed wireless technology. It appears that AT&T's resale activities to date have made it one of the two largest local competitors of Ameritech in Michigan, although this competition is still on a very small scale.

LCI Communications

LCI is a large long distance reseller that has recently entered Michigan as a reseller of local services. It does not have an approved interconnection agreement with Ameritech, and is reselling service under existing tariffs. It is marketing to small and medium-sized business customers.

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and Intermedia Communications Inc., ("ICI"), a Delaware corporation and shall be deemed effective as of July 1, 1996. This agreement may refer to either BellSouth or ICI or both as a "party" or "parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, ICI is an alternative local exchange telecommunications company ("ALEC" or "OLEC") authorized to provide or is intending to be authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, the parties wish to interconnect their facilities, purchase unbundled elements, and exchange traffic for the purposes of fulfilling their obligations pursuant to sections 251, 252 and 271 of the Telecommunications Act of 1996 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and ICI agree as follows:

I. Definitions

A. Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

B. Commission is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

C. Intermediary function is defined as the delivery of local traffic from a local exchange carrier other than BellSouth; an ALEC other than ICI; another telecommunications company such as a wireless telecommunications provider through the network of BellSouth or ICI to an end user of BellSouth or ICI.

D. Local Traffic is defined as any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. of BellSouth's General Subscriber Service Tariff.

E. Local Interconnection is defined as 1) the delivery of local traffic to be terminated on each party's local network so that end users of either party have the ability to reach end users of the other party without the use of any access code or substantial delay in the processing of the call; 2) the LEC unbundled network features, functions, and capabilities set forth in this Agreement; and 3) Service Provider Number Portability sometimes referred to as temporary telephone number portability to be implemented pursuant to the terms of this Agreement.

F. Percent of Interstate Usage (PIU) is defined as a factor to be applied to terminating access services minutes of use to obtain those minutes that should be rated as interstate access services minutes of use. The numerator includes all interstate "nonintermediary" minutes of use, including interstate minutes of use that are forwarded due to service provider number portability less any interstate minutes of use for Terminating Party Pays services, such as 800 Services. The denominator includes all "nonintermediary", local, interstate, intrastate, toll and access minutes of use adjusted for service provider number portability less all minutes attributable to terminating party pays services.

G. Percent Local Usage (PLU) is defined as a factor to be applied to intrastate terminating minutes of use. The numerator shall include all "nonintermediary" local minutes of use adjusted for those minutes of use that only apply local due to Service Provider Number Portability. The denominator is the total intrastate minutes of use including local, intrastate toll, and access, adjusted for Service Provider Number Portability less intrastate terminating party pays minutes of use.

H. Telecommunications Act of 1996 ("Act") means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

I. Multiple Exchange Carrier Access Billing ("MECAB") means the document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee of the Alliance for Telecommunications Industry Solutions ("ATIS") and by Bellcore as Special Report SR-BDS-000983, Containing the recommended guidelines for the billing of Exchange

Service access provided by two or more LECs and/or ALECs or by one LEC in two or more states within a single LATA.

II. Purpose

The parties desire to enter into this Agreement consistent with all applicable federal, state and local statutes, rules and regulations in effect as of the date of its execution including, without limitation, the Act at Sections 251, 252 and 271 and to replace any and all other prior agreements, both written and oral, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida concerning the terms and conditions of interconnection. The access and interconnection obligations contained herein enable ICI to provide competing telephone exchange service and private line service within the nine state region of BellSouth.

III. Term of the Agreement

A. The term of this Agreement shall be two years, beginning July 1, 1996.

B. The parties agree that by no later than July 1, 1997, they shall commence negotiations with regard to the terms, conditions and prices of local interconnection to be effective beginning July 1, 1998.

C. If, within 135 days of commencing the negotiation referred to in Section II (B) above, the parties are unable to satisfactorily negotiate new local interconnection terms, conditions and prices, either party may petition the commissions to establish appropriate local interconnection arrangements pursuant to 47 U.S.C. 252. The parties agree that, in such event, they shall encourage the commissions to issue its order regarding the appropriate local interconnection arrangements no later than March 1, 1997. The parties further agree that in the event the Commission does not issue its order prior to July 1, 1998 or if the parties continue beyond July 1, 1998 to negotiate the local interconnection arrangements without Commission intervention, the terms, conditions and prices ultimately ordered by the Commission, or negotiated by the parties, will be effective retroactive to July 1, 1998. Until the revised local interconnection arrangements become effective, the parties shall continue to exchange traffic pursuant to the terms and conditions of this Agreement.

IV. Local Interconnection

A. The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic

Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

B. Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to be billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid, within thirty (30) days of the due date of the quarterly bill.

C. The first six month period after the execution of this Agreement is a testing period in which the parties agree to exchange data and render billing. However, no compensation during this period will be exchanged. If, during the second six month period, the monthly net amount to be billed prior to the cap being applied pursuant to subsection (D) of this section is less than \$40,000.00 on a state by state basis, the parties agree that no payment is due. This cap shall be reduced for each of the subsequent six month periods as follows: 2nd period--\$40,000.00; 3rd period--\$30,000.00; and 4th period--\$20,000.00. The cap shall be \$0.00 for any period after the expiration of this Agreement but prior to the execution of a new agreement.

D. The parties agree that neither party shall be required to compensate the other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month on a statewide basis. This cap shall apply to the total billed local interconnection minutes of use measured by the local switching element calculated for each party and any affiliate of the party providing local exchange telecommunications services under the party's certificate of necessity issued by the Commission. Each party will report to the other a Percentage Local Usage ("PLU") and the application of the PLU will determine the amount of local minutes to be billed to the other party. Until such time as actual usage data is available or at the expiration of the first year after the execution of this Agreement, the parties agree to utilize a mutually acceptable surrogate for the PLU factor. The calculations, including examples of the calculation of the cap between the parties will be pursuant to the procedures set out in Attachment A, incorporated herein by this reference. For purposes of developing the PLU, each party shall consider every local call and every long distance call. Effective on the first of January, April, July and October of each year, the parties shall update their PLU.

E. The parties agree that there are three appropriate methods of interconnecting facilities: (1) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations; (2) physical collocation; and (3) interconnection via purchase of facilities from either party by the other party. Rates and charges for collocation are set forth in Attachment C-13, incorporated herein by this reference. Facilities may be purchased at rates, terms and conditions set forth in BellSouth's intrastate Switched Access (Section E6) or Special Access (Section E7)

services tariff or as contained in Attachment B-1 for local interconnection, incorporated herein by this reference.

F. The parties agree to accept and provide any of the preceding methods of interconnection. Reciprocal connectivity shall be established at each and every BellSouth access tandem within the local calling area ICI desires to serve for interconnection to those end offices that subtend the access tandem or may elect to interconnect directly at the end offices for interconnection to end users served by that end office. BellSouth will connect at each end office or tandem inside that local calling area. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to BellCore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point. BellSouth will provide out-of-band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TR-TSV-000905. The parties agree that their facilities shall provide the necessary on-hook, off-hook answer and disconnect supervision and shall hand off calling party number ID when technically feasible. The parties further agree that in the event a party interconnects via the purchase of facilities and/or services from the other party, the appropriate intrastate access tariff, as amended from time to time will apply.

G. Nothing herein shall prevent ICI from utilizing existing collocation facilities, purchased from the interexchange tariffs, for local interconnection; provided, however, that if ICI orders new facilities for interconnection or rearranges any facilities presently used for its alternate access business in order to use such facilities for local interconnection hereunder and a BellSouth charge is applicable thereto, BellSouth shall only charge ICI the lower of the interstate or intrastate tariffed rate or promotional rate.

H. The parties agree to establish trunk groups from the interconnecting facilities of subsection (E) of this section such that each party provides a reciprocal of each trunk group established by the other party. Notwithstanding the foregoing, each party may construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency. The parties agree that either no charges will be assessed or reciprocal charges will be assessed for network to network interfaces where the parties are certified as providers of local exchange services. BellSouth's treatment of ICI as to said charges shall be consistent with BellSouth treatment of other local exchange carriers for the same charges.

I. Whenever BellSouth delivers traffic to ICI for termination on ICI's network, if BellSouth cannot determine because of the manner in which ICI has utilized its NXX codes whether the traffic is local or toll BellSouth will not compensate ICI pursuant to this section but will, instead, charge ICI originating intrastate network access service charges as reflected in BellSouth's intrastate Access Service Tariff. Notwithstanding the foregoing, BellSouth will make the appropriate billing adjustments if

ICI can provide sufficient information for BellSouth to make a determination as to whether said traffic was local or toll. If BellSouth deploys an NXX code across its local calling areas in such a manner that ICI cannot determine whether the traffic it delivers to BellSouth is local or toll, this subsection shall apply to the parties.

J. If either party provides intermediary tandem switching and transport services for the other party's connection of its end user to a local end user of: (1) an ALEC other than ICI; (2) a local exchange telecommunications company other than BellSouth ("ICO"); or (3) another telecommunications company such as a wireless telecommunications service provider, the parties agree that compensation shall be on the basis of mutual traffic exchange. The parties agree that any billing to the ICO or other telecommunications company under this section shall be pursuant to subsection (L) of this section.

K. When the parties provides an access service connection between an interexchange carrier ("IXC") and each other, each party will provide their own access services to the IXC on a multi-bill, multi-tariff meet-point basis. Each party will bill its own access services rates to the IXC with the exception of the interconnection charge. The interconnection charge will be billed by the party providing the intermediary tandem function.

L. The parties agree to adopt MECAB as the terms and conditions for meet point billing for all traffic to which MECAB applies, including traffic terminating to ported numbers, and to employ 30 day billing periods for said arrangements. The recording party agrees to provide to the initial billing company, at no charge, the switched access detailed usage data within a reasonable time after the usage is recorded. The initial billing company will provide the switched access summary usage data to all subsequent billing companies within 10 days of rendering the initial bill to the IXC. The parties agree that there will be technical, administrative, and implementation issues associated with achieving the intent of this subsection. As such, the parties further agree to work cooperatively toward achieving the intent of this provision within nine months of the effective date of this Agreement.

M. The ordering and provision of all services purchased from BellSouth by ICI shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Facilities Based) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

V. IntraLATA and InterLATA Toll Traffic Interconnection

A. The delivery of intrastate toll traffic by a party to the other party shall be reciprocal and compensation will be mutual. For terminating its toll traffic on the other party's network, each party will pay BellSouth's intrastate terminating switched access rate, inclusive of the Interconnection Charge and the Carrier Common Line rate

elements of the switched access rate. The parties agree that their terminating switched access rates may change during the term of this Agreement and that the appropriate rate shall be the rate in effect when the traffic is terminated.

B. For originating and terminating intrastate toll traffic, each party shall pay the other BellSouth's intrastate switched network access service rate elements on a per minute of use basis. Said rate elements shall be as set out in BellSouth's Intrastate Access Services Tariff as that Tariff is amended from time to time during the term of this Agreement. The appropriate charges will be determined by the routing of the call. If ICI is the BellSouth end user's presubscribed interexchange carrier or if the BellSouth end user uses ICI as an interexchange carrier on a 10XXX basis, BellSouth will charge ICI the appropriate tariff charges for originating network access services. If BellSouth is serving as the ICI end user's presubscribed interexchange carrier or if the ICI end user uses BellSouth as an interexchange carrier on a 10XXX basis, ICI will charge BellSouth the appropriate BellSouth tariff charges for originating network access services.

C. The parties agree that to the extent ICI provides intraLATA toll service to its customers, it may be necessary for it to interconnect to additional BellSouth access tandems that serve end office outside the local calling area.

D. Each party agrees to compensate the other, pursuant to the appropriate originating switched access charges, including the database query charge, for the origination of 800 traffic terminated to the other party.

E. Each party will provide to the other party the appropriate records necessary for billing intraLATA 800 customers. The records provided will be in a standard EMR format for a fee of \$0.013 per record.

F. If during the term of this Agreement, either party provides interLATA 800 services, it will compensate the other for the origination of such traffic pursuant to subsection A, above. Each party shall provide the appropriate records for billing pursuant to subsection B, above.

G. Should ICI require 800 Access Ten Digit Screening Service from BellSouth, it shall have signaling transfer points connecting directly to BellSouth's local or regional signaling transfer point for service control point database query information. ICI shall utilize SS7 Signaling links, ports and usage as set forth in Attachment C-7, incorporated herein by this reference. ICI will not utilize switched access FGD service. 800 Access Ten Digit Screening Service is an originating service that is provided via 800 Switched Access Service trunk groups from BellSouth's SSP equipped end office or access tandem providing an IXC identification function and delivery of call to the IXC based on the dialed ten digit number. The rates and charges for said service shall be as set forth in BellSouth's Intrastate Access Services Tariff as said tariff is amended from time to time during the term of this Agreement.

VI. Service Provider Number Portability

A. Service Provider Number Portability (SPNP) is an interim service arrangement provided by each party to the other whereby an end user, who switches subscription of his local exchange service from BellSouth to ICI, or vice versa, is permitted to retain use of his existing assigned telephone number, provided that the end user remains at the same location for his local exchange service or changes locations and service providers but stays within the same serving wire center of his existing number. SPNP services are available in two arrangements, SPNP-Remote and SPNP-DID. Notwithstanding the foregoing, SPNP is not available when the end user's existing account has been denied or disconnected for nonpayment and an outstanding balance remains unpaid.

B. SPNP services and facilities will only be provided, where technically feasible, subject to the availability of facilities and may only be furnished from properly equipped central offices. SS7 Signaling is required for the provision of SPNP services. SPNP is available from either party on either a per DS0, DS1 or DS3 basis. Where SPNP-DID is provided on a DS1 or a DS3 basis, applicable channelization rates as specified in Attachment C-16, incorporated herein by this reference. SPNP is available only for basic local exchange service. Section E6.8.1.H of the BellSouth intrastate Switched Access tariff, as said tariff is amended from time to time during the term of this Agreement.

C. SPNP is available only where ICI or BellSouth is currently providing, or will begin providing concurrent with provision of SPNP, basic local exchange service to the affected end user. SPNP for a particular ICI assigned telephone number is available only from the central office originally providing local exchange service to the end user. SPNP for a particular assigned telephone number will be disconnected when any end user, Commission, BellSouth, or ICI initiated activity (e.g. a change in exchange boundaries) would normally result in a telephone number change had the end user retained his initial local exchange service.

D. SPNP-Remote is a telecommunications service whereby a call dialed to an SPNP-Remote equipped telephone number, is automatically forwarded to an assigned seven or ten digit telephone number within the local calling area as defined in Section A3 of the BellSouth General Subscriber Service Tariff. The forwarded-to number is specified by ICI or BellSouth, as appropriate. Where technologically feasible, the forwarding party will provide identification of the originating telephone number, via SS7 signaling, to the receiving party. Neither party guarantees, however, identification of the originating telephone number to the SPNP-Remote end user. SPNP-Remote provides a single call path for the forwarding of no more than one simultaneous call to the receiving party's specified forwarded-to number. Additional call

E. SPNP-DID service provides trunk side access to end office switches for direct inward dialing to other company's premises equipment from the

telecommunications network to lines associated with the other company's switching equipment and must be provided on all trunks in a group arranged for inward service. A SPNP-DID trunk termination, provided with SS7 Signaling only, charge applies for each trunk voice grade equivalent. In addition, direct facilities are required from the end office where a ported number resides to the end office serving the ported end user customer. The rates for a switched local channel and switched dedicated transport apply as contained in Section E6 of BellSouth's intrastate Access Services tariff, as said Tariff is amended from time to time during the term of this Agreement. Transport mileage will be calculated as the airline distance between the end office where the number is ported and the POI using the V&H coordinate method. SPNP-DID must be established with a minimum configuration of 2 channels and one unassigned telephone number per switch, per arrangement for control purposes. Transport facilities arranged for SPNP-DID may not be mixed with any other type of trunk group, with no outgoing calls placed over said facilities. SPNP-DID will be provided only where such facilities are available and where the switching equipment of the ordering party is properly equipped. Where SPNP-DID service is required from more than one wire center or from separate trunk groups within the same wire center, such service provided from each wire center or each trunk group within the same wire center shall be considered a separate service. Only customer dialed sent paid calls will be completed to the first number of a SPNP-DID number group, however there are no restrictions on calls completed to other numbers of a SPNP-DID number group. Interface group arrangements provided for terminating the switched transport at the party's terminal location are as set forth in E6.1.3.A. of BellSouth's intrastate Access Services tariff, as amended from time to time during the term of this Agreement.

F. SPNP services will be provided at the charges contained in Attachment B-3 for SPNP-RCF and Attachment B-4 for SPNP-DID. Both Attachments are incorporated herein by this reference.

G. The calling party is responsible for payment of the applicable charges for sent-paid calls to the SPNP number. For collect, third-party, or other operator-assisted non-sent paid calls to the ported telephone number, BellSouth or ICI is responsible for the payment of charges under the same terms and conditions for which the end user would have been liable for those charges. Either party may request that the other block collect and third party non-sent paid calls to the SPNP assigned telephone number. If the party does not request blocking, the other party will provide itemized local usage data for the billing of non-sent paid calls on the monthly bill of usage charges, provided at the individual end user account level. The detail will include itemization of all billable usage. As an alternative to the itemized monthly bill, each party shall have the option of receiving this usage data on a daily basis via a data file transfer arrangement. This arrangement will utilize the existing industry uniform standard, known as EMR standards, for exchange of billing data. Files of usage data will be created daily for the optional service. Usage originated and recorded in the sending BellSouth RAO will be provided in unrated format. ICI usage originated elsewhere and delivered via CMDS to the sending BellSouth RAO will be provided in rated format.

H. Each party is responsible for obtaining authorization from the end user for the handling of the disconnection of the end user's service, the provision of new local service and the provision of SPNP services. Each party is responsible for coordinating the provision of service with the other to assure that its switch is capable of accepting SPNP ported traffic. Each party is responsible for providing equipment and facilities that are compatible with the other's service parameters, interfaces, equipment and facilities and is required to provide sufficient terminating facilities and services at the terminating end of an SPNP call to adequately handle all traffic to that location and is solely responsible to ensure that its facilities, equipment and services do not interfere with or impair any facility, equipment, or service of the other party or any of its end users. In the event that either party determines in its sole judgment that the other party will likely impair or is impairing, or interfering with any equipment, facility or service or any of its end users, that party may either refuse to provide SPNP service or terminate SPNP to the other party.

I. Each party is responsible for providing an appropriate intercept announcement service for any telephone numbers subscribed to SPNP services for which it is not presently providing local exchange service or terminating to an end user. Where either party chooses to disconnect or terminate any SPNP service, that party is responsible for designating the preferred standard type of announcement to be provided.

J. Each party will be the other's party's single point of contact for all repair calls on behalf of each party's end user. Each party reserves the right to contact the other party's customers, if deemed necessary, for maintenance purposes.

K. Neither party is responsible for adverse effects on any service, facility or equipment for the use of SPNP services. End-to-end transmission characteristics may vary depending on the distance and routing necessary to complete calls over SPNP facilities and the fact that another carrier is involved in the provisioning of service. Therefore, end-to-end transmission characteristics can not be specified by either party for such calls. Neither party is responsible to the other if any necessary change in protection criteria or in any of the facilities, operation, or procedures of either renders any facilities provided by the other party obsolete or renders necessary modification of the other party's equipment.

L. For that terminating IXC traffic ported to either party which requires use of either party's tandem switching, the tandem provider will bill the IXC tandem switching, the interconnection charge, and a portion of the transport, and the other party will bill the IXC local switching, the carrier common line and a portion of the transport. If the tandem provider is unable to provide the necessary access records to permit the other party to bill the IXCs directly for terminating access to ported numbers, then the parties agree to work cooperatively to develop a surrogate method to approximate the access minutes, and a settlement process to recover those access revenues due it as a co-

provider of access services to IXC's. During the interim, while the surrogate is being developed, the tandem provider will bill the IXC full terminating switched access charges, keep the interconnection charge, tandem switching and a portion of transport, and remit the local switching, a portion of transport and CCL revenues to the other party. If a toll intraLATA call is delivered, the delivering party will pay terminating access rates to the other party. This subsection does not apply in cases where SPNP-DID is utilized for number portability.

M. If either party has direct connections to the IXC's for the termination of all interLATA traffic and it is only through the use of SPNP services that the tandem is being utilized and the tandem provider receives network access service revenues from the terminating IXC, the other party will bill the network access charges for the terminating facilities used for that interLATA traffic. This circumstance may also arise where an intraLATA toll call from one party's customer is sent to a number that is, in turn, forwarded through the use of SPNP services to the other party's customer. If so, terminating party will bill the other party the network access charges for the terminating facilities used for that intraLATA toll traffic.

N. If during the term of this Agreement, the Federal Communications Commission issues regulations pursuant to 47 U.S.C. §251 to require number portability different than that provided pursuant to this subsection, the parties agree to fully comply with those regulations.

VII. Provision of Unbundled Elements

A. BellSouth will offer an unbundled local loop to ICI at the current rates as set forth in Attachment C-15, incorporated herein by this reference. Special construction charges, if applicable, will be as set forth in BellSouth's Intrastate Special Access Tariff as said tariff is amended from time to time during the term of this Agreement. BellSouth will also offer, as a new service loop concentration as set forth in Attachment C-16, incorporated herein by this reference. The parties agree that loop concentration service as offered above is not an unbundled element.

B. BellSouth will offer to ICI unbundled loop channelization system service which provides the multiplexing function to convert 96 voice grade loops to DS1 level for connection with ICI's point of interface. Rates are as set forth in Attachment C-16, incorporated herein by this reference.

