

ORIGINAL

Legal Department

J. PHILLIP CARVER
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0710

September 23, 1997

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

RE: Docket No. 960786-TL

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence. Please file this in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver
J. Phillip Carver
(cc)

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU *Carver*
- CTR _____
- EAG _____
- LEG 2 Enclosures
- LIN 5 cc: All Parties of Record
- OPD _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

All Parties of Record
A. M. Lombardo
R. G. Beatty
W. J. Ellenberg

RECEIVED & FILED

[Signature]
FPSC-DIVISION OF RECORDS

DOCUMENT NUMBER-DATE
09699 SEP 23 1997
FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
DOCKET NO. 960786-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 23rd day of September, 1997 to the following:

Mr. Brian Sulmonetti
LDDS WorldCom