C. BellSouth will offer to ICI unbundled local transport from the trunk side of its switch at the rates as set forth in Attachment B-1, incorporated herein by this reference.

D. BellSouth will offer to ICI unbundled local switching at the rates as set forth in Attachment C-17, incorporated herein by this reference, for the unbundled exchange service port.

E. BellSouth shall, upon request of ICI, and to the extent technically feasible, provide to ICI access to its Network Elements for the provision of an ICI telecommunications service. Any request by ICI for access to a BellSouth Network Element that is not already available shall be treated as a Network Element bona fide request. ICI agrees to pay the costs associated with the bona fide request if ICI cancels the request or fails to purchase the service once completed. ICI shall provide BellSouth access to its Network Elements as mutually agreed by the Parties or as required by a state commission or the FCC.

F. A Network Element obtained by one Party from the other Party under this section may be used in combination with the facilities of the requesting Party only to provide a telecommunications service, including obtaining billing and collection, transmission, and routing of the telecommunications service.

VIII. Access To Poles, Ducts, Conduits, and Rights of Way

BellSouth agrees to provide to ICI, pursuant to 47 U.S.C. § 224, as amended by the Act, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by BellSouth.

IX. Access to 911/E911 Emergency Network

A. For basic 911 service, BellSouth will provide to ICI a list consisting of each municipality in each state that subscribes to Basic 911 service. The list will also provide, if known, the E911 conversion date for each municipality and, for network routing purposes, a ten-digit directory number representing the appropriate emergency answering position for each municipality subscribing to 911. ICI will arrange to accept 911 calls from its end users in municipalities that subscribe to Basic 911 service and translate the 911 call to the appropriate 10-digit directory number as stated on the list provided by BellSouth. ICI will route that call to BellSouth at the appropriate tandem or end office. When a municipality converts to E911 service, ICI shall discontinue the Basic 911 procedures and begin the E911 procedures, set forth in subsection (B), below.

B. For E911 service, ICI shall install a minimum of two dedicated trunks originating from ICI's serving wire center and terminating to the appropriate E911 tandem. The dedicated trunks shall be, at minimum, DS0 level trunks configured either as a 2 wire analog interface or as part of a digital (1.544 Mb/s) interface. Either configuration shall use CAMA type signaling with multifrequency (MF) pulsing that will deliver automatic number identification (ANI) with the voice portion of the call. If the

user interface is digital, MF pulses, as well as other AC signals, shall be encoded per the u-255 Law convention. ICI will provide BellSouth daily updates to the E911 database.

C. If a municipality has converted to E911 service, ICI will forward 911 calls to the appropriate E911 tandem, along with ANI, based upon the current E911 end office to tandem homing arrangement as provided by BellSouth. If the E911 tandem trunks are not available, ICI will alternatively route the call to a designated 7-digit local number residing in the appropriate PSAP. This call will be transported over BellSouth's interoffice network and will not carry the ANI of the calling party.

D. BellSouth and ICI agree that the practices and procedures contained in the E911 Local Exchange Carrier Guide For Facility-Based Providers, as it is amended from time to time during the term of this Agreement by BellSouth, shall determine the appropriate procedures and practices of the parties as to the provision of 911/E911 Access.

E. The applicable rate elements are as set forth in Attachment C-3, incorporated herein by this reference.

X. Provision of Operator Services

A. The parties agree to mutually provide busy line verification and emergency interrupt services pursuant to each party's published Tariffs as the Tariffs are amended from time to time during the term of this Agreement.

B. BellSouth will offer to ICI Operator Call Processing Access Service; and Directory Assistance Access Services (Number Services). Rates, terms and conditions are set forth in Attachment C-8 for Operator Call Processing Access Service and Attachment C-9 for Directory Assistance Access Services. Both Attachments are incorporated herein by this reference.

C. BellSouth will offer to ICI CMDS Hosting and the Non Sent Paid Report System pursuant to the terms and conditions set forth in Attachment C-11, incorporated herein by this reference.

XI. Directory Listings

A. Subject to execution of an agreement between ICI and BellSouth's affiliate, BellSouth Advertising & Publishing Corporation, ("BAPCO"), substantially in the form set forth in Attachment C-1, (1) listings shall be included in appropriate White Pages or alphabetical directories; (2) ICI's business subscribers' listings shall also be included in appropriate Yellow Pages, or classified directories; and (3) copies of such directories shall be delivered to ICI's subscribers.

B. BellSouth will include ICI's subscriber listings in BellSouth's directory assistance databases and BellSouth will not charge ICI to maintain the Directory Assistance database. The parties agree to cooperate with each other in formulating appropriate procedures regarding lead time, timeliness, format and content of listing information.

C. BellSouth will provide ICI a magnetic tape or computer disk containing the proper format for submitting subscriber listings. ICI will provide BellSouth with its directory listings and daily updates to those listings, including new, changed, and deleted listings, in an industry-accepted format.

D. BellSouth and BAPCO will accord ICI's directory listing information the same level of confidentiality which BellSouth and BAPCO accords its own directory listing information, and BellSouth shall limit access to ICI's customer proprietary confidential directory information to those BellSouth or BAPCO employees who are involved in the preparation of listings.

E. Additional listings and optional listings may be provided by BellSouth at the rates set forth in the General Subscriber Services Tariff as the tariff is amended from time to time during the term of this Agreement.

XII. Access to Telephone Numbers

A. BellSouth, during any period under this Agreement in which it serves as a North American Numbering Plan administrator for its territory, shall ensure that ICI has nondiscriminatory access to telephone numbers for assignment to its telephone exchange service customers. It is mutually agreed that BellSouth shall provide numbering resources pursuant to the BellCore Guidelines Regarding Number Assignment and compliance with those guidelines shall constitute nondiscriminatory access to numbers. ICI agrees that it will complete the NXX code application in accordance with Industry Carriers Compatibility Forum, Central Office Code Assignment Guidelines, ICCF 93-0729-010. This service will be as set forth in Attachment C-2, incorporated herein by this reference.

B. If during the term of this Agreement BellSouth is no longer the North American Numbering Plan administrator, the parties agree to comply with the guidelines, plan or rules adopted pursuant to 47 U.S.C. § 251(e).

XIII. Access to Signaling and Signaling Databases

A. Each party will offer to the other party use of its signaling network and signaling databases on an unbundled basis at published tariffed rates. Signaling functionality will be available with both A-link and B-link connectivity.

B. BellSouth agrees to input the NXXs assigned to ICI into the Local Exchange Routing Guide ("LERG").

C. BellSouth will enter ICI line information into its Line Information Database ("LIDB") pursuant to the terms and conditions contained in Attachment C-5, incorporated herein by this reference. Entry of line information into LIDB will enable ICI's end users to participate or not participate in alternate billing arrangements such as collect or third number billed calls.

D. If ICI utilizes BellSouth's 800 database for query purposes only, the rates and charges shall be as set forth in Attachment C-4, incorporated herein by this reference.

XIV. BellSouth's Offer of Services Available for Resale

A. The rates pursuant by which ICI is to purchase services from BellSouth for resale shall be at a discount rate off of the retail rate for the telecommunications service. The discount rates shall be as set forth in Attachment D, attached hereto and incorporated herein by this reference. Such discount shall reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

B. ICI may resell the tariffed telecommunications services of BellSouth, including any broadband exchange line or SynchroNet® service, subject to the terms, and conditions specifically set forth herein. Notwithstanding the foregoing, the following are not available for purchase: Grandfathered services; promotional and trial retail service offerings; lifeline and linkup services; contract service arrangements; installment billing options; 911 and E911 services; interconnection services for mobile service providers; legislatively or administratively mandated specialized discounts (e.g. education institutions discount); and discounted services to meet competitive situations. BellSouth agrees that ICI may resell the broadband exchange line or Synchronet service as provided by BellSouth in any technically feasible manner alone or in conjunction with its own service offering.

C. The provision of services by BellSouth to ICI does not constitute a joint undertaking for the furnishing of any service.

D. ICI will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and expect payment from ICI for all services.

E. ICI will be BellSouth's single point of contact for all services purchased pursuant to this Agreement including all ordering activities and repair calls. For all repair requests, ICI accepts responsibility for adhering to BellSouth's prescreening

guidelines prior to referring the trouble to BellSouth. BellSouth may bill ICI for handling troubles that are found not to be in the BellSouth network. The parties agree that BellSouth may contact ICI's customers, if in its sole discretion it deems necessary for maintenance purposes. BellSouth shall have no other contact with the end user except to the extent provided for herein.

F. BellSouth will continue to bill the end user for any services that the end user specifies it wishes to receive directly from BellSouth. BellSouth maintains the right to serve directly any end user within the service area of ICI and ALEC agrees not to interfere with the right of any end user to obtain service directly from BellSouth. BellSouth will continue to directly market its own telecommunications products and services and in doing so may establish independent relationships with end users of ICI

G. In most circumstances, the current telephone number of an end user may be retained by the end user unless the end user has past due charges associated with the BellSouth account for which payment arrangements have not been made. BellSouth will not, however, make the end user's previous telephone number available to ICI until the end user's outstanding balance has been paid. Denied service means that the service of an end user provided by a local exchange telecommunications company, including BellSouth has been temporally suspended for nonpayment and subject to complete disconnection.

H. BellSouth may provide any service or facility for which a charge is not established herein, as long as it is offered on the same terms to ICI for a charge not less than BellSouth's cost.

I. The characteristics and methods of operation of any circuits, facilities or equipment provided by any person or entity other than BellSouth shall not:

1. Interfere with or impair service over any facilities of BellSouth, its affiliates, or its connecting and concurring carriers involved in its service;
2. Cause damage to their plant;
3. Impair the privacy of any communications; or
4. Create hazards to any employees or the public.

ICI assumes the responsibility of notifying BellSouth regarding less than standard operations with respect to services provided by ICI.

J. ICI agrees that its resale of BellSouth services shall be as follows: .

- 1. The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.**
- 2. To the extent ICI is a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines, ICI shall not jointly market its interLATA services with the telecommunications services purchased from BellSouth pursuant to this Agreement in any of the states covered under this Agreement. For purposes of this subsection, to jointly market means any advertisement, marketing effort or billing in which the telecommunications services purchased from BellSouth for purposes of resale to customers and interLATA services offered by ICI are packaged, tied, bundled, discounted or offered together in any way to the end user. Such efforts include, but are not limited to, sales referrals, resale arrangements, sales agencies or billing agreements. This subsection shall be void and of no effect for a particular state covered under this Agreement as of February 8, 1999 or on the date BellSouth is authorized to offer interLATA services in that state, whichever is earlier.**
- 3. Hotel and Hospital PBX service are the only telecommunications services available for resale to Hotel/Motel and Hospital end users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to COCOTS customers. Shared Tenant Service customers can only be sold those telecommunications services available in BellSouth's A23 or A27 Shared Tenant Service Tariff, as appropriate.**
- 4. ICI is prohibited from furnishing both flat and measured rate service on the same business premises to the same subscribers (end users) as stated in A2.3.2.A. of BellSouth's Tariff.**
- 5. Resold services can only be used in the same manner as specified in BellSouth's Tariff. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual end user of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features, e.g. a usage allowance per month, shall not be aggregated across multiple resold services. Resold services cannot be used to aggregate traffic from more than one end user customer except as specified in Section A23. of BellSouth's Tariff referring to Shared Tenant Service.**

K. Telephone numbers transmitted via any resold service feature are intended solely for the use of the end user of the feature. Resale of this information is prohibited.

L. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. ICI is strictly prohibited from any use, including but not limited to sale, marketing or advertising, of any BellSouth name or trademark.

M. Services resold under BellSouth's Tariffs and facilities and equipment provided by BellSouth shall be maintained by BellSouth. ICI or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BellSouth, other than by connection or disconnection to any interface means used, except with the written consent of BellSouth.

N. BellSouth will not perform billing and collection services for ICI as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within BellSouth.

O. Until such time as BellSouth receives permission from the FCC to bill the End User Common Line (EUCL) charge to ICI, BellSouth will, on an interim basis, bill ICI the charges shown below which are identical to the EUCL rates billed by BST to its end users.

	Monthly Rate
1. Residential	
(a) Each Individual Line or Trunk	\$3.50
2. Single Line Business	
(b) Each Individual Line or Trunk	\$3.50
3. Multi-line Business	
(c) Each Individual Line or Trunk	\$6.00

P. The procedures for discontinuing end user service purchased by ICI for resale to an end user are as follows:

1. Where possible, BellSouth will deny service to ICI's end user on behalf of, and at the request of, ICI. Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of ICI
2. At the request of ICI, BellSouth will disconnect a ICI end user customer.

3. All requests by ICI for denial or disconnection of an end user for nonpayment must be in writing.
4. ICI will be made solely responsible for notifying the end user of the proposed disconnection of the service.
5. BellSouth will continue to process calls made to the Annoyance Call Center and will advise ICI when it is determined that annoyance calls are originated from one of their end user's locations. BellSouth shall be indemnified, defended and held harmless by ICI and/or the end user against any claim, loss or damage arising from providing this information to ICI. It is the responsibility of ICI to take the corrective action necessary with its customers who make annoying calls. Failure to do so will result in BellSouth's disconnecting the end user's service.

Q. The procedures for discontinuing service to ICI are as follows:

1. BellSouth reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by ICI of the rules and regulations of BellSouth's Tariffs.
2. If payment of account is not received by the bill day in the month after the original bill day, BellSouth may provide written notice to ICI, that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. If BellSouth does not refuse additional applications for service on the date specified in the notice, and ICI's noncompliance continues, nothing contained herein shall preclude BellSouth's right to refuse additional applications for service without further notice.
3. If payment of the account is not received, or arrangements made, by the bill day in the second consecutive month, the account will be considered in default and will be subject to denial or disconnection, or both.
4. If ICI fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, BellSouth may, on thirty days written notice to the person designated by ICI to receive notices of noncompliance, discontinue the provision of existing services to ICI at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If BellSouth

does not discontinue the provision of the services involved on the date specified in the thirty days notice, and ICI's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to ICI without further notice.

5. If payment is not received or arrangements made for payment by the date given in the written notification, ICI's services will be discontinued. Upon discontinuance of service on a ICI's account, service to ICI's end users will be denied. BellSouth will also reestablish service at the request of the end user or ICI upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures.
6. If within fifteen days after an end user's service has been denied no contact has been made in reference to restoring service, the end user's service will be disconnected.

R. BellSouth may require ICI to make a deposit, if evidence of good credit cannot be provided, when purchasing services for resale purposes to be held by BellSouth as a guarantee of the payment of rates and charges. Any such deposit may be held during the continuance of the service and may not exceed two month's estimated billing. The fact that a deposit has been made in no way relieves ICI from the prompt payment of bills on presentation nor does it constitute a waiver or modification of the regular practices of BellSouth providing for the discontinuance of service for non-payment of any sums due BellSouth. In the event that ICI defaults on its account, service to ICI will be terminated and any deposits held will be applied to its account. In the case of a cash deposit, interest at the rate of six percent per annum shall be paid to ICI during the continuance of the deposit. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to ICI by the accrual date.

XV. Ordering of Services From BellSouth For Resale Purposes

A. The ordering and provision of services purchased from BellSouth for resale purposes by ICI shall be as set forth in the OLEC-to-BellSouth Ordering Guidelines (Reseller) as those guidelines are amended by BellSouth from time to time during the term of this Agreement.

B. When the initial service is ordered by ICI, BellSouth will establish an accounts receivable master account for ICI.

C. BellSouth shall bill ICI on a current basis all applicable charges and credits.

D. Payment of all charges will be the responsibility of ICI. ICI shall make payment to BellSouth for all services billed. BellSouth is not responsible for payments not received by ICI from ICI's customer. BellSouth will not become involved in billing disputes that may arise between ICI and its customer. Payments made to BellSouth as payment on account will be credited to an accounts receivable master account and not to an end user's account.

E. BellSouth will render bills each month on established bill days for each of ICI's accounts.

F. BellSouth will bill ICI in advance charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual end user account level, including, if applicable, any charges for usage or usage allowances. BellSouth will also bill all charges, including but not limited to 911 and E911 charges, telecommunications relay charges, and franchise fees, on an individual end user account level.

G. The payment will be due by the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available U.S. funds. Payment is considered to have been made when received by BellSouth.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in I. following, shall apply.

H. Upon proof of tax exempt certification from ICI, the total amount billed to ICI will not include any taxes due from the end user. ICI will be solely responsible for the computation, tracking, reporting and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the end user.

I. As the customer of record, ICI will be responsible for, and remit to BellSouth, all charges applicable to its resold services for emergency services (E911 and 911) and Telecommunications Relay Service (TRS) as well as any other charges of a similar nature.

J. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by

BellSouth in funds that are not immediately available to BellSouth, then a late payment penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lesser of:

1. The highest interest rate (in decimal value) which may be levied by law for commercial transaction, compounded daily for the number of days from the payment due date to and including the date that ICI actually makes the payment to BellSouth, or
2. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that ICI actually makes the payment to BellSouth.

K. Any Carrier Common Line charges (CCL) associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, BellSouth.

L. In general, BellSouth will not become involved in disputes between ICI and ICI's end user customers over resold services. If a dispute does arise that cannot be settled without the involvement of BellSouth, ICI shall contact the designated Service Center for resolution. BellSouth will make every effort to assist in the resolution of the dispute and will work with ICI to resolve the matter in as timely a manner as possible. ICI may be required to submit documentation to substantiate the claim.

M. ICI is responsible for payment of all appropriate charges for completed calls, services, and equipment. If objection in writing is not received by BellSouth within twenty-nine days after the bill is rendered, the account shall be deemed correct and binding upon ICI.

XVI. Network Design and Management

A. The parties agree to work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. BellSouth agrees to provide public notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

B. The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.

C. The parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls, e.g., call gapping, to alleviate or prevent network congestion.

D. Neither party intends to charge rearrangement, reconfiguration, disconnection, termination or other non-recurring fees that may be associated with the initial reconfiguration of either party's network interconnection arrangement contained in this Agreement. However, the interconnection reconfigurations will have to be considered individually as to the application of a charge. Notwithstanding the foregoing, the parties do intend to charge non-recurring fees for any additions to, or added capacity to, any facility or trunk purchased..

E. The parties agree to provide LEC-to-LEC Common Channel Signaling (CCS) to one another, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. All CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored, and the parties agree to cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate full interoperability of CCS-based features between the respective networks.

F. For network expansion, the parties agree to review engineering requirements on a quarterly basis and establish forecasts for trunk utilization as required by Section V of this Agreement. New trunk groups will be implemented as state by engineering requirements for both parties.

G. The parties agree to provide each other with the proper call information, i.e. originated call party number and destination call party number, CIC, and OZZ, including all proper translations for routing between networks and any information necessary for billing where BellSouth provides recording capabilities. The exchange of information is required to enable each party to bill properly.

XVII. Disconnection of Existing End User Service

A. BellSouth will accept requests from ICI to disconnect the service of an existing BellSouth end user. BellSouth will accept a request directly from an end user for conversion of the end user's service from ICI to BellSouth or will accept a request from another ALEC or ICI for conversion of the Service Provider Number Portability service associated with an end user's service from ICI to the second ALEC or Reseller. BellSouth will notify ICI that such a request has been processed. BellSouth will not require end user confirmation prior to disconnecting the end user's service. ICI must, however, provide proof of authorization upon request.

B. If BellSouth determines that an unauthorized change in local service provider has occurred, BellSouth will reestablish service with the appropriate local service provider as requested by the end user and will assess ICI an Unauthorized Change Charge of \$19.41 per line or trunk for Residence of Business. The appropriate nonrecurring charges to reestablish the customer's service with the appropriate local service provider will also be assessed to ICI because of the unauthorized change. These charges may be adjusted if ICI provides satisfactory proof of authorization.

C. BellSouth may designate BellSouth as the preferred provider of local exchange service for its own pay telephones.

XVIII. Implementation of Agreement

The parties agree that within 30 days of the execution of this Agreement they will adopt a schedule for the implementation of this Agreement. The schedule shall state with specificity, conversion, reconfiguration, ordering, testing, and full operational time frames. Both parties agree to provide the appropriate staff support to ensure effective implementation, administration of this Agreement and conversion of existing services to the appropriate rates contained in this Agreement. Any changes in billing to ICI shall be as of the effective date of this Agreement. The implementation schedule shall be attached to this Agreement as an addendum and specifically incorporated herein by this reference.

XIX. Auditing Procedures

A. Upon thirty (30) days written notice, each party must provide the other the ability and opportunity to conduct an annual audit to ensure the proper billing of traffic between the parties. The parties agree to retain records of call detail for a minimum of nine months from which the PLU can be ascertained. The audit shall be accomplished during normal business hours at an office designated by the party being audited. Audit request shall not be submitted more frequently than one (1) time per calendar year. Audits shall be performed by a mutually acceptable independent auditor paid for by the party requesting the audit. The PLU shall be adjusted based upon the audit results and shall apply to the usage for the quarter the audit was completed, the usage for the quarter prior to the completion of the audit, and to the usage for the two quarters following the completion of the audit. If, as a result of an audit, either party is found to have overstated the PLU by twenty percentage points (20%) or more, that party shall reimburse the auditing party for the cost of the audit.

B. For combined interstate and intrastate ICI traffic terminated by BellSouth over the same facilities, ICI shall provide a projected Percentage Interstate Usage ("PIU") as defined herein to BellSouth. All jurisdictional report requirements, rules and regulations for Interexchange Carriers specified in E2.3.14 of BellSouth's Intrastate Access Services Tariff will apply to ICI. After interstate and intrastate traffic percentages have been determined by use of PIU procedures, the PLU factor will be

used for application and billing of local interconnection and intrastate toll access charges.

C. BellSouth reserves the right to periodically audit services purchased by ICI for the purposes of resale to confirm that such services are being utilized in conformity with this Agreement. ICI agrees to make any and all records available to BellSouth or its auditors on a timely basis. BellSouth shall bear the cost of said audit that shall not occur more than once in a calendar year. If the audit determines that the services are being utilized in violation of this Agreement, ICI shall be notified and billing for the service will be immediately changed to conform with this Agreement. Service charges, back billing and interest may be applied.

XX. Liability and Indemnification

A. With respect to any claim or suit by ICI, an ICI customer or by any other person or entity, other than for willful misconduct, for damages associated with any of the services provided by BellSouth pursuant to this Agreement or otherwise, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of B. through G. following, BellSouth's liability shall not exceed an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected.

B. BellSouth shall not be liable for any act or omission of any other telecommunications company providing a portion of a service, nor shall BellSouth hold liable any other telecommunications company providing a portion of a service for any act or omission of BellSouth.

C. BellSouth is not liable for damages to ICI's terminal location, POI nor ICI's customer's premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, unless the damage is caused by BellSouth's gross negligence.

D. BellSouth shall be indemnified, defended and held harmless by ICI against any claim, loss or damage arising from ICI's use of services provided by BellSouth under this Agreement, involving: 1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from ICI's own communications; 2) Claims for patent infringement arising from ICI's acts combining or using the service furnished by BellSouth in connection with facilities or equipment furnished by ICI or ICI's customer; 3) any claim, loss, or damage claimed by a ICI customer, arising from ICI's uses of services provided by BellSouth under this Agreement; or 4) all other claims arising out of an act or omission of ICI in the course of using services provided pursuant to this Agreement.

E. BellSouth assumes no liability for the accuracy of the data provided to it by ICI and ICI agrees to indemnify and hold harmless BellSouth for any claim, action, cause of action, damage, injury whatsoever, that may result from the supply of data from ICI to BellSouth in conjunction with the provision of any service provided pursuant to this Agreement.

F. BellSouth does not guarantee or make any warranty with respect to its services when used in an explosive atmosphere. BellSouth shall be indemnified, defended and held harmless by ICI or ICI's customer from any and all claims by any person relating to ICI's or ICI's customer's use of services so provided.

G. No license under patents (other than the limited license to use) is granted by BellSouth or shall be implied or arise by estoppel, with respect to any service offered pursuant to this Agreement. BellSouth will defend ICI against claims of patent infringement arising solely from the use by ICI of services offered pursuant to this Agreement and will indemnify ICI for any damages awarded based solely on such claims.

H. BellSouth's failure to provide or maintain services offered pursuant to this Agreement shall be excused by labor difficulties, governmental orders, civil commotion, criminal actions taken against BellSouth, acts of God and other circumstances beyond BellSouth's reasonable control.

I. This obligations of the Parties contained within this section shall survive the expiration of this Agreement.

XXI. More Favorable Provisions

A. In the event an appropriate regulatory agency or judicial body orders or directs BellSouth or ICI to provide any substantive portion of this Agreement in a way different than that provided for herein, including but not limited to BellSouth's provision of broadband exchange line services, the parties agree to implement said order so that the parties can incorporate the order on the same day that the order becomes effective. The parties agree that such action shall take place only after all administrative and judicial remedies have been exhausted. The party pursuing any administrative or judicial remedy agrees to apply the regulatory or judicial order retroactively to the date that the order was initially entered and apply simple interest at a rate based on the thirty day commercial paper rate for high grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000.00 as regularly published in the Wall Street Journal. The preceding sentence shall survive the expiration of this Agreement.

B. In the event BellSouth executes an interconnection, unbundling and resale agreement with any other local exchange carrier, the parties agree that ICI shall be eligible to supersede this Agreement with the identical rates, terms and conditions contained in the BellSouth agreement with the other local exchange carrier. If ICI

chooses to adopt another agreement in its entirety, the parties agree that the effective day shall be the date the agreement is approved by the Commission.

C. In the event BellSouth files and receives approval for a tariff offering to provide any substantive service of this Agreement in a way different than that provided for herein, the parties agree that ICI shall be eligible for subscription to said service at the rates, terms and conditions contained in the tariff. The parties agree that such eligibility shall be as of the effective date of the tariff.

D. The Parties acknowledge that BellSouth will guarantee the provision of universal service as the carrier-of-last-resort throughout its territory in Florida until January 1, 1998 without contribution from ICI.

XXII. Treatment of Proprietary and Confidential Information

A. Both parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Information"). Both parties agree that all Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both parties agree that the Information shall not be copied or reproduced in any form. Both parties agree to receive such Information and not disclose such Information. Both parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees of the parties with a need to know such Information and which employees agree to be bound by the terms of this Section. Both parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

B. Notwithstanding the foregoing, both parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a nonparty to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; or 3) previously known to the receiving party without an obligation to keep it confidential.

XXIII. Resolution of Disputes

Except as otherwise stated in this Agreement, the parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the parties will initially refer the issue to the individuals in each company that negotiated the Agreement. If the issue is not resolved within 30 days, either party may petition the Commission for a resolution of the dispute.

However, each party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

XXIV. Limitation of Use

The parties agree that this Agreement shall not be proffered by either party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other party in that jurisdiction or for any other purpose.

XXV. Waivers

Any failure by either party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

XXVI. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

XXVII. Arm's Length Negotiations

This Agreement was executed after arm's length negotiations between the undersigned parties and reflects the conclusion of the undersigned that this Agreement is in the best interests of all parties.

XXVIII. Notices

A. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.
Rich Dender –Acct. Manager
South E4E1 Colonnade Prkwy
Birmingham, AL 35243

ICI–Pat Kurlin
3625 Queen Palm Drive
Tampa, Florida
33619

or at such other address as the intended recipient previously shall have designated by written notice to the other party.

B. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

XXIX. Entire Agreement

This Agreement and its Attachments, incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the parties, including, without limitation, that certain Stipulation and Agreement dated December 7, 1995, applicable to the state of Florida, relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

BellSouth Telecommunications, Inc.

C. B. Coe

Signature

Group President

Title

June 21, 1996

Date

Intermedia
Communications Inc

David C. Schubert

Signature

CEO

Title

6/21/96

Date

ATTACHMENT A

EXAMPLE OF "5% CAP"

Case 1:

BellSouth terminates 10,000 min. to ALEC X ALEC X bills BellSouth for 10,000 min.

ALEC X terminates 15,000 min. to BellSouth BellSouth bills ALEC X for 10,500 min.
(10,000 + 5%)

Case 2:

BellSouth terminates 15,000 min. to ALEC X ALEC X bills BellSouth for 10,500 min.
(10,000 + 5%)

ALEC X terminates 10,000 min. to BellSouth BellSouth bills ALEC X for 10,000 min.

Case 3:

BellSouth terminates zero min. to ALEC X ALEC X bills BellSouth zero

ALEC X terminates 10,000 min. to BellSouth BellSouth bills ALEC X zero

Case 4:

BellSouth terminates 10,000 min. to ALEC X ALEC X bills BellSouth zero

ALEC X terminates zero min. to BellSouth BellSouth bills ALEC X zero

Case 5:

BellSouth terminates 10,000 min. to ALEC X ALEC X bills BellSouth for 10,000 min.

ALEC X terminates 10,200 min. to BellSouth BellSouth bills ALEC X for 10,200 min.
(difference is less than cap)

Case 6:

BellSouth terminates 10,200 min. to ALEC X

ALEC X bills BellSouth for 10,200 min.
(difference is less than cap)

ALEC X terminates 10,000 min. to BellSouth

BellSouth bills ALEC X for 10,000 min.

Case 7:

BellSouth and ALEC X both terminate 10,000 min. to each other

ALEC X and BellSouth both bill each other 10,000 min.

Attachment B-1

Local Interconnection Service

Service: Local Interconnection*

Description: Provides for the use of BellSouth Switching and transport facilities and common subscriber plant for connecting calls between an ALEC's Point of Interface (POI) and a BellSouth end user.

It can also be used to connect calls between an ALEC and an Interexchange Carrier (IC), and Independent Exchange Telephone Company (ICO), or a Mobile Service Service Provider (MSP), or between two ALECs.

It is furnished on a per-trunk basis. Trunks are differentiated by traffic type and directionality. There are two major traffic types: (1) Local and (2) Intermediary. Local represents traffic from the ALEC's POI to a BellSouth tandem or end office and Intermediary represents traffic originated or terminated by an ALEC which is interconnected with an IC, ICO, MSP or another ALEC.

Rates and charges will be applied as indicated below.

State(s):	Alabama						Florida					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First	-	-	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport	-	-	\$23.50	per mile	\$486.83	LC - Add'l	-	-	\$16.75	per mile	\$486.83	LC - Add'l
DS1 Common Transport	\$0.00004	per mile	-	-	\$100.49	fac. term.	-	-	\$59.75	fac. term.	\$100.49	fac. term.
Local Switching LS2 (FGD)	\$0.00036	fac. term.	-	-	-	-	\$0.00036	fac. term.	-	-	-	-
Tandem Switching	\$0.00755	access mou	-	-	-	-	\$0.00755	access mou	-	-	-	-
Information Surcharge	\$0.00074	access mou	-	-	-	-	\$0.00050	access mou	-	-	-	-
Tandem Intermediary Charge**	\$0.03218	100 mou	-	-	-	-	-	-	-	-	-	-
	\$0.002	access mou	-	-	-	-	\$0.002	access mou	-	-	-	-
Composite Rate-DS1 Dedicated	\$0.00978						\$0.01028					
Composite Rate-DS1 Tandem Sw.	\$0.00991						\$0.01056					

State(s):	Georgia						Kentucky					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First	-	-	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport	-	-	\$23.50	per mile	\$486.83	LC - Add'l	-	-	\$23.50	per mile	\$486.83	LC - Add'l
DS1 Common Transport	\$0.00004	per mile	-	-	\$100.49	fac. term.	-	-	\$0.00	fac. term.	\$100.49	fac. term.
Local Switching LS2 (FGD)	\$0.00036	fac. term.	-	-	-	-	\$0.00036	fac. term.	-	-	-	-
Tandem Switching	\$0.00755	access mou	-	-	-	-	\$0.00755	access mou	-	-	-	-
Information Surcharge	\$0.00074	access mou	-	-	-	-	\$0.00074	access mou	-	-	-	-
Tandem Intermediary Charge**	-	-	-	-	-	-	\$0.03218	Prem/100 mou	-	-	-	-
	\$0.002	access mou	-	-	-	-	\$0.01448	Trans/100 mou	-	-	-	-
							\$0.002	access mou	-	-	-	-
Composite Rate-DS1 Dedicated	\$0.00978						\$0.00978					
Composite Rate-DS1 Tandem Sw.	\$0.00991						\$0.00991					

*Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth Telecommunication's, Inc.'s Intrastate Access Tariff

**The Tandem Intermediary Charge applies only to Intermediary Traffic.

-DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's POI, also called an Entrance Facility. This element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is collocated.

-DS1 Dedicated Transport: provides transmission and facility termination. The facility termination applies for each DS1 Interoffice Channel terminated. Can be used from the ALEC's serving wire center to the end users end office or from the ALEC's serving wire center to the tandem.

-Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.

-Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.

-Compensation Credit (CAP): BellSouth and the ALECs will not be required to compensate each other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

Attachment B-1
Local Interconnection Service

Service: Local Interconnection* (Cont'd)

State(s):	Louisiana						Mississippi					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First	-	-	\$133.81	LC	\$866.97	LC - First
					\$486.83	LC - Add'l					\$486.83	LC - Add'l
DS1 Dedicated Transport	-	-	\$16.75 per mile	-	-	-	-	-	\$23.50 per mile	-	-	-
			\$59.75 fac. term.	\$100.49	fac. term.	fac. term.	-	-	\$90.00 fac. term.	-	\$100.49	fac. term.
DS1 Common Transport	\$0.00004 per mile	-	-	-	-	-	\$0.00004 per mile	-	-	-	-	-
	\$0.00036 fac. term.	-	-	-	-	-	\$0.00036 fac. term.	-	-	-	-	-
Local Switching LS2 (FGD)	\$0.00868 access mou	-	-	-	-	-	\$0.00787 access mou	-	-	-	-	-
Tandem Switching	\$0.00050 access mou	-	-	-	-	-	\$0.00074 access mou	-	-	-	-	-
Information Surcharge	-	-	-	-	-	-	-	-	-	-	-	-
Tandem Intermediary Charge**	\$0.002 access mou	-	-	-	-	-	\$0.002 access mou	-	-	-	-	-
Composite Rate-DS1 Dedicated	\$0.01021						\$0.00978					
Composite Rate-DS1 Tandem Sw.	\$0.01049						\$0.00991					

State(s):	N. Carolina						S. Carolina					
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First	-	-	\$133.81	LC	\$866.97	LC - First
					\$486.83	LC - Add'l					\$486.83	LC - Add'l
DS1 Dedicated Transport	-	-	\$23.50 per mile	-	-	-	-	-	\$23.50 per mile	-	-	-
			\$90.00 fac. term.	\$100.49	fac. term.				\$90.00 fac. term.	\$100.49	fac. term.	
DS1 Common Transport	\$0.00004 per mile	-	-	-	-	-	\$0.00004 per mile	-	-	-	-	-
	\$0.00036 fac. term.	-	-	-	-	-	\$0.00036 fac. term.	-	-	-	-	-
Local Switching LS2 (FGD)	\$0.01140 access mou	-	-	-	-	-	\$0.01096 access mou	-	-	-	-	-
Tandem Switching	\$0.00074 access mou	-	-	-	-	-	\$0.00074 access mou	-	-	-	-	-
Information Surcharge	-	-	-	-	-	-	\$0.03741 100 mou	-	-	-	-	-
Tandem Intermediary Charge**	\$0.002 access mou	-	-	-	-	-	\$0.002 access mou	-	-	-	-	-
Composite Rate-DS1 Dedicated	\$0 01331						\$0 01323					
Composite Rate-DS1 Tandem Sw.	\$0 01344						\$0 01336					

State(s):		Tennessee				
RATE ELEMENTS	Per MOU	Applied Per	Monthly Recur.	Applied Per	Non-Recur.	Applied Per
DS1 Local Channel	-	-	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport	-	-	\$23.50 per mile	-	\$486.83	LC - Add'l
DS1 Common Transport	\$0.00004 per mile	-	\$90.00 fac. term.	\$100.49	fac. term.	-
Local Switching LS2 (FGD)	\$0.00036 fac. term.	-	-	-	-	-
Tandem Switching	\$0.01750 access mou	-	-	-	-	-
Information Surcharge	\$0.00074 access mou	-	-	-	-	-
Tandem Intermediary Charge**	\$0.002 access mou	-	-	-	-	-
Composite Rate-DS1 Dedicated	\$0.01941	-	-	-	-	-
Composite Rate-DS1 Tandem Sw.	\$0.01954	-	-	-	-	-

*Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth Telecommunications, Inc.'s Intrastate Access Tariff.

**The Tandem Intermediary Charge applies only to intermediary traffic.

-DS1 Local Channel: denotes a DS1 dedicated transport facility between the ALEC's serving wire center and the ALEC's POI, also called an Entrance Facility. This element will apply when associated with services ordered by an ALEC which utilizes a BellSouth facilities. This element is not required when an ALEC is collocated.

-DS1 Dedicated Transport: provides transmission and facility termination. The facility termination applies for each DS1 interoffice channel terminated. Can be used from the ALEC's serving wire center to the end users end office or from the ALEC's serving wire center to the tandem.

-Common Transport: Composed of Common Transport facilities as determined by BellSouth and permits the transmission of calls terminated by BellSouth.

-Access Tandem Switching: provides function of switching traffic from or to the Access Tandem from or to the end office switch(es). The Access Tandem Switching charge is assessed on all terminating minutes of use switched at the access tandem.

-Compensation Credit (CAP): BellSouth and the ALECs will not be required to compensate each other for more than 105% of the total billed local interconnection minutes of use of the party with the lower total billed local interconnection minutes of use in the same month.

Attachment B-2

Local Interconnection Service

Service: Toll Switched Access

Description: Provides the Switched Local Channel, Switched Transport, Access Tandem Switching, local end office switching and end user termination functions necessary to complete the transmission of ALEC intrastate and interstate calls from outside the BellSouth's basic local calling area.

Provided in the terminating direction only. Provides trunk side access to a BellSouth tandem/end office for the ALEC's use in terminating long distance communications from the ALEC to BellSouth end users.

Provided at BellSouth tandem/end office as trunk side terminating switching through the use of tandem/end office trunk equipment. The switch trunk equipment may be provided with wink start-pulsing signals and answer and disconnect supervisory signaling, or without signaling when out of band signaling is provided.

Provided with multifrequency address or out of band signaling. Ten digits of the called party number, as appropriate, will be provided by the ALEC's equipment to a BellSouth tandem/end office.

State(s): All

Rates, Terms and Conditions:

In all states, rates, terms and conditions will be applied as set forth in Section E6 of BellSouth Telecommunication's, Inc.'s Intrastate Access Service Tariffs and in Section 6 of the BellSouth Telecommunication's, Inc. Interstate Access Tariff, F.C.C. No. 1.

Attachment B-3

Local Interconnection Service

Service: Service Provider Number Portability-Remote

Description: Service Provider Number Portability (SPNP) is an interim service arrangement provided by BellSouth to ALECs whereby an end user, who switches subscription to local exchange service from BellSouth to an ALEC, is permitted to retain use of the existing BellSouth assigned telephone number provided that the end user remains at the same location.

SPNP-Remote is a telecommunications service whereby a call dialed to an SPNP-Remote equipped telephone number, assigned by BellSouth, is automatically forwarded to an ALEC assigned seven or ten digit telephone number within BellSouth's basic local calling area as defined in Section A3 of BellSouth's General Subscriber Service Tariff. The forwarded-to number is specified by the ALEC.

SPNP-Remote provides a single call path for the forwarding of no more than one simultaneous call to the ALEC specified forwarded-to number. Additional call paths for the forwarding of multiple simultaneous calls are available on a per path basis, and are in addition to the rate for SPNP-Remote service.

State(s): ALL

	<u>Monthly Rate</u>	<u>Nonrecurring Charge</u>
Per Number Ported		
- Residence / 6 paths	\$1.15	-
- Business / 10 paths	\$2.25	-
Each Additional Path	\$0.50	-
Per Order, per end user location	-	None

Attachment B-4

Local Interconnection Service

Service: Service Provider Number Portability-Direct Inward Dialed (DID)*

Description: Service Provider Number Portability (SPNP) is an interim service arrangement provided by BellSouth to ALECs whereby an end user, who switches subscription to local exchange service from BellSouth to an ALEC is permitted to retain use of the existing BellSouth assigned telephone number provided that the end user remains at the same location.

SPNP-DID provides trunk side access to BellSouth end office switched for direct inward dialing to ALEC premises from the telecommunications network directly to lines associated with ALEC switching equipment.

SPNP-DID will be available on either a DSO, DS1 or DS3 basis.

SPNP-DID Trunk Termination will only be provided with SS7 Signaling at rates set forth in E6 of BellSouth Telecommunication's, Inc.'s Intrastate Access Tariffs.

Direct facilities are required from the BellSouth end office where a ported number resides to the ALEC end office serving the ALEC end user.

RATE ELEMENTS	Alabama				Florida			
	Monthly Recurring	Applied Per	Non- Recurring	Applied Per	Monthly Recurring	Applied Per	Non- Recurring	Applied Per
Per Number Ported - Business	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Number Ported - Residence	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Order	-	-	\$25.00	end user location	-	-	\$25.00	end user location
SPNP-DID Trunk Termination	\$13.00	trunk	\$160.00 \$80.00	trunk-init. trunk-sub.	\$15.00	trunk	\$170.00 \$85.00	trunk-init. trunk-sub.
DS1 Local Channel**	\$133.81	LC	\$866.97	LC - First	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport**	\$23.50	per mile	\$486.83	LC - Add'l	\$16.75	per mile	\$486.83	LC - Add'l
	\$90.00	fac. term.	\$100.49	fac. term.	\$59.75	fac. term.	\$100.49	fac. term.

RATE ELEMENTS	Georgia				Kentucky			
	Monthly Recurring	Applied Per	Non- Recurring	Applied Per	Monthly Recurring	Applied Per	Non- Recurring	Applied Per
Per Number Ported - Business	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Number Ported - Residence	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Order	-	-	\$25.00	end user location	-	-	\$25.00	end user location
SPNP-DID Trunk Termination	\$14.00	trunk	\$165.00 \$83.00	trunk-init. trunk-sub.	\$13.00	trunk	\$150.00 \$80.00	trunk-init. trunk-sub.
DS1 Local Channel**	\$133.81	LC	\$866.97	LC - First	\$133.81	LC	\$866.97	LC - First
DS1 Dedicated Transport**	\$23.50	per mile	\$486.83	LC - Add'l	\$23.50	per mile	\$486.83	LC - Add'l
	\$90.00	fac. term.	\$100.49	fac. term.	\$90.00	fac. term.	\$100.49	fac. term.

* Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth's Intrastate Access Tariffs.

**May not be required if the ALEC is collocated at the ported number end office.

Attachment B-4

Local Interconnection Service

Service: Service Provider Number Portability-Direct Inward Dialed (DID)* (Cont'd)

State(s):	Louisiana				Mississippi			
RATE ELEMENTS	Monthly Recurring	Applied Per	Non- Recurring	Applied Per	Monthly Recurring	Applied Per	Non- Recurring	Applied Per
Per Number Ported - Business	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Number Ported - Residence	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Order	-	-	\$25.00	end user location	-	-	\$25.00	end user location
SPNP-DID Trunk Termination	\$13.00	trunk	\$170.00	trunk-init.	\$13.00	trunk	\$150.00	trunk-init.
			\$86.00	trunk-sub.			\$80.00	trunk-sub.
DS1 Local Channel**	\$133.81	LC	\$866.97	LC - First	\$133.81	LC	\$866.97	LC - First
	-	-	\$486.83	LC - Add'l	-	-	\$486.83	LC - Add'l
DS1 Dedicated Transport**	\$16.75	per mile	-	-	\$23.50	per mile	-	-
	\$59.75	fac. term.	\$100.49	fac. term.	\$90.00	fac. term.	\$100.49	fac. term.

State(s):	N.Carolina				S.Carolina			
RATE ELEMENTS	Monthly Recurring	Applied Per	Non- Recurring	Applied Per	Monthly Recurring	Applied Per	Non- Recurring	Applied Per
Per Number Ported - Business	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Number Ported - Residence	\$0.01	each	\$1.00	each	\$0.01	each	\$1.00	each
Per Order	-	-	\$25.00	end user location	-	-	\$25.00	end user location
	-	-	-		-	-		
SPNP-DID Trunk Termination	\$13.00	trunk	\$160.00	trunk-init.	\$13.00	trunk	\$164.00	trunk-init.
			\$83.00	trunk-sub.			\$81.00	trunk-sub.
DS1 Local Channel**	\$133.81	LC	\$866.97	LC - First	\$133.81	LC	\$866.97	LC - First
			\$486.83	LC - Add'l			\$486.83	LC - Add'l
DS1 Dedicated Transport**	\$23.50	per mile	-	-	\$23.50	per mile	-	-
	\$90.00	fac. term.	\$100.49	fac. term.	\$90.00	fac. term.	\$100.49	fac. term.

State(s):		Tennessee		
RATE ELEMENTS	Monthly Recurring	Applied Per	Non- Recurring	Applied Per
Per Number Ported - Business	\$0.01	each	\$1.00	each
Per Number Ported - Residence	\$0.01	each	\$1.00	each
Per Order	-	-	\$25.00	end user location
SPNP-DID Trunk Termination	\$13.00	trunk	\$164.00	trunk-init.
			\$83.00	trunk-sub.
DS1 Local Channel**	\$133.81	LC	\$666.97	LC - First
			\$486.83	LC - Add'l
DS1 Dedicated Transport**	\$23.50	per mile	-	-
	\$90.00	fac. term.	\$100.49	fac. term.

*Rates are displayed at the DS1-1.544 Mbps. level. For rates and charges applicable to other arrangement levels, refer to Section E6 of BellSouth Telecommunication's Inc.'s Intrastate Access Tariff.

**May not be required if the ALEC is collocated at the ported number end office.

Attachment C-1

Unbundled Products and Services and New Services

Service: Subscriber Listing Information

Description: Subscriber primary listing information provided at no charge and in an acceptable format will be published at no charge as standard directory listings in an alphabetical directory published by or for BellSouth at no charge to each ALEC end user customer.

State(s): All

Rates: (1) No charge for ALEC-1 customer primary listings.
(2) Additional listings and optional listings may be provided by BellSouth at rates set forth in BellSouth's intrastate General Subscriber Services Tariffs.

EXHIBIT _____

ALPHABETICAL DIRECTORY SIDE AGREEMENT

- I. CARRIER agrees to provide to BellSouth Advertising & Publishing Corporation ("BAPCO"), through BST, at CARRIER's expense and at no charge, listing information concerning its subscribers (designating any who do not desire published listings), consisting of: customer, name, address, telephone number and all other information reasonably requested by BAPCO for BAPCO's use in publishing directories of whatever type and format and for other derivative purposes. Such information shall be provided on a schedule and in a format reasonably acceptable to BAPCO. CARRIER shall advise BAPCO promptly regarding any directory-related inquiries, requests or complaints which it shall receive from CARRIER's subscribers and shall provide reasonable cooperation to BAPCO in response to or resolution of the same. CARRIER shall respond promptly regarding corrections or queries raised by BAPCO and to process listing changes requested by subscribers.
- II. BAPCO shall include one standard listing for each CARRIER subscriber per hunting group in BAPCO's appropriate local alphabetical directory as published periodically by BAPCO unless nonlisted or nonpublished status is designated by subscribers. BAPCO shall also include one standard listing for each CARRIER business subscriber per hunting group in an appropriate heading as selected by the subscriber in BAPCO's appropriate local classified directory as published periodically by BAPCO unless nonlisted or nonpublish status is designated by subscriber. Such listings shall be interfiled with the listings of other local exchange telephone company subscribers and otherwise published in the manner of such other listings according to BAPCO's generally applicable publishing policies and standards. BAPCO shall deliver such local alphabetical and classified directory to CARRIER's subscribers according to BAPCO's generally applicable policies and standards.
- III. BAPCO shall maintain full authority over its publishing schedules, policies, standards, and practices and over the scope and publishing schedules of its directories.
- IV. Each party agrees to defend, indemnify and hold harmless the other from all damages, claims, suits, losses or expenses, including without limitation costs and attorneys fees, to the extent of such party's relative fault, arising out of or resulting from any error, omission or act of such party hereunder. CARRIER agrees to limit its liability and that of BAPCO by contract with CARRIER's subscribers or by tariff to no more than the cost of service for any errors or

omissions in any listings published hereunder for CARRIER subscribers. Each party shall notify in writing the other promptly of any claimed error or omission affecting this paragraph and of any claim or suit arising hereunder or relating to this Agreement and shall provide reasonable and timely cooperation in its resolution of the same. Without waiver of any rights hereunder, the indemnified party may at its expense undertake its own defense in any such claim or suit.

- V BAPCO's liability to CARRIER for any errors or omissions in directories or for any default otherwise arising hereunder shall be limited to One Dollar (\$1) for any error or omission in any subscriber listing in any directory published by BAPCO.
- VI. This Side Agreement shall be subject to the term and cancellation provisions of the agreement to which it is appended ("the Agreement"), except that BAPCO shall have the right to terminate this Side Agreement upon sixty days prior written notice given at any time following the initial term of the Agreement.
- VII. A separate Agreement may be entered into between BAPCO and CARRIER concerning Yellow Pages, or classified directories, directory delivery, CallGuide pages, and other directory related issues.

BAPCO:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

CARRIER:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

DRAFT 5/20/96

AGREEMENT

In consideration of the mutual promises contained herein, BellSouth Advertising & Publishing Corporation, a Georgia corporation ("BAPCO") and _____, a _____ corporation ("CARRIER") agree as follows:

1. RECITALS. BAPCO is the publisher of alphabetical and classified directories for certain communities in the southeastern region of the U.S (the "Directories"). CARRIER provides, or intends to provide, local exchange telephone service in communities in which BAPCO publishes Directories. BAPCO and CARRIER hereby establish the terms by which BAPCO will include listings of CARRIER subscribers in such Directories and by which BAPCO will provide such Directories to CARRIER subscribers.

2. CARRIER OBLIGATIONS. CARRIER agrees as follows:

(a) CARRIER shall provide to BAPCO, or its designee, at CARRIER's expense and at no charge, listing information concerning its subscribers (designating any who do not desire published listings), consisting of customer name, address, telephone number and all other information reasonably requested by BAPCO as set forth on Exhibit A for BAPCO's use in publishing Directories of whatever type and format and for other derivative purposes. Such subscriber listing information shall be provided in the format and on the schedule set forth in said Exhibit, or as otherwise mutually agreed between the parties from time to time.

(b) CARRIER shall also provide directory delivery information to BAPCO as set forth in Exhibit A for all subscribers.

(c) CARRIER shall advise BAPCO promptly of any directory-related inquiries, requests or complaints which it may receive from CARRIER subscribers and shall provide reasonable cooperation to BAPCO in response to or resolution of the same.

(d) CARRIER shall respond promptly regarding corrections or queries raised by BAPCO to process listing changes requested by subscribers.

3. BAPCO OBLIGATIONS. BAPCO agrees as follows:

(a) BAPCO shall include one standard listing for each CARRIER subscriber per hunting group in BAPCO's appropriate local alphabetical Directory as published periodically by BAPCO unless nonlisted or nonpublished status is designated by subscribers. Such listings shall be interfiled with the listings of other local exchange telephone company subscribers and otherwise published in the manner of such other listings according to BAPCO's generally applicable publishing policies and standards.

(b) BAPCO shall publish additional listings, foreign listings and other alphabetical Directory listings of CARRIER subscribers upon their request consistent with BAPCO's generally applicable policies in BAPCO's alphabetical Directories at BAPCO's prevailing rates, terms and conditions.

(c) BAPCO will distribute its regularly published alphabetical and classified Directories to local CARRIER subscribers in accordance with BAPCO's prevailing practices, including delivery following Directory publication and upon establishment of new CARRIER service, if a current Directory for that geographic area has not previously been provided. Such deliveries may include separate advertising materials accompanying the Directories.

(d) BAPCO will include CARRIER information in the customer guide pages of its alphabetical Directories for communities where CARRIER provides local exchange telephone service at the time of publication in accordance with BAPCO's prevailing standards for the same. CARRIER will provide information requested by BAPCO for such purpose on a timely basis.

(e) BAPCO shall make available at no charge to CARRIER or its subscribers one listing for CARRIER business customers per hunting group in one appropriate heading in BAPCO's appropriate local classified directory as published periodically by BAPCO. Such listings shall be published according to BAPCO's generally applicable publishing policies and standards.

(f) BAPCO agrees to solicit, accept and publish directory advertising from business subscribers for CARRIER in communities for which BAPCO publishes classified Directories in the same manner and upon substantially the same terms as it solicits, accepts and publishes advertising from advertisers who are not CARRIER subscribers.

4. PUBLISHING POLICIES. BAPCO shall maintain full authority over its publishing schedules, policies, standards, and practices and over the scope and publishing schedules of its Directories.

5. LIABILITY AND INDEMNITY.

(a) BAPCO's liability to CARRIER for any errors or omissions in directories or for any default otherwise arising hereunder shall be limited to One Dollar (\$1) for errors or omissions in any subscriber listing in any directory published by BAPCO.

(b) Each party agrees to defend, indemnify and hold harmless the other from all damages, claims, suits, losses or expenses, including without limitation costs and attorneys fees, to the extent of such party's relative fault, arising-out of or resulting from any error, omission or act of such party hereunder. CARRIER agrees to limit its liability and that of BAPCO by contract with CARRIER's subscribers or by tariff to no more than

the cost of service for any errors or omissions in any listings published hereunder for CARRIER subscribers. Each party shall notify in writing the other promptly of any claimed error or omission affecting this paragraph and of any claim or suit arising hereunder or relating to this Agreement and shall provide reasonable and timely cooperation in its resolution of the same. Without waiver of any rights hereunder, the indemnified party may at its expense undertake its own defense in any such claim or suit.

6. TERM. This Agreement shall be effective on the date of the last signature hereto for a term of two (2) years and shall relate to Directories published by BAPCO during such period. Thereafter, it shall continue in effect unless terminated by either party upon sixty days prior written notice.

7. ASSIGNMENT. This Agreement shall be binding upon any successors or assigns of the parties during its Term.

8. RELATIONSHIP OF THE PARTIES. This Agreement does not create any joint venture, partnership or employment relationship between the parties or their employees, and the relationship between the parties shall be that of an independent contractor. There shall be no intended third party beneficiaries to this Agreement.

9. NONDISCLOSURE.

(a) During the term of this Agreement it may be necessary for the parties to provide each other with certain information ("Information") considered to be private or proprietary. The recipient shall protect such Information from distribution, disclosure or dissemination to anyone except its employees or contractors with a need to know such Information in conjunction herewith, except as otherwise authorized in writing. All such Information shall be in writing or other tangible form and clearly marked with a confidential or proprietary legend. Information conveyed orally shall be designated as proprietary or confidential at the time of such oral conveyance and shall be reduced to writing within forty-five (45) days.

(b) The parties will not have an obligation to protect any portion of Information which: (1) is made publicly available lawfully by a nonparty to this Agreement; (2) is lawfully obtained from any source other than the providing party; (3) is previously known without an obligation to keep it confidential; (4) is released by the providing party in writing; or (5) commencing two (2) years after the termination date of this Agreement if such Information is not a trade secret under applicable law.

(c) Each party will make copies of the Information only as necessary for its use under the terms hereof, and each such copy will be marked with the same proprietary notices as appear on the originals. Each party agrees to use the Information solely in support of this Agreement and for no other purpose.

10. FORCE MAJEURE. Neither party shall be responsible to the other for any delay or failure to perform hereunder to the extent caused by fire, flood, explosion, war, strike,

riot, embargo, governmental requirements, civic or military authority, act of God, or other similar cause beyond its reasonable control. Each party shall use best efforts to notify the other promptly of any such delay or failure and shall provide reasonable cooperation to ameliorate the effects thereof.

11. PUBLICITY. Neither party shall disclose the terms of this Agreement nor use the trade names or trademarks of the other without the prior express written consent of the other.

12. REPRESENTATIVES AND NOTICES.

(a) Each party shall name one or more representatives for contacts between the parties which shall be authorized to act on its behalf. Such representatives may be changed from time to time upon written notice to the other party.

(b) Notices required by law or under this Agreement shall be given in writing by hand delivery, certified or registered mail, or by facsimile followed by certified or registered mail, addressed to the named representatives of the parties with copies to:

If to BAPCO:

Director-LEC/BST Interface
BellSouth Advertising & Publishing Corporation
Room 270
59 Executive Park South
Atlanta, GA 30329

With Copy to:

Associate General Counsel
BellSouth Advertising & Publishing Corporation
Room 430
59 Executive Park South
Atlanta, GA 30329

If to CARRIER:

13. MISCELLANEOUS. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof and supersedes any previous oral or

written communications, representations, understandings, or agreements with respect thereto. It may be executed in counterparts, each of which shall be deemed an original. All prior and contemporaneous written or oral agreements, representations, warranties, statements, negotiations, and /or understandings by and between the parties, whether express or implied, are superseded, and there are no representations or warranties, either oral or written, express or implied, not herein contained. This Agreement shall be governed by the laws of the state of Georgia.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the dates set forth below.

BELLSOUTH ADVERTISING &
PUBLISHING CORPORATION

By: _____

Title: _____

Date: _____

CARRIER:

By: _____

Title: _____

Date: _____

EXHIBIT A

- CARRIER Listing Information, Format, Schedule for Provision
- CARRIER Delivery Information, Format, Schedule for Provision

Attachment C-2

Unbundled Products and Services and New Services

Service: Access to Numbers

Description: For that period of time in which BellSouth serves as North American Numbering Plan administrator for the states in the BellSouth region, BellSouth will assist ALECs applying for NXX codes for their use in providing local exchange services.

State(s): All

Rates: No Charge

Attachment C-3

Unbundled Products and Services and New Services

Service: Access to 911 Service

Description: Provides a universal, easy-to-remember number which is recognized nationally as the appropriate number to call in an emergency.

Additionally, ALEC-1 must provide a minimum of two dedicated trunk groups originating from ALEC-1's serving wire center and terminating to the appropriate 911 tandem. These facilities, consisting of a Switched Local Channel from ALEC-1's point of interface to it's serving wire center and Switched Dedicated Transport to the 911 tandem, may be purchased from BellSouth at the Switched Dedicated Transport rates set forth in Section E6 of BellSouth Telecommunication's Inc.'s Intrastate Access Service Tariffs.

State(s): All

Rates: Will be billed to appropriate municipality.

Attachment C-4

Unbundled Products and Services and New Services

Service: 800 Database

Description: Provides for utilization of the BellSouth 800 Service Control Points for obtaining 800 Service routing information.

800 Database service is provided using a common nationwide 800 Database. The BellSouth network components utilized in the provision of this service are the Service Switching Point (SSP), the Common Channel Signaling Seven Network, the Signal Transfer Point (STP), and the Service Control Point (SCP). Additionally, the Service Management System functions nationally as the central point for the administration of all 800 numbers and downloads 800 number information to BellSouth's SCPs.

ALEC's with STPs will be able to connect directly to BellSouth local or regional STP for obtaining 800 database routing information from BellSouth's SCP and will not be required to order FGD or TSBSA Technical Option 3 Service. For this connection the ALECs may utilize Signaling System Seven Terminations Interconnected in Birmingham, AL and Atlanta, GA with BellSouth's local or regional STP.

State(s): All

Rates, Terms and Conditions:

In all states, the 800 Database rates, terms and conditions will be applied as set forth in Sections E2, E5, E6 and E13 of BellSouth Telecommunication's, Inc.'s Intrastate Access Service Tariffs.

Attachment C-5

Unbundled Products and Services and New Services

Service: Line Information Database (LIDB)- Storage Agreement

Description: The LIDB Storage Agreement provides the terms and conditions for inclusion in BellSouth's LIDB of billing number information associated with BellSouth exchange lines used for Local Exchange Companies' resale of local exchange service or Service Provider Number Portability arrangements requested Local Exchange Companies' on behalf of the Local Exchange company's end user. BellSouth will store in it's database, the relevant billing number information and will provide responses to on-line, call-by-call queries to this information for purposes of Billed Number Screening, Calling Card Validation and Fraud Control.

Each time an ALECs data is used BellSouth will compensate that ALEC at a rate of 40% of BellSouth's LIDB Validation rate per query as displayed in Attachment C-6 following.

State(s): All

Rates: No Charge

**LINE INFORMATION DATA BASE (LIDB)
STORAGE AGREEMENT
FOR RESOLD LOCAL EXCHANGE LINES OR
SERVICE PROVIDER NUMBER PORTABILITY ARRANGEMENTS**

This agreement, effective as of _____, 1996, is entered into by and between BellSouth Telecommunications, Inc. ("BST"), a Georgia corporation, and _____, ("Local Exchange Company").

WHEREAS, in consideration of the mutual covenants, agreements and obligations set forth below, the parties hereby agree as follows:

I. SCOPE

This Agreement sets forth the terms and conditions for inclusion in BST's Line Information Data Base (LIDB) of billing number information associated with BST exchange lines used for Local Exchange Company's resale of local exchange service or Service Provider Number Portability (SPNP) arrangements requested by Local Exchange Company on behalf of Local Exchange Company's end user. BST will store in its data base the relevant billing number information, and BST will provide responses to on-line, call-by-call queries to this information for purposes specified below.

LIDB is accessed for:

- Billed Number Screening
- Calling Card Validation for Calling Cards issued by BellSouth
- Fraud Control

II. DEFINITIONS

- 2.01. **Billing number** - a number used by BST for the purpose of identifying an account liable for charges. This number may be a line or a special billing number.
- 2.02. **Line number** - a ten digit number assigned by BST that identifies a telephone line associated with a resold local exchange service, or with a SPNP arrangement.
- 2.03. **Special billing number** - a ten digit number that identifies a billing account established by BST in connection with a resold local exchange service or with a SPNP arrangement.
- 2.04. **Calling Card number** - a billing number plus PIN number assigned by BST.
- 2.05. **PIN number** - a four digit security code assigned by BST which is added to a billing number to compose a fourteen digit calling card number.
- 2.06. **Toll billing exception indicator** - associated with a billing number to indicate that it is considered invalid for billing of collect calls or third number calls or both, by the Local Exchange Company.
- 2.07. **Billed Number Screening** - refers to the activity of determining whether a toll billing exception indicator is present for a particular billing number.
- 2.08. **Calling Card Validation** - refers to the activity of determining whether a particular calling card number exists as stated or otherwise provided by a caller.
- 2.09. **Billing number information** - information about billing number or Calling Card number as assigned by BST and toll billing exception indicator provided to BST by the Local Exchange Company.

III. RESPONSIBILITIES OF PARTIES

3.01. BST will include billing number information associated with resold exchange lines or SPNP arrangements in its LIDB. The Local Exchange Company will request any toll billing exceptions via the Local Service Request (LSR) form used to order resold exchange lines, or the SPNP service request form used to order SPNP arrangements.

3.02. Under normal operating conditions, BST shall include the billing number information in its LIDB upon completion of the service order establishing either the resold local exchange service or the SPNP arrangement, provided that BST shall not be held responsible for any delay or failure in performance to the extent such delay or failure is caused by circumstances or conditions beyond BST's reasonable control. BST will store in its LIDB an unlimited volume of the working telephone numbers associated with either the resold local exchange lines or the SPNP arrangements. For resold local exchange lines or for SPNP arrangements, BST will issue line-based calling cards only in the name of Local Exchange Company. BST will not issue line-based calling cards in the name of Local Exchange Company's individual end users. In the event that Local Exchange Company wants to include calling card numbers assigned by the Local Exchange Company in the BST LIDB, a separate agreement is required.

3.03. BST will provide responses to on-line, call-by-call queries to the stored information for the specific purposes listed in the next paragraph.

3.04. BST is authorized to use the billing number information to perform the following functions for authorized users on an on-line basis:

(a) Validate a 14 digit Calling Card number where the first 10 digits are a line number or special billing number assigned by BST, and where the last four digits (PIN) are a security code assigned by BST.

(b) Determine whether the Local Exchange Company has identified the billing number as one which should not be billed for collect or third number calls, or both.

3.05. BST will provide seven days per week, 24-hours per day, fraud control and detection services. These services include, but are not limited to, such features as sorting Calling Card Fraud detection according to domestic or international calls in order to assist the pinpointing of possible theft or fraudulent use of Calling Card numbers; monitoring bill-to-third number and collect calls made to numbers in BST's LIDB, provided such information is included in the LIDB query, and establishing Account Specific Thresholds, at BST's sole discretion, when necessary. Local Exchange Company understands and agrees BST will administer all data stored in the LIDB, including the data provided by Local Exchange Company pursuant to this Agreement, in the same manner as BST's data for BST's end user customers. BST shall not be responsible to Local Exchange Company for any lost revenue which may result from BST's administration of the LIDB pursuant to its established practices and procedures as they exist and as they may be changed by BST in its sole discretion from time to time.

3.06. Local Exchange Company understands that BST currently has in effect numerous billing and collection agreements with various interexchange carriers and billing clearing houses. Local Exchange Company further understands that these billing and collection customers of BST query BST's LIDB to determine whether to accept various billing options from end users. Additionally, Local Exchange Company understands that presently BST has no method to

differentiate between BST's own billing and line data in the LIDB and such data which it includes in the LIDB on Local Exchange Company's behalf pursuant to this Agreement. Therefore, until such time as BST can and does implement in its LIDB and its supporting systems the means to differentiate Local Exchange Company's data from BST's data and the parties to this Agreement execute appropriate amendments hereto, the following terms and conditions shall apply:

(a) The Local Exchange Company agrees that it will accept responsibility for telecommunications services billed by BST for its billing and collection customers for Local Exchange Customer's end user accounts which are resident in LIDB pursuant to this Agreement. Local Exchange Company authorizes BST to place such charges on Local Exchange Company's bill from BST and agrees that it shall pay all such charges. Charges for which Local Exchange Company hereby takes responsibility include, but are not limited to, collect and third number calls.

(b) Charges for such services shall appear on a separate BST bill page identified with the name of the entity for which BST is billing the charge.

(c) Local Exchange Company shall have the responsibility to render a billing statement to its end users for these charges, but Local Exchange Company's obligation to pay BST for the charges billed shall be independent of whether Local Exchange Company is able or not to collect from Local Exchange Company's end users.

(d) BST shall not become involved in any disputes between Local Exchange Company and the entities for which BST performs billing and collection. BellSouth will not issue adjustments for charges billed on behalf of an entity to Local Exchange Company. It shall

be the responsibility of the Local Exchange Company and the other entity to negotiate and arrange for any appropriate adjustments.

IV. COMPLIANCE

Unless expressly authorized in writing by the Local Exchange Company, all billing number information provided pursuant to this Agreement shall be used for no purposes other than those set forth in this Agreement.

V. TERMS

This Agreement will be effective as of _____, 1996, and will continue in effect for one year, and thereafter may be continued until terminated by either party upon thirty (30) days written notice to the other party.

VI. FEES FOR SERVICE AND TAXES

6.01. The Local Exchange Company will not be charged a fee for storage services provided by BST to the Local Exchange Company, as described in Section I of this Agreement.

6.02. Sales, use and all other taxes (excluding taxes on BST's income) determine by BST or any taxing authority to be due to any federal, state or local taxing jurisdiction with respect to the provision of the service set forth herein will be paid by the Local Exchange Company. The Local Exchange Company shall have the right to have BST contest with the imposing jurisdiction, at the Local Exchange Company's expense, any such taxes that the Local Exchange Company deems are improperly levied.

VII. INDEMNIFICATION

To the extent not prohibited by law, each party will indemnify the other and hold the other harmless against any loss, cost, claim, injury, or liability relating to or arising out of

negligence or willful misconduct by the indemnifying party or its agents or contractors in connection with the indemnifying party's provision of services, provided, however, that any indemnity for any loss, cost, claim, injury or liability arising out of or relating to errors or omissions in the provision of services under this Agreement shall be limited as otherwise specified in this Agreement. The indemnifying party under this Section agrees to defend any suit brought against the other party for any such loss, cost, claim, injury or liability. The indemnified party agrees to notify the other party promptly, in writing, of any written claims, lawsuits, or demands for which the other party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying party shall not be liable under this Section for settlement by the indemnified party of any claim, lawsuit, or demand unless the defense of the claim, lawsuit, or demand has been tendered to it in writing and the indemnifying party has unreasonably failed to assume such defense.

VIII. LIMITATION OF LIABILITY

Neither party shall be liable to the other party for any lost profits or revenues or for any indirect, incidental or consequential damages incurred by the other party arising from this Agreement or the services performed or not performed hereunder, regardless of the cause of such loss or damage.

IX. MISCELLANEOUS

9.01. It is understood and agreed to by the parties that BST may provide similar services to other companies.

9.02. All terms, conditions and operations under this Agreement shall be performed in accordance with, and subject to, all applicable local, state or federal legal and regulatory tariffs, rulings, and other requirements of the federal courts, the U. S. Department of Justice and state and federal regulatory agencies. Nothing in this Agreement shall be construed to cause either party to violate any such legal or regulatory requirement and either party's obligation to perform shall be subject to all such requirements.

9.03. The Local Exchange Company agrees to submit to BST all advertising, sales promotion, press releases, and other publicity matters relating to this Agreement wherein BST's corporate or trade names, logos, trademarks or service marks or those of BST's affiliated companies are mentioned or language from which the connection of said names or trademarks therewith may be inferred or implied; and the Local Exchange Company further agrees not to publish or use advertising, sales promotions, press releases, or publicity matters without BST's prior written approval.

9.04. This Agreement constitutes the entire agreement between the Local Exchange Company and BST which supersedes all prior agreements or contracts, oral or written representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

9.05. Except as expressly provided in this Agreement, if any part of this Agreement is held or construed to be invalid or unenforceable, the validity of any other Section of this Agreement shall remain in full force and effect to the extent permissible or appropriate in furtherance of the intent of this Agreement.

9.06. Neither party shall be held liable for any delay or failure in performance of any part of this Agreement for any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers.

9.07. This Agreement shall be deemed to be a contract made under the laws of the State of Georgia, and the construction, interpretation and performance of this Agreement and all transactions hereunder shall be governed by the domestic law of such State.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by
their fully authorized officers.

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____
Title: _____
Date: _____
Address: _____

THE LOCAL EXCHANGE COMPANY

By: _____
Title: _____
Date: _____
Address: _____

Attachment C-6

Unbundled Products and Services and New Services

Service: Line Information Database Access Service (LIDB) - Validation

Description: Provides a customer the ability to receive validation of billing information through query of data stored in BellSouth's LIDB data base. See below for additional information.

State(s): All

Rate Elements	Description	Monthly	Non-Recurring
LIDB Common Transport	Provides for transport of the customer's query from the LIDB Location (RSTP) to the data base (SCP). This charge will apply each time the customer requests and receives validation of a BellSouth calling card or requests and receives the status of a billed number associated with a LEC line stored in the BellSouth LIDB.	\$0.00030	—
LIDB Validation	Provides for query of data resident in BellSouth's LIDB. This rate will apply each time a customer requests and receives validation of LEC calling card or requests and receives the status of a billed number associated with a LEC line stored in BellSouth's LIDB. As set forth in Attachment C-5 (LIDB Storage Agreement), preceding, each time an ALEC data is used, BellSouth will compensate that ALEC at a rate of 40% of BellSouth's LIDB Validation rate per query.	\$0.03800	—
Originating Point Code Establishment or Change	Provides for the establishment or change of a customer requested Originating Point Code. This charge will apply each time the customer establishes or changes a point code destination identifying one of his locations or a location of one of his end users.	—	\$91.00
CCS7 Signaling Connections	Rates, terms and conditions for CCS7 Signaling Connections are as set forth in Section E5.8 of BellSouth Telecommunication's Inc.'s Intrastate Access Services Tariff.	—	

Attachment C-7

Unbundled Products and Services and New Services

Service: Signaling

Description: Provides for connection to and utilization of BellSouth's Signaling System 7 network for both call setup and non-call setup purposes.

State(s): All

Rate Elements	Monthly Rate	Recurring Rate	Non-Recurring	Applied Per
CCS7 Signaling Connection - Provides a two-way digital 56 Kbps dedicated facility connecting a customer's signaling point of interface in a LATA to a BellSouth STP. Each customer's connection requires either a pair or a quad of signaling connections.	\$155.00	-	\$510.00	56 Kbps facility
CCS7 Signaling Termination - Provides a customer dedicated point of interface at the BellSouth STP for each of the customer's SS7 connections.	\$355.00	-	-	STP Port
CCS7 Signaling Usage* - Refers to the messages traversing the BellSouth signaling network for call set-up and non call set-up purposes.	-	\$0.000023 \$0.000050	-	Call Set Up Msg. TCAP Msg.
CCS7 Signaling Usage Surrogate*	\$395.00	-	-	56 Kbps facility
*Where signaling usage measurement and billing capability exists, CCS7 Signaling Usage will be billed on a per message basis. Where measurement capability does not exist, CCS7 Signaling Usage Surrogate will be billed on a per 56 Kbps facility basis.				

Attachment C-8

Unbundled Products and Services and New Services

Service: Operator Call Processing Access Service

Description: Provides Operator and Automated call handling. This includes processing and verification of alternate billing information for collect, calling card, and billing to a third number. Operator Call Processing Access Service also provides customized call branding; dialing instructions; and other operator assistance the customer may desire.

Rate Elements	State(s)	Monthly Recurring	Applied Per
Operator Provided Call Handling	All	\$1.17	Per Work Minute
Call Completion Access Termination Charge This charge will be applicable per call attempt and is in addition to the Operator Provided Call Handling charge listed above.	Alabama	\$0.06	Per Call Attempt
	Florida	\$0.06	Per Call Attempt
	Georgia	\$0.06	Per Call Attempt
	Kentucky	\$0.06	Per Call Attempt
	Louisiana	\$0.06	Per Call Attempt
	Mississippi	\$0.06	Per Call Attempt
	N. Carolina	\$0.08	Per Call Attempt
	S. Carolina	\$0.08	Per Call Attempt
	Tennessee	\$0.12	Per Call Attempt
Fully Automated Call Handling	All	\$0.15	Per Attempt
Operator Services Transport Operator Services transport rates, terms and conditions are as set forth in E6 of BellSouth Telecommunication's, Inc.'s Intrastate Access Service Tariff.			

Attachment C-9

Unbundled Products and Services and New Services

Service: Directory Assistance Access Service (Number Services)

Description: See below

Rate Elements	Description	State(s)	Monthly Rate
Directory Assistance Call Completion Access Service	Optional service provided to an Access subscriber of BellSouth's DA Access Service. Given a listed telephone number at the request of an Access subscriber's end user, BellSouth will provide or attempt to provide from the DA Operator System, call completion to the number requested. All local and intralata call completion attempts are routed over an intertoll trunk facility directly to the terminating end office that serves the designated number. An Automatic Message Account (AMA) record that includes conversation time, originating, terminating, and billing number details is made for each call completion attempt. This record is in addition to the record made for the DA transaction.	All	\$0.25 (per call attempt)
Call Completion Access Termination Charge	This charge will be applicable per call attempt and is in addition to the DACC Access Service charge listed above.	Alabama Florida Georgia Kentucky Louisiana Mississippi N. Carolina S. Carolina Tennessee	\$0.06 \$0.06 \$0.06 \$0.06 \$0.06 \$0.06 \$0.08 \$0.08 \$0.12
Number Services Intercept Access Service	Number Services Intercept Access refers calls from disconnected numbers to the proper number or numbers. A separate dedicated intercept trunk facility to the Number Services switch for intercept calls is required. Standard trunk signaling is used to send the intercepted number to the Number Services switch and a database hook-up is performed to retrieve the referral number. The referral number is provided to the calling party by a mechanized audio announcement. The subscribing Access customer must provide the updates to the intercept database to support the service.	All	\$0.30 (per intercept query)
Directory Assistance Service Call	Rates, terms and conditions will be applied as set forth in E9.1.7 for Georgia and as set forth in E9.5.3 for AL, FL, KY, LA, MS, NC, SC, TN of BellSouth Telecommunication's Inc.'s Intrastate Access Service Tariff.		
Directory Transport	Rates, terms and conditions will be applied as set forth in E9.1.7 for Georgia and as set forth in E9.5.3 for AL, FL, KY, LA, MS, NC, SC, TN of BellSouth Telecommunication's Inc.'s Intrastate Access Service Tariff.		
Directory Assistance Interconnection	Rates, terms and conditions will be applied as set forth in E9.1.7 for Georgia and as set forth in E9.5.3 for AL, FL, KY, LA, MS, NC, SC, TN of BellSouth Telecommunication's Inc.'s Intrastate Access Service Tariff.		
Directory Assistance Database Service	Rates, terms and conditions will be applied as set forth in A38.1 of BellSouth Telecommunication's Inc.'s General Subscriber Service Tariff.		
Direct Access to DA Service	Rates, terms and conditions will be applied as set forth in Section 9.3 of BellSouth Telecommunication's, Inc.'s Interstate Access Service Tariff F.C.C. No.1.		

Attachment C-10

Unbundled Products and Services and New Services

Service: Busy Line Verification and Emergency Interrupt

Description: BellSouth will provide Inward Operator Service for Busy Line Verification and Verification and Emergency Interrupt.

State(s): All

Rates, Terms and Conditions: In all states, rates, terms and conditions will be applied as set forth in Section E18 of BellSouth Telecommunication's, Inc.'s Intrastate Access Service Tariff.

Attachment C-11

Unbundled Products and Services and New Services

Service: Centralized Message Distribution System - Hosting (CMDS-Hosting)

Description: CMDS-Hosting is the Bellcore administered national system used to exchange Exchange Message Record (EMR) formatted message data among host companies.

All intraLATA and local messages originated and billed in the BellSouth Region involving BellSouth CMDS hosted companies will be processed through the Non-Send Paid Report System described in Attachment C-12 following.

State(s): All

Rate Elements	Description	Monthly
Message Distribution	Message Distribution is routing determination and subsequent delivery of message data from one company to another. Also included is the interface function with CMDS, where appropriate. This charge is applied on a per message basis.	\$0.004
Data Transmission	This charge is applied on a per message basis.	\$0.001

Attachment C-12

Unbundled Products and Services and New Services

Service: Non-Sent Paid Report System (NSPRS)

Description: NSPRS includes: 1) a mechanized report system that provides to the BellSouth CMDS hosted companies within the BellSouth Region information regarding Non-Sent Paid message and revenue occurring on calls originated and billed within the BellSouth region; 2) distribution of Bellcore produced Credit Card and Third Number System (CATS) reports and administration of associated elements; 3) distribution of Bellcore produced non-conterminous CATS reports and administration of associated settlements.

State(s): All

Rate Elements	Billing and Collections Fee Retained by Billing Co.	Applied Per
NSPRS - intrastate FL and NC	\$0.066	message
NSPRS - intrastate all other BellSouth states	\$0.05	message
NSPRS - CATS	\$0.05	message
NSPRS - non-conterminous	\$0.16	message

Contract Provisions for RAO Hosting and NSPRS

SECTION 1. SCOPE OF AGREEMENT

- 1.01 This Agreement shall apply to the services of Revenue Accounting Office (RAO) Hosting and the Non-Sent Paid Report System (NSPRS) as provided by BellSouth to the ALEC. The terms and conditions for the provisions of these services are outlined in the Exhibits to this Agreement.

SECTION 2. DEFINITIONS

- 2.01 A. Centralized Message Distribution System is the BellCore administered national system, based in Kansas City, Missouri, used to exchange Exchange Message Record (EMR) formatted data among host companies.
- B. Compensation is the amount of money due from BellSouth to the ALEC or from the ALEC to BellSouth for services and/or facilities provided under this Agreement.
- C. Exchange Message Record is the nationally administered standard format for the exchange of data among Exchange Carriers within the telecommunications industry.
- D. Intercompany Settlements (ICS) is the revenue associated with charges billed by a company other than the company in whose service area such charges were incurred. ICS on a national level includes third number and credit card calls. ICS within the BellSouth region includes third number, credit card and collect calls.
- E. Message Distribution is routing determination and subsequent delivery of message data from one company to another. Also included is the interface function with CMDS, where appropriate.
- F. Non-Sent Paid Report System (NSPRS) is the system that calculates ICS amounts due from one company to another in the state of Florida.

- G. Revenue Accounting Office (RAO) Status Company is a local exchange company/alternate local exchange company that has been assigned a unique RAO code. Message data exchanged among RAO status companies is grouped (i.e. packed) according to From/To/Bill RAO combinations.

SECTION 3. RESPONSIBILITIES OF THE PARTIES

- 3.01 RAO Hosting and NSPRS services provided to the ALEC by BellSouth will be in accordance with the methods and practices regularly adopted and applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 3.02 The ALEC shall furnish all relevant information required by BellSouth for the provision of RAO Hosting and NSPRS.

SECTION 4. COMPENSATION ARRANGEMENTS

- 4.01 Applicable compensation amounts will be billed by BellSouth to the ALEC on a monthly basis in arrears. Amounts due from one party to the other (excluding adjustments) are payable within thirty (30) days of receipt of the billing statement.

SECTION 5. ASSOCIATED EXHIBITS

- 5.01 Listed below are the exhibits associated with this Agreement.

Exhibit A **Message Distribution Service (RAO Hosting)**

Exhibit B **Intercompany Settlements (NSPRS)**

- 5.02 From time to time by written agreement of the parties, new Exhibits may be substituted for the attached Exhibits, superseding and cancelling the Exhibits then in effect.

SECTION 6. TERM OF AGREEMENT

6.01 This agreement is effective _____ and will continue in force until terminated, with or without cause, by thirty (30) days prior notice in writing from either party to the other. This Agreement may be amended from time to time upon written agreement of the parties.

Executed this _____ day of _____, 1996.

WITNESS:

THE ALEC

(title)

WITNESS:

BELLSOUTH TELECOMMUNICATIONS, INC

(title)

Exhibit A

SECTION 1. SCOPE OF EXHIBIT

1.01 This exhibit specifies the terms and conditions, including compensation, under which BellSouth shall provide message distribution service to the ALEC. As described herein, message distribution service includes the following:

- 1) Message Forwarding to Intraregion LEC/ALEC** - function of receiving an ALEC message and forwarding the message to another LEC/ALEC in the BellSouth region.
- 2) Message Forwarding to CMDS** - function of receiving an ALEC message and forwarding that message on to CMDS.
- 3) Message Forwarding from CMDS** - function of receiving a message from CMDS and forwarding that message to the ALEC.

SECTION 2. RESPONSIBILITIES OF THE PARTIES

- 2.01** An ALEC that is CMDS hosted by BellSouth must have its own unique RAO code. Requests for establishment of RAO status where BellSouth is the selected CMDS interfacing host, require written notification from the ALEC to BellSouth at least six (6) weeks prior to the proposed effective date. The proposed effective date will be mutually agreed upon between the parties with consideration given to time necessary for the completion of required BellCore functions. BellSouth will request the assignment of an RAO code from its connecting contractor, currently BellCore, on behalf of the ALEC and will coordinate all associated conversion activities.
- 2.02** BellSouth will receive messages from the ALEC that are to be processed by BellSouth, another LEC/ALEC in the BellSouth region or a LEC outside the BellSouth region.
- 2.03** BellSouth will perform invoice sequence checking, standard EMR format editing, and balancing of message data with the EMR trailer record counts on all data received from the ALEC.
- 2.04** All data received from the ALEC that is to be processed or billed by another LEC/ALEC within the BellSouth region will be distributed to that LEC/ALEC in accordance with the agreement(s) which may be in effect between BellSouth and the involved LEC/ALEC.

- 2.05 All data received from the ALEC that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) which may be in effect between BellSouth and its connecting contractor (currently BellCore).
- 2.06 BellSouth will receive messages from the CMDS network that are destined to be processed by the ALEC and will forward them to the ALEC on a daily basis.
- 2.07 Transmission of message data between BellSouth and the ALEC will be via electronic data transmission.
- 2.08 All messages and related data exchanged between BellSouth and the ALEC will be formatted in accordance with accepted industry standards for EMR formatted records and packed between appropriate EMR header and trailer records, also in accordance with accepted industry standards.
- 2.09 The ALEC will ensure that the recorded message detail necessary to recreate files provided to BellSouth will be maintained for back-up purposes for a period of three (3) calendar months beyond the related message dates.
- 2.10 Should it become necessary for the ALEC to send data to BellSouth more than sixty (60) days past the message date(s), that ALEC will notify BellSouth in advance of the transmission of the data. If there will be impacts outside the BellSouth region, BellSouth will work with its connecting contractor and the ALEC to notify all affected parties.
- 2.11 In the event that data to be exchanged between the two parties should become lost or destroyed, both parties will work together to determine the source of the problem. Once the cause of the problem has been jointly determined and the responsible party (BellSouth or the ALEC) identified and agreed to, the company responsible for creating the data (BellSouth or the ALEC) will make every effort to have the affected data restored and retransmitted. If the data cannot be retrieved, the responsible party will be liable to the other party for any resulting lost revenue. Lost revenue may be a combination of revenues that could not be billed to the end users and associated access revenues. Both parties will work together to estimate the revenue amount based upon historical data through a method mutually agreed upon. The resulting estimated revenue loss will be paid by the responsible party to the other party within three (3) calendar months of the date of problem resolution, or as mutually agreed upon by the parties.

- 2.12 Should an error be detected by the EMR format edits performed by BellSouth on data received from the ALEC, the entire pack containing the affected data will not be processed by BellSouth. BellSouth will notify the ALEC of the error condition. The ALEC will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, the ALEC will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.
- 2.13 In association with message distribution service, BellSouth will provide the ALEC with associated intercompany settlements reports (national and regional) as appropriate.
- 2.14 In no case shall either party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this agreement.

SECTION 3. COMPENSATION

- 3.01 For message distribution service provided by BellSouth for the ALEC, BellSouth shall receive the following as compensation:

Rate Per Message	\$0.004
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- 3.02 For data transmission associated with message distribution service, BellSouth shall receive the following as compensation:

Rate Per Message	\$0.001
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- 3.03** Data circuits (private line or dial-up) will be required between BellSouth and the ALEC for the purpose of data transmission. Where a dedicated line is required, the ALEC will be responsible for ordering the circuit, overseeing its installation and coordinating the installation with BellSouth. The ALEC will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on a case by case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to the ALEC. Additionally, all message toll charges associated with the use of the dial circuit by the ALEC will be the responsibility of the ALEC. Associated equipment on the BellSouth end, including a modem, will be negotiated on a case by case basis between the parties.
- 3.04** All equipment, including modems and software, that is required on the ALEC end for the purpose of data transmission will be the responsibility of the ALEC.

SECTION 1. SCOPE OF EXHIBIT

- 1.01 This Exhibit specifies the terms and conditions, including compensation, under which BellSouth and the ALEC will compensate each other for Intercompany Settlements (ICS) messages.

SECTION 2. RESPONSIBILITIES OF THE PARTIES

- 2.01 BellSouth will remit to the ALEC the revenue, less a billing charge, for IntraLATA ICS messages, Local ICS messages, and charges for other services when related messages and/or services are provided by the ALEC and billed to:
- 1) a BellSouth customer,
 - 2) another company within the BellSouth region (excluding Florida) associated with the exchange of message data with BellSouth (excluding CILD and 891 messages),
 - 3) another company within the conterminous United States that utilizes CMDS directly or indirectly and settles with BellSouth directly or indirectly through the Credit Card and Third Number Settlement System (CATS) administered by BellCore,
 - 4) another company utilizing the non-conterminous RAO codes associated with AT&T's Transport and Tracking Intercompany System settlements with BellSouth.
- 2.02 These other services include, but are not limited to:
- 1) Maritime Mobile Radiotelephone Services radio link charges as set forth in the FCC's Maritime Mobile Radiotelephone Services tariff.
 - 2) Aviation Radiotelephone Service radio link charges as set forth in the FCC's Aviation Radiotelephone Service tariff.
 - 3) Public Land Mobile Radiotelephone Transient-Unit Non-Toll Service charges as approved by the authorized state regulatory commission (or municipal regulatory authority).

- 4) Non-Toll Service Charges billed to a calling card or to a third number as filed with and approved by the authorized state regulatory commission (or municipal regulatory authority).
- 5) Directory Assistance Call Charges to a calling card or to a third number as approved by the authorized regulatory commission.

2.03 The ALEC will bill, collect and remit to BellSouth the charges for intraLATA and/or local ICS messages and other services as described above where such messages and/or services are provided by:

- 1) BellSouth,
- 2) another company within the BellSouth region (excluding Florida) associated with the exchange of message data with BellSouth (excluding CIID and 891 messages),
- 3) another company within the conterminous United States that utilizes CMDS directly or indirectly and settles with BellSouth directly or indirectly through the Credit Card and Third Number Settlement System (CATS).

2.04 For ICS revenues involving the ALEC and other non-BellSouth LECs/ALECs within the state, BellSouth will provide the ALEC with monthly reports summarizing the ICS revenues for messages that originated with the ALEC and were billed by each of the other Florida LECs/ALECs and those messages that originated with each of the other Florida LECs/ALECs and were billed by the ALEC.

SECTION 3. COMPENSATION

3.01 The following compensation shall be retained by the billing company for the billing of ICS messages and services:

	<u>Rate Per message</u>
1) Calls originated and billed in Florida or originated and billed in North Carolina	\$0.0668
Calls originated in any of the states within BellSouth region and billed in that same state	\$0.05
2) Calls originated in a state within BellSouth's region and billed in another state or originated in another state and billed in a state within BellSouth's region	\$0.05
3) Calls originated in a state within BellSouth's region and billed outside the conterminous United States	\$0.18

Attachment C-13

Unbundled Products and Services and New Services

Service: Virtual Collocation

Description: Virtual Expanded Interconnection Service (VEIS) provides for location interconnection in collocator-provided/BellSouth leased fiber optic facilities to BellSouth's switched and special access services, and local interconnection facilities.

State(s): All

Rates, Terms and Conditions: In all states, the rates, terms and conditions will be applied as set forth in Section 20 of BellSouth Telecommunication's Inc.'s Interstate Access Service Tariff, F.C.C. No. 1.

Service: Physical Collocation

Description: Per FCC - (10/19/92 FCC Order, para 39)
Physical Collocation is whereby "the interconnection party pays for LEC central office space in which to locate the equipment necessary to terminate its transmission links, and has physical access to the LEC central office to install, maintain, and repair this equipment."

State(s): All

Rates, Terms and Conditions: Rates as attached

Rates for Physical Interconnection

Rate Element	Application/Description	Type of Charge	Rate
Application Fee	Applies per arrangement per location	Nonrecurring	Tariff Rates (Same as Virtual)
Space Preparation Fee	Applies for survey and design of space, covers shared building modification costs	Nonrecurring	ICB - See Note 1 Will not be less than \$1800 - not to exceed \$8500 unless HVAC or power plant upgrade. If so, rates to be ICB.
Space Construction Fee	Covers materials and construction of optional cage in 100 square foot increments	Nonrecurring	\$29,744.00 See Note 2
Cable Installation Fee	Applies per entrance cable	Nonrecurring	Tariff Rates (Same as Virtual)
Floor Space	Per square foot, for Zone A and Zone B offices respectively	Monthly Recurring	\$7.50 / \$6.75 See Note 3
Power	Per ampere based on manufacturer's specifications	Monthly Recurring	\$5.14 per ampere
Cable Support Structure	Applies per entrance cable	Monthly Recurring	\$13.35 per cable
POT Bay	Optional Point of Termination bay; rate is per DS1/DS3 cross-connect respectively	Monthly Recurring	\$1.20 / \$5.00 See Note 4
Cross-Connects	Per DS1/DS3 respectively	Monthly Recurring	\$8.00 / \$72.48
Security Escort	First and additional half hour increments, per tariff rate in Basic time (B), Overtime (O) and Premium time (P)	As Required	\$41.00 / \$25.00 B \$48.00 / \$30.00 O \$55.00 / \$35.00 P

- Note 1: Will be determined at the time of the application based on building and space modification requirements for shared space at the requested CO
- Note 2: Applies only to collocators who wish to purchase a steel-gauge cage enclosure. Carriers may also pay \$330.00 per square foot for the first 100 square feet and \$242.00 for each additional 100 square feet in the same CO in lieu of space preparation and construction fees. This option does not apply where HVAC, power plant or both upgrade is required.
- Note 3: See attached list for Zone A offices as of May 1996. This list will be amended monthly.
- Note 4: Applies when collocator does not supply their own POT bay.

BellSouth Zone A Offices - as of May 1996

EX=Exempt from Physical

STATE	CITY	OFFICE	CLLI / STATUS
AL	Birmingham	Main & Toll	BRHMA LMA EX
	Montgomery	Main & Toll	MTGMA LMT
	Mobile	Azalea	MOBLA LAZ
FL	Boca Raton	Boca Teeca	BCRTFLBT
	Fort Lauderdale	Main Relief	FTLDFLMR
		Cypress	FTLDFLCY
		Plantation	FTLDFLPL
	Jacksonville Beach	Main	JCBHFLMA
	Jacksonville	Arlington	JCVLFLAR
		Beachwood	JCVLFLBW
		Clay Street	JCVLFLCL
		Southpoint	JCVLFLJT EX
		Normandy	JCVLFLNO
		Riverside	JCVLFLRV
		San Jose	JCVLFLSJ EX
		San Marco	JCVLFLSM
		Westconnett	JCVLFLWC
		Mandarin Avenues	MNDRFLAV EX
		Mandarin Loretto	MNDRFLLO
	Lake Mary	Lake Mary	LKMRFLMA EX
	Miami	Grande	MIAMFLGR
		Palmetto	MIAMFLPL
		Alhambra	MIAMFLAE
		Bayshore	MIAMFLBA
		Metro	MIAMFLME
	Melbourne	Main	MLBRFLMA
	Orlando	Magnolia	ORLDFLMA
		Azalea Park	ORLDFLAP
		Sand Lake	ORLDFLSL
		Pinecastle	ORLDFLPC
		Pinehills	ORLDFLPH
	West Palm Beach	Annex (Main Annex)	WPBHFLAN

GA	Athens	Athens	ATHNGAMA	
	Atlanta	Courtland St	ATLNGACS	
		Peachtree Pl	ATLNGAPP	
		Buckhead	ATLNGABU	
		East Point	ATLNGAEP	
		Toco Hills	ATLNGATH	
		Sandy Springs	ATLNGASS	
	Lilburn	Lilburn	LLBNGAMA	
	Smyrna	Power Ferry	SMYRGAPF	
		Smyrna Main	SMYRGAMA	
	Tucker	Tucker Main	TUKRGAMA	EX
	Roswell	Roswell Main	RSWLGAMA	
	Norcross	Norcross Main	NRCRGAMA	
	Marietta	Marietta Main	MRRTGAMA	
	Dunwoody	Dunwoody Main	DNWDGAMA	
	Alpharetta	Alpharetta Main	ALPRGAMA	
	Columbus	Columbus Main	CLMBGAMT	
KY	Louisville	Armory Place	LSVLKYAP	EX
		Westport Rd	LSVLKYWE	EX
		Beechmont	LSVLKYBE	
		Bardstown Road	LSVLKYBR	EX
		Fern Creeek	LSVLKYFC	
		JTown	LSVLKYJT	
		Mathews	LSVLKYSM	
		Third Street	LSVLKYTS	
LA	New Orleans	Main	NWORLAMA	
	Baton Rouge	Main	BTRGLAMA	
MS	Hattiesburg	Hattiesburg Main	HTBGMSMA	
	Jackson	Cap Pearl	JCSNMSCP	
	Vicksburg	Vicksburg	VCBGMSMA	
NC	Cary	Central	NARYNCCE	
	Chapel Hill	Rosemary	CPHLNCRO	
	Charlotte	Caldwell	CHRLNCCA	
		South Boulevard	CHRLNCB0	

		Derita	CHRLNCDE	
		Erwin	CHRLNCER	
		Lake Point	CHRLNCLP	
		Reid	CHRLNCRE	EX
		Sharon Amity	CHRLNCSH	
		University	CHRLNCUN	EX
	Greensboro	Eugene St	GNBONCEU	
	Raleigh	Morgan	RLGHNCMO	
		New Hope	RLGHNCHO	
	Salisbury	Main	SLBRNCMA	
	Winston Salem	Fifth Street	WNSLNCFI	
	Ashville	O'Henry	AHVLNCOH	
SC	Charleston	Dial & Toll	CHTNSCDT	
	Columbia	Senate St	CLMASCSN	EX
		At. Andrews	CLMASCSA	
	Greenville	D&T	GNVLSCDT	
		Woodruff Road	GNVLSCWR	EX
	Spartenburg	Main	SPBGSCMA	
TN	Knoxvill	Main	KNVLTNMA	
	Memphis	Bartlett	MMPHTNBA	
		Chickasaw	MMPHTNCT	
		Eastland	MMPHTNEL	
		Germantown	MMPHTNGT	
		Main	MMPHTNMA	EX
		Oakville	MMPHTNOA	
		Southland	MMPHTNSL	
	Nashville	Main & Toll	NSVLTNMT	
		Airport	NSVLTNAP	
		Brentwood	NSVLTNBW	
		Crieve Hall	NSVLTNCH	
		Donelson	NSVLTNDO	
		Inglewood	NSVLTNIN	
		Sharondale	NSVLTNST	
		University	NSVLTNUN	

Attachment C-14

Unbundled Products and Services and New Services

Service: Poles, Ducts, Conduits and Rights of Way

State(s): All

Rates, terms and conditions: This service will be provided via a Standard License Agreement.

Attachment C-15

Unbundled Products and Services and New Services

Service: Unbundled Exchange Access Loop

Description: Provides the connection from the serving central office to a subscriber's premises. It is engineered to meet the same parameters as a residence or business exchange access line.

Information relative to multiplexing of the Unbundled Exchange Access Loop is described in Attachment C-16 following.

State(s):	Alabama			Florida			Georgia		
	Monthly	Nonrecurring Charges First	Add'l	Monthly	Nonrecurring Charges First	Add'l	Monthly	Nonrecurring Charges First	Add'l
Unbundled Exchange Access Loop	\$25.00	\$140.00	\$45.00	\$17.00	\$140.00	\$45.00	\$25.00	\$140.00	\$45.00
Unbundled Exchange Access IOC									
- Fixed	\$30.00	\$97.00	N/A	\$28.50	\$97.00	N/A	\$32.00	\$105.00	N/A
- 1 - 8 Miles	\$2.05	N/A	N/A	\$1.65	N/A	N/A	\$2.05	N/A	N/A
- 9 - 25 Miles	\$2.00	N/A	N/A	\$1.60	N/A	N/A	\$2.00	N/A	N/A
- Over 25 Miles	\$1.95	N/A	N/A	\$1.55	N/A	N/A	\$1.95	N/A	N/A

State(s):	Kentucky			Louisiana			Mississippi		
	Monthly	Nonrecurring Charges First	Add'l	Monthly	Nonrecurring Charges First	Add'l	Monthly	Nonrecurring Charges First	Add'l
Unbundled Exchange Access Loop	\$25.00	\$140.00	\$45.00	\$18.50	\$140.00	\$45.00	\$25.00	\$140.00	\$45.00
Unbundled Exchange Access IOC									
- Fixed	\$30.00	\$93.00	N/A	\$30.00	\$100.00	N/A	\$30.00	\$96.00	N/A
- 1 - 8 Miles	\$2.05	N/A	N/A	\$2.05	N/A	N/A	\$2.05	N/A	N/A
- 9 - 25 Miles	\$2.00	N/A	N/A	\$2.00	N/A	N/A	\$2.00	N/A	N/A
- Over 25 Miles	\$1.95	N/A	N/A	\$1.95	N/A	N/A	\$1.95	N/A	N/A

State(s):	N.Carolina			S.Carolina			Tennessee		
	Monthly	Nonrecurring Charges First	Add'l	Monthly	Nonrecurring Charges First	Add'l	Monthly	Nonrecurring Charges First	Add'l
Unbundled Exchange Access Loop	\$30.03	\$140.00	\$45.00	\$25.00	\$140.00	\$45.00	\$25.00	\$140.00	\$45.00
Unbundled Exchange Access IOC									
- Fixed	\$11.85	\$71.87	N/A	\$50.00	\$97.00	N/A	\$30.00	\$96.00	N/A
- 1 - 8 Miles	\$2.15	N/A	N/A	\$2.05	N/A	N/A	\$2.05	N/A	N/A
- 9 - 25 Miles	\$2.15	N/A	N/A	\$2.00	N/A	N/A	\$2.00	N/A	N/A
- Over 25 Miles	\$2.15	N/A	N/A	\$1.95	N/A	N/A	\$1.95	N/A	N/A

Attachment C-16

Unbundled Products and Services and New Services

Service: Channelization System for Unbundled Exchange Access Loops

Description: This new rate element provides the multiplexing function for Unbundled Exchange Access Loops. It can convert up to 96 voice grade loops to DS1 level for connection with the ALEC's point of interface. The multiplexing can be done on a concentrated basis (delivers at 2 DS1 level to customer premise) or on a non-concentrated basis (delivers at 4 DS1 level to customer premise) at the option of the customer.

In addition to the following rates elements, 1.544 Mbps local channel and/or interoffice channel facilities may be required as set forth in E7 of BellSouth Telecommunication's, Inc.'s Intrastate Access Service Tariff for non-collocated ALECs.

State(s)	Alabama			Florida			Georgia		
Rate Elements	Monthly Rate	Nonrecurring First	Charge Add'l	Monthly Rate	Nonrecurring First	Charge Add'l	Monthly Rate	Nonrecurring First	Charge Add'l
Unbundled Loop Channelization System (DS1 to VG), Per System	\$575.00	\$525.00	N/A	\$555.00	\$490.00	N/A	\$555.00	\$490.00	N/A
Central Office Channel Interface (circuit specific plug-in equipment), 1 per circuit	\$1.70	\$8.00	\$8.00	\$1.70	\$7.00	\$7.00	\$1.70	\$7.00	\$7.00

State(s)	Kentucky			Louisiana			Mississippi		
Rate Elements	Monthly Rate	Nonrecurring First	Charge Add'l	Monthly Rate	Nonrecurring First	Charge Add'l	Monthly Rate	Nonrecurring First	Charge Add'l
Unbundled Loop Channelization System (DS1 to VG), Per System	\$540.00	\$495.00	N/A	\$530.00	\$510.00	N/A	\$560.00	\$450.00	N/A
Central Office Channel Interface (circuit specific plug-in equipment), 1 per circuit	\$1.60	\$8.00	\$8.00	\$1.60	\$8.00	\$8.00	\$1.70	\$6.00	\$6.00

State(s):	N.Carolina			S.Carolina			Tennessee		
Rate Elements	Monthly Rate	Nonrecurring First	Charge Add'l	Monthly Rate	Nonrecurring First	Charge Add'l	Monthly Rate	Nonrecurring First	Charge Add'l
Unbundled Loop Channelization System (DS1 to VG), Per System	\$545.00	\$475.00	N/A	\$520.00	\$480.00	N/A	\$530.00	\$520.00	N/A
Central Office Channel Interface (circuit specific plug-in equipment), 1 per circuit	\$1.65	\$7.00	\$7.00	\$1.60	\$6.00	\$6.00	\$1.60	\$8.00	\$8.00

Attachment C-17

Unbundled Products and Services and New Services

Service: Unbundled Exchange Ports

Description: An exchange port is the capability derived from the central office switch hardware and software required to permit end users to transmit or receive information over BellSouth's public switched network. It provides service enabling and network features and functionality such as translations, a telephone number, switching, announcements, supervision and touch-tone capability.

In addition, a BellSouth provided port with outgoing network access also provides access to other services such as operator services, long distance service, etc. It may also be combined with other services available in BellSouth's Intrastate Access Service Tariffs as technically feasible.

When an Unbundled Port is connected to BellSouth provided collocated loops, cross-connection rate elements are required as set forth in Section 20 of BellSouth Telecommunications's, Inc.'s Interstate Access Tariff, FCC No.1.

Alabama			Florida		Georgia	
Rate Elements	Rate	Per	Rate Elements	Rate	Rate Elements	Rate
Monthly			Monthly		Monthly	
Residence Port	\$2.50		Residence Port	\$2.00	Residence Port	\$2.28
Business Port	\$7.00		Business Port	\$4.50	Business Port	\$4.60
PBX Trunk Port	\$7.00		PBX Trunk Port	\$7.50	PBX Trunk Port	\$7.37
Rotary Service	\$2.00		Rotary Service	\$2.00	Rotary Service	\$2.77
Primary Rate ISDN NAS	\$20.00					
Usage-Mileage Bands			Usage-(STS)		Usage-(STS)	
A (0 miles)	\$0.02	Init.min.	- init. min.	\$0.0275	-setup per call	\$0.02
	\$0.01	Add'l min.	- add'l min.	\$0.0125	- per minute or	
B (1-10 miles)	\$0.04	Init.min.			fraction thereof	\$0.02
	\$0.02	Add'l min.				
C (11-16 miles)	\$0.06	Init.min.				
	\$0.04	Add'l min.				
D (17-22 miles & existing LCA described in A3.6 greater than 22 mi.)	\$0.10	Init.min.				
	\$0.07	Add'l min.				
E (23-30 miles)	\$0.10	Init.min.				
	\$0.10	Add'l min.				
F (31-40 miles)	\$0.10	Init.min.				
	\$0.10	Add'l min.				
G (Special Band)*	\$0.10	Init.min.				
	\$0.10	Add'l min.				

* In addition to the local calling described in A3 of BellSouth's General Subscriber Service Tariff, if any wire center in an exchange is located within 40 miles of any wire center in the originating exchange, local calling will be provided from the entire originating exchange to the entire terminating exchange. The usage charges for Band G are applicable for distances greater than 40 miles.

Attachment C-17

Unbundled Products and Services and New Services

Service: Unbundled Exchange Ports (Cont'd)

Kentucky			Louisiana		
Rate Elements	Rate	Per	Rate Elements	Rate	Per
Monthly			Monthly		
Residence Port	\$3.50		Residence Port	\$2.50	
Business Port	\$10.00		Business Port	\$7.00	
PBX Trunk Port	\$10.00		PBX Trunk Port	\$7.00	
Rotary Service	\$3.50		Rotary Service	\$3.50	
Usage-Mileage Bands			Usage-Mileage Bands		
A (0 miles)	\$0.04	Init.Min.	A (0 miles)	\$0.02	Init.Min.
	\$0.02	Add'l min.		\$0.01	Add'l min.
B (1-10 miles)	\$0.04	Init.Min.	A (1-10 miles)	\$0.04	Init.Min.
	\$0.02	Add'l min.		\$0.02	Add'l min.
C (Greater than 10 miles Limited LCA)	\$0.06	Init.Min.	B (11-16 miles)	\$0.06	Init.Min.
	\$0.04	Add'l min.		\$0.04	Add'l min.
D (1-10 miles beyond Limited LCA)	\$0.04	Init.Min.	C (17-22 miles)	\$0.10	Init.Min.
	\$0.02	Add'l min.		\$0.07	Add'l min.
E (11-16 miles beyond Limited LCA)	\$0.06	Init.Min.	D (23 - 30 miles Basic LCA and Intra Parish Expanded LCA)	\$0.14	Init.Min.
	\$0.04	Add'l min.		\$0.10	Add'l min.
F (17-22 miles beyond Limited LCA)	\$0.08	Init.Min.	E (Greater than 30 miles Basic LCA and Intra Parish Expanded LCA)	\$0.14	Init.Min.
	\$0.07	Add'l min.		\$0.14	Init.Min.
G (23-30 miles beyond Limited LCA)	\$0.08	Init.Min.	F (23 - 30 miles Inter-Parish Expanded LCA)	\$0.14	Init.Min.
	\$0.07	Add'l min.		\$0.10	Add'l min.
H (31-40 miles beyond Limited LCA)	\$0.08	Init.Min.	G (31 - 40 miles Inter-Parish Expanded LCA)	\$0.14	Init.Min.
	\$0.07	Add'l min.		\$0.14	Add'l min.
I (Greater than 40 miles beyond Limited LCA)	\$0.08	Init.Min.	G (Greater than 40 miles Inter-Parish)	\$0.14	Init.Min.
	\$0.07	Add'l min.		\$0.14	Add'l min.

Mississippi			N.Carolina			S.Carolina		
Rate Elements	Rates	Per	Rate Elements	Rates	Rate Elements	Rates		Rates
Monthly			Monthly		Monthly			
Residence Port	\$3.75		Residence Port	\$2.00	Residence Port	\$4.00		
Business Port	\$7.50		Business Port	\$8.00	Business Port	\$10.50		
PBX Trunk Port	\$7.50		PBX Trunk Port	\$8.00	PBX Trunk Port	\$10.50		
Rotary Service	\$3.75		Rotary Service	\$1.50	Rotary Service	\$3.00		
Usage - Mile Bands			Usage - (STS)		Usage - (STS)			
A (0 miles)	\$0.02	Init.min.	- Init.min.	\$0.05	- Basic Svc.Area	\$0.02		
	\$0.01	Add'l min.	- Add'l min.	\$0.02	- Expanded Svc.Area	\$0.12		
B (1-10 miles)	\$0.04	Init.min.						
C (11-16 miles, existing LCA described in A3.6 greater than 16 miles, and calls to county seat greater than 16 miles)	\$0.02	Add'l min.						
	\$0.06	Init.min.						
D (17-30 miles)	\$0.04	Add'l min.						
	\$0.08	Init.min.						
	\$0.07	Add'l min.						
E (31-55 miles Biloxi LATA)	\$0.08	Init.min.						
	\$0.07	Add'l min.						
F (31-55 miles Jackson LATA)	\$0.12	Init.min.						
	\$0.10	Add'l min.						
G (56-85 miles Biloxi LATA)	\$0.18	Init.min.						
	\$0.14	Add'l min.						

Tennessee		
Rate Elements	Rates	Per
Monthly		
Residence Port	\$4.00	
Business Port	\$10.00	
PBX Trunk Port	\$10.00	
Rotary Service	\$8.50	
Usage - Mile Bands		
A (0-16 miles)	\$0.02	mon
B (17-30 miles)	\$0.05	mon
C >30 miles	\$0.10	mon

Attachment C-18

Unbundled Products and Services and New Services

Service: Local Calling Area Boundary Guide

Description: Provided to ALECs to assist in deployment of numbers on their network to conform with BellSouth existing local calling area geographics.

State: All

Rate(s): No Charge

ATTACHMENT "D"

APPLICABLE DISCOUNTS

The telecommunications services available for purchase by ICI for the purposes of resale to ICI end users shall be available at the following discount off of the retail rate.

STATE	RESIDENCE	DISCOUNT	
			BUSINESS
ALABAMA	10%		10%
FLORIDA	18%		12%
GEORGIA	20.3%*		17.3%*
KENTUCKY	10%		8%
LOUISIANA	11%		10%
MISSISSIPPI	9%		8%
NORTH CAROLINA	12%		9%
SOUTH CAROLINA	10%		9%
TENNESSEE	11%		9%

The Georgia discount is subject to change as a result of final resolution of the order of the Georgia Public Service Commission, issued June 12, 1996

Discounts will not apply to: Unbundled port service; nonrecurring charges; federal or state subscriber line charges; inside wire maintenance plans; pass-through charges (e.g. N11 end user charges); and taxes

FILED
To Jerry
Hendrix
also

July 11, 1996

To: Rich Dender

From: Tom Allen

Subject: Intermedia Unbundling Request

Pursuant to Section 251 of the Telecommunications Act and to the recently executed interconnection agreement, Intermedia requests that BellSouth provide the following unbundled elements:

- 1) An unbundled frame relay loop;
- 2) An unbundled ISDN loop;
- 3) Line side loop unbundling that supports a multi-host environment, i.e., modification of the TR303 industry standard to extend that standard to the local loop environment. This unbundling was discussed in Intermedia's comments filed with the FCC in Docket No.96-98 on May 15th.

We are requesting an evaluation of technical feasibility as well as price quotes consistent with the requirements of the Act for the loops requested. Please advise me or Julia Strow if additional information is needed to facilitate evaluation of these requests. Also, please let me know when Intermedia can expect a response to this request. I can be reached at 770-429-5709 and Julia can be reached on 770-429-5702. Thanks for your help in initiating this request.

INTERMEDIA/BELLSOUTH INTERCONNECTION AGREEMENT IMPLEMENTATION PLAN

	<u>IC/BSI CONTACT</u>	<u>TIMEFRAME</u>
I. Local Interconnection (Section IV)		
A. Tracking local exchange and EAS traffic for compensation purposes (by state, format). (IVA)	Jack Davidson/Gloria Calhoun	10-1-96
B. Exchange of traffic data between companies (format, fields). (IVA)	" "	" "
C. Bill rendered every month, late payment charges (by state, format). (TVB)	" "	" "
D. Quarterly payments made when applicable. (IVC)	" "	" "
E. Development of quarterly percent local usage factor (PLU) and updating the PLU to the other party on January 1st, April 1st, July 1st and October 1st. (IVD)	" "	" "
F. Interconnection of facilities (ICT's plans). (IVE)	Mike Vireo, Bob Van Dyke/ Rich Dender	Ongoing
- White Paper Developed	" "	8-15-96
G. Reciprocal connectivity arrangements that meet technical standards. (IVF)	" "	Ongoing
H. Network to Network Interface charges. (IVH)	Jack Davidson, Jeanne Walters/ Rich Dender	9-1-96
I. Unidentified traffic (NOX) charges, validation of traffic for appropriate compensation. (IVI)	Jack Davidson/Gloria Calhoun	10-1-96
J. Intermediary tandem switching and transport arrangements/must point billing arrangements. (IVJ,IVK,IVL,IVM)	Bob Van Dyke/ Pinsky Reichert, Gloria Calhoun	8-15-96
II. IntraLATA and InterLATA Toll Traffic Interconnection (Section V)		
A. Compensation arrangements. (VA,VB)	Glenn Walkley/ Pinsky Reichert	8-1-96*
B. 800 traffic compensation arrangements. (VD,VE,VF)	" "	" "
C. 800 Access Ten Digit Screening arrangements. (VG) * Pinsky to provide IntraLATA prescription schedule	" "	" "
III. Service Provider Number Portability (SPNP) (Section VI)		
A. SPNP general provisions. (VIB,VIC,VII,VII,VII,VII,VII,VII,VII)	Bob Van Dyke, Tim Tuck/ Gloria Calhoun	8-15-96
B. SPNP-Remote arrangements. (VID,VIF)	" "	" "
C. SPNP-DTD arrangements. (VIE,VIF)	" "	" "
IV. Provision of Unbundled Elements (Section VII)		
A. Unbundled loops, loop channelization, local transport, and local switching. (VIIA,VIIB,VIIIC,VIIID)	Julia Strow/ Rich Dender	10-1-96
B. Request process for unbundled network elements (timeframes, process used). (VIIIE)	Julia Strow/ Rich Dender	8-15-96
C. Restrictions on use of unbundled elements. (VIIIF)	Julia Strow/ Rich Dender	Ongoing

V. Access to Poles, Ducts, Conduits and Rights of Way (Section VIII)

A. Process for handling access requests. (VIII)

Jack Davidson/ John
Chaucer 9-1-86*

*Pending agreement reviewed, revised and agreed to by both parties.

VI. Access to 911/E911 Emergency Network (Section IX)

Tim Tuck/ Val Sapp Process &
Procedures in
Place

A. Basic 911

1. BellSouth to provide a list of each municipality with Basic 911 and will provide information on the conversion date of each municipality to E911 and the ten digit directory number for each emergency answering position. (IXA)
2. ICI will accept and translate 911 calls to the appropriate number and route to the appropriate tandem/end office. (IXA)

" "

" "

" "

B. E911

1. ICI to install a minimum of two dedicated trunks terminating on the appropriate E911 tandem. Trunk specifications included. (IXB)
2. ICI to provide daily updates to E911 database. (IXB)
3. ICI is responsible for forwarding, routing and providing alternate routes to BellSouth tandems for the emergency call. (IXC)
4. ICI will follow industry practices and procedures contained in the 911 Local Exchange Carrier Guide for Facilities-Based Providers. (IXD)

" "

" "

" "

" "

" "

VII. Provision of Operator Services (Section X)

Tim Tuck, Bob Van
Dyke/ Gloria Calhoun 10-1-86

- A. Both parties to provide busy line verification and emergency interrupt services. (XA)
- B. BellSouth to provide ICI with Operator Call Processing Access Service. (XB)
- C. BellSouth to offer ICI CMDS Hosting and the Non-Sent Paid Report System. (XC)

" "

" "

" " 8-1-96

VIII. Directory Listings (Section XI)

Tim Tuck/ Rook
Barnes 8-1-96*

- A. BellSouth to include ICI users in Yellow and White Page Directories and deliver directories to ICI customer. (XIA)
- B. BellSouth to provide ICI subscriber listings in directory assistance databases at no charge. Procedures need to be developed regarding load time, format and content of listing information. (XIB)
- C. BellSouth to provide mag tape with format for listings, ICI to provide directory listings and daily updates that include new, changed, and deleted listings in industry accepted format. (XIC)

" "

" "

" "

* BAPCO agreement must also be executed by 8-1-96.

IX. Access to Telephone Numbers (XII)

Bob Van Dyke/
Jerry Latham Procedures in
Place

BellSouth, as number administrator, to provide ICI numbering resources pursuant to industry guidelines, I will complete NXX code application pursuant to industry guidelines. (XIIA)

X. Access to Signaling and Signaling Databases

Van Dyke/Vic
Asherson 9-1-96

- A. Each party to offer use of signaling network and databases on an unbundled basis, with functionality available at both A-link and B-link connectivity. (XIIIA)

" "

B. BellSouth to update LERC with assigned ICI NOCs. (XIII B)	" "	" "
C. BellSouth to input ICI line information into LIDB. (IXIII C)	Tim Tuck, Bob Van Dylan/ Vic Aderton	" "
XI. Resale of BellSouth's Retail Services (Section XIV)	Angela Lewis/ Bill French	11-15-96*
A. Discounts are as follows: Alabama 10%, Florida 12%, Georgia 17.3%, Kentucky 8%, Louisiana 10%, Mississippi 8%, North Carolina 9%, South Carolina 9%, Tennessee 9%. (XIVA)	" "	" "
B. All BellSouth retail services included (broadband exchange line and SynchroNet) except as follows: grandfathered services, promotional and trial services, lifeline and link-up, CSAs, installment billing, 911/E911, ... (XIVB)	" "	" "
C. ICI to be the customer of record and BellSouth's single point of contact for ordering, repair and payment of charges. (XIVC, XIVD, XIVE)	" "	" "
D. ICI to follow preclearing guidelines prior to reporting trouble. (XIVE)	" "	" "
E. Service quality standards for providers other than BST. (XIVF)	" "	" "
F. Resale provisions/restrictions provisions outlined. (XIVF)	" "	7-15-96
1. Class of service restriction.	" "	" "
2. Joint marketing provisions from the Act.	" "	" "
3. PBX, Coin line and shared tenant service restrictions.	" "	" "
4. Flat and local rate restrictions.	" "	" "
J. BellSouth to maintain resold services. (XIVH)	" "	11-15-96
K. BellSouth to bill the End Users Common Line rate surrogate to ICI. (XIVO)	" "	" "
L. Procedures for discontinuing end user service of resold services. (XIVF)	" "	" "
M. Procedures for discontinuing ICI service. (XIVO)	" "	" "
N. Deposit requirements. (XIVR)	" "	" "
* All billing of embedded conversions retroactive to 6-21-96.		
XII. Ordering Services for Resale Purposes (Section XV)	Angela Lewis/ Pinky Reichert	8-1-96
A. ICI will follow OLEC-to-BellSouth Ordering Guidelines (to be provided). (XVA)	" "	" "
B. BellSouth to establish a master account when services are ordered and commits to bill ICI on a current basis. (XVB, XVC)	" "	" "
C. ICI is responsible for payment of all charges associated with resold services, billing and payment provisions outlined. (XVD, XVE, XVF, XVG)	" "	" "
D. BellSouth charges to ICI will not include taxes, ICI to provide documentation for tax exemption. (XVI)	Angela Lewis/ Bill French	" "
E. ICI will be responsible for and remit payment to BellSouth for the provision of emergency services and TRS. (XVI)	" "	" "
F. Late payment penalty provisions. (XVI)	" "	" "
G. Any applicable carrier common line charges will be billed by and due to BellSouth. (XVI)	" "	" "

REED SMITH SHAW & McCLAY

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January 8, 1997

Whit W. Jordan
Executive Director, Federal Regulatory
BellSouth Corporation
1133 - 21st Street, N.W.
Suite 900
Washington, D.C. 20036

VIA FACSIMILE
ORIGINAL FOLLOWS BY
US. MAIL

Re: Intermedia request for escalation of discussions to resolve interconnection implementation issues

Dear Whit:

This letter follows our conference call of January 6, in which we were joined by Tom Allen and Julia Strow to discuss a range of issues related to the implementation of the interconnection agreement negotiated between ICI and BellSouth. In raising these issues, we very much appreciate your and Bob Blau's willingness to act as expeditors in resolving the concerns raised by ICI. Our conference focused on the following issues:

1. Confirm BellSouth's position on the mechanism for billing for unbundled rate elements and resold services. Our BellSouth account representatives have informed us that unbundled elements and resold services will ultimately be billed through the CRIS system. It is our position that billing through CABS will be more efficient, less costly, and can be implemented more quickly. In particular, because CABS is a carrier-based system it can generate the data that we need to prepare bills and verify calls. Being an end-user focused system, CRIS does not provide us with these features. Can BellSouth accommodate a request to bill its unbundled elements -- in particular Frame Relay loops -- through CABS?
2. As we discussed, ICI had been informed that it must pay a \$25 per-loop node charge for its unbundled 56 kbps loops. Shortly before our conference call, ICI heard from Fred Monticelli that this statement was made in error, and that the node charge did not apply. We ask that BellSouth confirm this latter statement.
3. In a letter dated July 11, ICI requested, among other things, subloop unbundling arrangements. BellSouth responded with a two-paragraph statement that such an arrangement was technically infeasible and could not be accomplished by BellSouth's LFACS and TIRKS network management systems. A copy of ICI's request and BellSouth's response are attached for your review. During our conference call, we requested that BellSouth provide a more detailed response to our request. In particular, we requested that BellSouth discuss the relative distribution of Integrated Digital Loop Carriers and Universal Digital Loop

REED SMITH SHAW & McCLAY

Mr. Whit W. Jordan
January 8, 1997
Page 2


Carriers throughout its network, and discuss whether subloop unbundling could be made more readily available in cases where UDLCs or next generation loop carriers were deployed. Finally, BellSouth's letter responding to ICI's request suggests that manual records could be used to record the trunk assignments necessitated by subloop unbundling. We would like to explore the possibility of using such records to implement the unbundling sought by ICI -- at least on an interim basis -- until more permanent arrangements can be established.

4. To date, ICI has been unable to obtain call record detail from BellSouth in electronic format. While BellSouth has provided ICI with copies of paper bills, it is not economical for ICI to use the information in this format to generate its own bills. We need to establish a process for providing ICI with electronic call record detail, either on floppy disks or via e-mail.
5. As a result of recent discussions with BellSouth personnel, two issues have arisen regarding the application of nonrecurring charges in the context of interconnection:
 - A. We seek clarification that, when ICI resells BellSouth service, the applicable wholesale discounts apply to all of the service elements that are listed in the retail tariff -- including nonrecurring charges.
 - B. We wish to confirm that, when a customer that currently takes service from BellSouth pursuant to a long term contract switches to BellSouth service resold by ICI, ICI assumes the customer's obligation for the remainder of the contract term, and no termination liability charges would apply as a result.

At the conclusion of our conference call, we requested that you present these issues to the appropriate decisionmakers within BellSouth, and that we hold another conference call early next week to discuss the progress on these issues. As you know, several of these issues have been pending for almost half a year, and we are anxious to achieve a final resolution expeditiously. To this end, we are grateful to you for agreeing to act as an expeditor, and look forward to working with you to achieve the prompt implementation of our interconnection agreement.

Again, thank you for your help in this matter.

Sincerely,



Jonathan E. Canis

REED SMITH SHAW & McCLAY

1301 K STREET, N.W.

SUITE 1100 - EAST TOWER

WASHINGTON, D.C. 20005-3317

202-414-9200

FAX 202-414-9299

WRITER'S DIRECT NUMBERS:
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HARRISBURG, PA
MCLEAN, VA
NEW YORK, NY
NEWARK, NJ
PHILADELPHIA, PA
PITTSBURGH, PA
PRINCETON, NJ

January 28, 1997

Whit W. Jordan
Executive Director, Federal Regulatory
BellSouth Corporation
1133 - 21st Street, N.W.
Suite 900
Washington, D.C. 20036

**VIA FACSIMILE
ORIGINAL FOLLOWS BY
US. MAIL**

Re: Intermedia request for escalation of discussions to resolve interconnection implementation issues

Dear Whit:

This letter follows our letter to you dated January 8, 1997, requesting responses to five issues regarding implementation of the ICI/BellSouth interconnection agreement; the conference call of January 23, 1997 in which we were joined by Tom Allen to discuss those issues; and your written response dated January 23, 1997.

Issue 1: We understand that BellSouth will revise its CRIS billing system in the future to include the CABS-like functions that we have requested. We thank you for your clarification of BellSouth's position, and look forward to the implementation of these changes. In the interim, we understand that BellSouth will implement a Club Bill format that will provide us with the billing detail we require in the near future. We will work with our account team to implement this billing system as soon as possible, and expect to hear from the BellSouth account team within the week.

Issue 2: You clarified BellSouth's position that, until we can obtain unbundled Frame Relay loops from BellSouth, we must continue to take tariffed Synchronet service. Moreover, you stated that it is BellSouth's current position that the Synchronet service will not be unbundled, and that we must pay for all Synchronet elements - including the \$25.00 per-line port charge - even if we have no need for that functionality. We must inform you that this position is inconsistent with commitments that BellSouth personnel made to us in the past, and violates an express agreement that ICI and BellSouth reached during their negotiation discussions.

From the beginning of our interconnection negotiations, ICI requested unbundled Frame Relay-capable loops, and BellSouth confirmed its intention to provide them. BellSouth has been unable to deliver such loops to date, and we continue to request them. During our negotiations, it was suggested by BellSouth personnel that ICI could use Synchronet loops as an interim measure, until BellSouth could deploy the requested unbundled Frame Relay-capable loops. On June 11, 1996, we received from Jerry Hendrix a fax that clearly identified the Synchronet functions that we would purchase in lieu of the unbundled Frame Relay loops, and the rates that we would pay.

REED SMITH SHAW & MCCLAY

Mr. Whit W. Jordan
January 28, 1997
Page 2

A copy of the fax is attached for your review at tab A, and contains no mention of the \$25.00 port charge.

It has been ICI's position from the beginning that ICI is prepared to pay for the service it obtains from BellSouth. We stress, however, that the provision of Synchronet – absent the \$25.00 port charge – was from the start an interim solution proposed by BellSouth that was intended to provide the functional and cost surrogate for an unbundled Frame Relay loop. This was the mutual understanding of ICI and BellSouth, as discussed during a luncheon meeting between Tom Allen and Joe Baker, Fred Monacelli and Bill French on November 11, 1996.

ICI initially requested unbundled Frame Relay loops by a written request on July 11, 1996, and has consistently repeated its request to date. In a letter dated September 10, 1996, BellSouth committed to fulfilling that request, although to date it has been unable or unwilling to do so. A copy of the correspondence is attached at tab B for your review. ICI's primary concern continues to be the provisioning of the requested loops, and ICI would prefer not to expend its resources in debating interim solutions. However, until BellSouth can provision the unbundled Frame Relay loops per its commitment – and ICI stresses its need for such loops as soon as possible – ICI requests that BellSouth provide the Synchronet links in the way the parties agreed, and at the rates that BellSouth quoted to ICI in writing.

Items 3 and 4: In response to ICI's requests for subloop unbundling arrangements and the provision of call record detail in electronic format, you have confirmed that BellSouth has convened two "task forces" to seek the solutions that ICI has required. While ICI is glad to see some progress on this front, it is profoundly disappointed that BellSouth is unable to provide a more substantive response to ICI's requests at this time. As ICI made clear during our conference call, we do not have complete confidence in the ability of some of the account representatives to provide a timely solution to ICI's requests, and we are profoundly concerned that the establishment of task forces may constitute an unproductive exercise that engenders additional delay. While we will participate actively in these task forces and will work with BellSouth's designated account representatives to the best of our ability, we stress that process is not enough – ICI requires that solutions be implemented as soon as possible.

Item 5: Regarding ICI's request for clarification of BellSouth's policies on resale, our conversation on the 23rd provided some answers, but additional clarification is required. First, per our conversation, we concluded that ICI can resell BellSouth's Customer Specific Arrangements ("CSAs"), and that, when such CSA's are provided on a long-term contract basis, ICI can assume the remaining term commitment – and other rights and responsibilities associated with the CSA. We understand that, when ICI assumes such contracts, it will not be considered a termination of service, and no termination liability penalties will be assessed on the customer. It is also our

REED SMITH SHAW & MCCLAY

Mr. Whit W. Jordan
January 28, 1997
Page 3

understanding that, because ICI will be reselling the CSAs, the state-prescribed avoidable cost discount will apply to such resale.

Regarding the pricing of nonrecurring charges, we understand that further clarification is required. It is our position that the Telecommunications Act of 1996 does not limit BellSouth's obligation to provide all tariffed services for resale at avoidable cost, and that this requirement applies fully to nonrecurring charges as well as to recurring rates. We understand that BellSouth is taking this position under advisement, and will clarify its own position in the near future.

Whit, thank you for acting as an expeditor in obtaining some answers and establishing processes for further action. We look forward to working directly with our account representatives to resolve outstanding issues relating to our interconnection requests, and we look forward to talking with you in the near future to clarify further BellSouth's position on the pricing for our interim Synchronet arrangement, and on the resale treatment of nonrecurring charges.

Again, thank you for your help in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan E. Canis". The signature is fluid and cursive, with the first name "Jonathan" and last name "Canis" clearly distinguishable.

Jonathan E. Canis

ATTACHMENT A

01/27/97 MON 13:55 FAX 8138832508
 3-11-96 03:20PM FROM BST ICS Pricing

ICI ACCTG
 TO 9/7704260908

P001/001

0007

Post-it brand ink is available in 75% of pages	Tom Allen	Phone 1
	Jerry Hendrix	Dept.

SynchroNet Service

DNAs = #94 629 967-502

	AL	GA	FL	KY	LA	MS	NC	SC	TN
Digital Local Channel									
56 Kbps									
Monthly	\$70.00	\$70.00	\$69.10	\$70.00	\$70.00	\$70.00	\$64.00	\$70.00	\$70.00
24-42 Months	\$65.00	\$65.00	\$62.00	\$65.00	\$65.00	\$65.00	\$60.00	\$65.00	\$65.00
43-60 Months	\$60.00	\$60.00	\$55.00	\$60.00	\$60.00	\$60.00	\$55.00	\$60.00	\$60.00
IOC									
0-8 Miles, 56 Kbps	\$40.00	\$40.00	\$37.55	\$40.00	\$40.00	\$40.00	\$30.00	\$40.00	\$40.00
Monthly	\$38.00	\$38.00	\$33.75	\$38.00	\$38.00	\$38.00	\$28.00	\$38.00	\$38.00
24-42 Months	\$34.00	\$34.00	\$30.00	\$34.00	\$34.00	\$34.00	\$25.00	\$34.00	\$34.00
43-60 Months									
Discounted/Resale Amount									
Digital Local Channel									
56 Kbps									
Monthly	\$63.00	\$63.00	\$60.81	\$64.40	\$63.00	\$64.40	\$58.24	\$63.70	\$63.70
24-42 Months	\$58.50	\$58.50	\$54.58	\$59.80	\$58.50	\$59.80	\$54.60	\$59.15	\$59.15
43-60 Months	\$54.00	\$54.00	\$48.40	\$55.20	\$54.00	\$55.20	\$50.05	\$54.60	\$54.60
Discounted/Resale Amount									
IOC									
0-8 Miles, 56 Kbps	\$36.00	\$36.00	\$33.04	\$38.80	\$36.00	\$38.80	\$27.30	\$36.40	\$38.40
Monthly	\$32.40	\$32.40	\$29.70	\$33.12	\$32.40	\$33.12	\$25.48	\$32.78	\$32.78
24-42 Months	\$30.60	\$30.60	\$26.40	\$31.28	\$30.60	\$31.28	\$22.75	\$30.84	\$30.94
43-60 Months									
<p>NOTE: Discounted/Resale amounts reflect the resale discounted rate, as of 5/29/98, for each respective state. AL 10%, FL 12%, GA 9.0%, KY 8%, LA 10%, MS 8%, NC 9%, SC 9%, TN 8%</p> <p>NOTE: NC rates are applicable to 43 to 72 months.</p> <p>17.3% Ga. will be 17.3% once order becomes final 6/15/98</p>									

1/98 MON 08:15 FAX 770 628 6725

ICI ATLANTA

000:

ATTACHMENT B

*Fixed
To Jerry
Hendry
also*

July 11, 1996

To: Rich Dender

From: Tom Allen

Subject: Intermedia Unbundling Request

Pursuant to Section 251 of the Telecommunications Act and to the recently executed interconnection agreement, Intermedia requests that BellSouth provide the following unbundled elements:

- 1) An unbundled frame relay loop;
- 2) An unbundled ISDN loop;
- 3) Line side loop unbundling that supports a multi-host environment, i.e., modification of the TR303 industry standard to extend that standard to the local loop environment. This unbundling was discussed in Intermedia's comments filed with the FCC in Docket No.96-98 on May 15th.

We are requesting an evaluation of technical feasibility as well as price quotes consistent with the requirements of the Act for the loops requested. Please advise me or Julia Strow if additional information is needed to facilitate evaluation of these requests. Also, please let me know when Intermedia can expect a response to this request. I can be reached at 770-429-5709 and Julia can be reached on 770-429-5702. Thanks for your help in initiating this request.

© BELLSOUTH

BellSouth Interconnection
South 1461
3535 Colonnade Parkway
Birmingham, Alabama 35243

Richard A. Dender
Accounts Manager

September 10, 1996

Mr. Tom Allen
Vice President - Strategic Planning
Intermedia Communications, Inc.
3525 Queen Palm Drive
Tampa, Florida 33619

Dear Tom:

In regard to your letter of July 11, 1996, BellSouth can provide the unbundled frame relay loop and the unbundled ISDN loop as requested by Intermedia Communications, Inc. (ICI). However, BST cannot provide the "line side loop unbundling that supports a multi-host environment".

The frame relay loop can be provisioned by using the loop portion of BST's existing DDAS or Synchronet services. BST will provision these services at their existing tariffed rates. Also, BST has developed unbundled ISDN loops and can provision them in Florida for \$43.00 per month. BST understands that it may have to re-price these services at TELRIC if that portion of the FCC Order becomes final.

Concerning the request for "line side loop unbundling that supports a multi-host environment", our staff has reviewed ICI's comments to the FCC on this matter and have determined that BellSouth's operations and support systems, particularly the Loop Facilities Assignment and Control System (LFACS) and Trunk Inventory and Record Keeping System (TIRKS), cannot handle assignment and administration of this small portion of a carrier system. Manual records would need to be maintained that would conflict with BellSouth's mechanized systems.

There is no technically feasible method to segregate the concentration portion of the carrier system from the feeder transport to it. The systems are designed as a single entity and cannot be separated. This means that the concentration portion and the feeder transport portion are one entity. They provide the necessary facilities to transport and concentrate loop facilities from the central office to the remote terminal.

If you would like to discuss this further, please call me at 205-977-5966.

Sincerely,



Rich Dender



Intermedia/BellSouth Local Interconnection Issues for Resolution

- **Frame Relay conversion to unbundled loops, billing of inappropriate elements (node charges) with the surrogate Synchronet loop element.**
- **Unbundled frame relay loops and unbundled ISDN loops have been committed to ICI by BellSouth approximately four months ago, however, no pricing or implementation schedule has been provided.**
- **BellSouth denied Intermedia's request for loop unbundling to support a multi-host environment stating that it was technically infeasible, however, no documentation was provided substantiating that position.**
- **Inadequate billing data for resold services, billing is currently in summary format and does not provide customer detail needed for verification.**
- **Request BellSouth position regarding imposition of termination liability charges on customers under contract with BellSouth who choose to switch to ICI's resold local exchange service where ICI will assume the contract obligation.**
- **Modification of billing systems to support and reflect in its billing detail a wholesale environment.**

1/6/97

W. W. (Whit) Jordan
Executive Director-Federal Regulatory

Suite 900
1133 21st Street, N.W.
Washington, D.C. 20036
202 463-4114
Fax: 202 463-4198

January 23, 1997

Mr. Jonathan E. Canis, Esq.
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3317

Re: Intermedia request for escalation of discussions to resolve interconnection implementation issues

Dear Jonathan:

This is in response to your letter dated January 8, 1997, and the discussions on the conference calls regarding certain interconnection implementation issues. Following is the current status of each issue:

1. Issue: "Confirm BellSouth's position on the mechanism for billing for unbundled rate elements and resold services. Our BellSouth account representatives have informed us that unbundled elements and resold service will ultimately be billed through the CRIS system. It is our position that billing through CABS will be more efficient, less costly, and can be implemented more quickly. In particular, because CABS is a carrier-based system it can generate the data that we need to prepare bills and verify calls. Being an end-user focused system, CRIS does not provide us with these features. Can BellSouth accommodate a request to bill its unbundled elements - in particular Frame Relay loops - through CABS?"

Response: In the Florida Order [Order No. PSC-96-1579-FOF-TP] issued December 31, 1996, regarding the AT&T/MCI Arbitration, the Florida Commission requires that billing must transition to CABS-formatted billing for resold services. The billing formats should be consistent with industry guidelines to the extent they exist or are developed. BellSouth is required to provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of the Florida Order. BellSouth can continue to use its CRIS billing, but the CRIS data shall be translated into CABS format. Bill French will arrange for the contact between Intermedia and BellSouth to begin the negotiations to amend the billing arrangements. This item will be handled on a state-by-state basis.

In the interim, BellSouth is willing to provide billing for unbundled rate elements and resold services in a similar CLUB Billing Arrangement that Intermedia has already agreed to for its Red Roof Accounts. Nancy McClellan of BellSouth has called Jack Davidson of Intermedia to finalize this billing arrangement.

2. Issue: "...ICI had been informed that it must pay a \$25 per-loop node charge for its unbundled 56 kbps loops. Shortly before our conference call, ICI heard from Fred Monticelli that this statement was made in error, and that the node charge did not apply. We ask that BellSouth confirm this latter statement."

Response: The \$25.00 Per Node charge is associated with BellSouth's SynchroNet Service and the rate varies by state. Intermedia requested that 1100 DDAS circuits be converted to SynchroNet Service [Intermedia's "frame relay service"]. Intermedia's Local Interconnection

Agreement provides for resale of SynchroNet Service. The agreement does not provide for SynchroNet Service on an unbundled basis. Under the current agreement, all rates associated with SynchroNet Service will apply. In order to provide these services on a different basis, it will be necessary to amend the Local Interconnection Agreement. Bill French of BellSouth will arrange for the contact between Intermedia and BellSouth to begin the negotiations to amend the Local Interconnection Agreement.

We apologize for the misunderstanding regarding the statement made by Fred Monacelli of BellSouth regarding the application of the rate for the "node function", however, Fred was correct when he stated that if BellSouth provides the "node function" the rate will apply and if BellSouth does not provide the "node function" the rate will not apply. In the current situation, BellSouth is providing the "node function" in accordance with the resale provision of SynchroNet Service in the Local Interconnection Agreement, therefore, the rate does apply. We believe that this misunderstanding will be cleared up during the above negotiations for the amendment to the agreement.

3. Issue: "In a letter dated July 11, ICI requested, among other things, subloop unbundling arrangements. BellSouth responded with a two-paragraph statement that such an arrangement was technically infeasible and could not be accomplished by BellSouth's LFACS [Loop Facilities Assignment and Control Systems] and TIRKS [Trunk Inventory and Record Keeping Systems] network management systems. A copy of ICI's request and BellSouth's response are attached for your review. [Not attached hereto] During our conference call, we requested that BellSouth provide a more detailed response to our request. In particular, we requested that BellSouth discuss the relative distribution of Integrated Digital Loop Carriers and Universal Digital Loop Carriers throughout its network, and discuss whether subloop unbundling could be made more readily available in cases where UDLCS or next generation loop carriers were deployed. Finally, BellSouth's letter responding to ICI's request suggests that manual records could be used to record the trunk assignments necessitated by subloop unbundling. We would like to explore the possibility of using such records to implement the unbundling sought by ICI -- at least on an interim basis -- until more permanent arrangements can be established."

Response: The BellSouth letter dated September 10, 1996, which responded to Intermedia's July 11, 1996, letter did not suggest that manual records could be used to record the trunk assignments necessitated by subloop unbundling, but rather a concern was expressed that a manual record process would conflict with BellSouth's mechanized systems. Additionally, a manual process of this magnitude would not be advantageous for either BellSouth or Intermedia and would be a very expensive way of doing business. The letter further states that there is no technically feasible method to segregate the concentration portion of the carrier system from the feeder transport. Your request for the line side loop unbundling that supports a multi-host environment has been escalated to a group of subject matter experts to further evaluate the feasibility of providing such an arrangement. Further information from Intermedia to be provided through the Bona Fide Request [BFR] process will be needed to complete the evaluation of data already provided by Intermedia through previous correspondence and discussions between our companies. Bill French will be in contact with Intermedia; individuals to be designated by Intermedia. Bill will also continue to follow this request until the evaluation is finalized.

4. Issue: "To date, ICI has been unable to obtain call record detail from BellSouth in electronic format. While BellSouth has provided ICI with copies of paper bills, it is not economical for ICI to use the information in this format to generate its own bills. We need to establish a process for providing ICI with electronic call record detail, either on floppy disks or via e-mail."

Response: Information was faxed to Tom Allen on Wednesday, January 22, 1997, by Pam Kruse of BellSouth. We believe the information faxed to Intermedia will satisfy its concerns. Bill French and Pam Kruse will follow-up on this issue with Intermedia early next week.

5. Issue: "As a result of recent discussions with BellSouth personnel, two issues have arisen regarding the application of nonrecurring charges in the context of interconnection:

- "A. We seek clarification that, when ICI resells BellSouth service, the applicable wholesale discounts apply to all of the service elements that are listed in the retail tariff -- including nonrecurring charges.
- "B. We wish to confirm that, when a customer that currently takes service from BellSouth pursuant to a long term contract switches to BellSouth service resold by ICI, ICI assumes the customer's obligation for the remainder of the contract term, and no termination liability charges would apply as a result."

Response:

A. The Local Interconnection Agreement between Intermedia and BellSouth does not provide for discounted nonrecurring charges on resold services. In the Florida Order [Order No. PSC-96-1579-FOF-TP] issued December 31, 1996, regarding the AT&T/MCI Arbitration, the Florida Commission requires that discounted nonrecurring charges be provided to those companies. ICI may, in turn, obtain similar provisions for Florida only in an amendment to the Local Interconnection Agreement between BellSouth and Intermedia. This item will be negotiated, as appropriate, on a state-by-state basis. Bill French will arrange for the contact between Intermedia and BellSouth to begin the negotiations to amend the Local Interconnection Agreement.

B. BellSouth agrees to allow transfer of service contracts to Intermedia as long as Intermedia agrees to assume the terms and conditions of the contract and all past and current indebtedness associated with the transferred service. If the transfer involves a portion of the service, details of the transfer will be worked out. If the transferred service is disconnected in whole or part prior to the expiration of the contract, termination liability charges will apply. In addition, any nonrecurring charges associated with the transfer of service[s] will be the responsibility of Intermedia.

I was happy to assist you with your requests and I trust that the above information and the contacts scheduled to finalize the outstanding issues will be sufficient to continue the working relationship between BellSouth and Intermedia to come to a satisfactory resolution for both companies.

Yours truly,


Whit Jordan
Executive Director - Federal Regulatory
BellSouth Corporation

© Bellsouth

BellSouth Interconnection
South 7461
3535 Colonnade Parkway
Birmingham, Alabama 35243

Richard A. Dender
Account Manager

September 10, 1996

Mr. Tom Allen
Vice President - Strategic Planning
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, Florida 33618

Dear Tom:

In regard to your letter of July 11, 1996, BellSouth can provide the unbundled frame relay loop and the unbundled ISDN loop as requested by Intermedia Communications, Inc. (ICI). However, BST cannot provide the "line side loop unbundling that supports a multi-host environment".

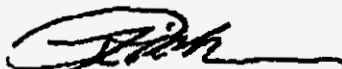
The frame relay loop can be provisioned by using the loop portion of BST's existing DDAS or SynchroNet services. BST will provision these services at their existing tariffed rates. Also, BST has developed unbundled ISDN loops and can provision them in Florida for \$43.00 per month. BST understands that it may have to re-price these services at TELRIC if that portion of the FCC Order becomes final.

Concerning the request for "line side loop unbundling that supports a multi-host environment", our staff has reviewed ICI's comments to the FCC on this matter and have determined that BellSouth's operations and support systems, particularly the Loop Facilities Assignment and Control System (LFACS) and Trunk Inventory and Record Keeping System (TIRKS), cannot handle assignment and administration of this small portion of a carrier system. Manual records would need to be maintained that would conflict with BellSouth's mechanized systems.

There is no technically feasible method to segregate the concentration portion of the carrier system from the feeder transport to it. The systems are designed as a single entity and cannot be separated. This means that the concentration portion and the feeder transport portion are one entity. They provide the necessary facilities to transport and concentrate loop facilities from the central office to the remote terminal.

If you would like to discuss this further, please call me at 205-977-5966.

Sincerely,



Rich Dender

USA
GOV
12/20/96

Post-It Brand fax transmittal memo 7571 (4 of pages)	To: Tom Allen	From: Jerry Hendrix
	Ca:	Ca:
	Dept:	Phone:

SynchroNet Service

DDAS = 194 629 969-502

	AL	GA	FL	KY	LA	MS	NC	SC	TN
Digital Local Channel									
56 Kbps									
Monthly <i>Fixed</i>	\$70.00	\$70.00	\$89.10	\$70.00	\$70.00	\$70.00	\$84.00	\$70.00	\$70.00
24-42 Months	\$85.00	\$85.00	\$62.00	\$85.00	\$85.00	\$85.00	\$80.00	\$85.00	\$85.00
43-60 Months	\$80.00	\$80.00	\$55.00	\$80.00	\$80.00	\$80.00	\$55.00	\$80.00	\$80.00
IOC									
0-8 Miles, 56 Kbps <i>increase No miles</i>									
Monthly	\$40.00	\$40.00	\$37.55	\$40.00	\$40.00	\$40.00	\$30.00	\$40.00	\$40.00
24-42 Months	\$38.00	\$38.00	\$33.75	\$38.00	\$38.00	\$38.00	\$28.00	\$38.00	\$38.00
43-60 Months	\$34.00	\$34.00	\$30.00	\$34.00	\$34.00	\$34.00	\$25.00	\$34.00	\$34.00
Discounted/Resale Amount									
Digital Local Channel									
56 Kbps									
Monthly	\$63.00	\$63.00 <i>58.59</i>	\$60.81	\$64.40	\$63.00	\$64.40	\$58.24	\$63.70	\$63.70
24-42 Months	\$58.50	\$58.50	\$54.58	\$59.80	\$58.50	\$59.80	\$54.80	\$59.15	\$59.15
43-60 Months	\$54.00	\$54.00	\$48.40	\$55.20	\$54.00	\$55.20	\$50.05	\$54.60	\$54.60
Discounted/Resale Amount									
IOC									
0-8 Miles, 56 Kbps									
Monthly	\$36.00	\$36.00	\$33.04	\$38.80	\$38.00	\$36.80	\$27.30	\$38.40	\$38.40
24-42 Months	\$32.40	\$32.40	\$29.70	\$33.12	\$32.40	\$33.12	\$25.48	\$32.76	\$32.76
43-60 Months	\$30.60	\$30.60	\$26.40	\$31.28	\$30.60	\$31.28	\$22.75	\$30.94	\$30.94
<p><i>17.3%</i></p> <p>NOTE: Discounted/Resale amounts reflect the resale discounted rate, as of 5/29/86, for each respective state. AL 10%, FL 12%, GA 8.0%, KY 8%, LA 10%, MS 8%, NC 9%, SC 9% TN 9%</p> <p>NOTE: NC rates are applicable to 43 to 72 months.</p> <p><i>Ca. will be 17.3% ONCE ORDER BECOMES FINAL 6/15/94</i></p>									

CERTIFICATE OF SERVICE

DIRECT TESTIMONY
JULIA STROW

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery*, Federal Express** and/or U.S. Mail this 17th day of July, 1997, to the following:

Jeffrey J. Walker**
Regulatory Counsel
Preferred Carrier Services,
Inc.
1425 Greenway Drive
Suite 210
Irving, Texas 75038

Laura L. Wilson*
Charles F. Dudley
Florida Cable Telecommunications
Association
310 North Monroe Street
Tallahassee, FL 32301

Andrew O. Isar**
Director-Industry Relations
Telecommunications Resellers
Assoc.
P.O. Box 2461
Gig Harbor, WA 98335-4461

Monica Barone*
Division of Legal Services
Florida Public Service Comm.
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Steve Brown
Intermedia Communications Inc.
3625 Queen Palm Drive
Tampa, FL 33619-1309

Rick Melson*
Hopping Green Sams & Smith
123 South Calhoun Street
Post Office Box 6526
Tallahassee, FL 32314

C. Everett Boyd, Jr.*
Ervin, Varn, Jacobs,
Odom & Ervin
P.O. Drawer 1170
Tallahassee, FL 32302

Floyd R. Self*
Messer, Caparello, Madsen,
Goldman & Metz
Post Office Box 1876
Tallahassee, FL 32302-1876

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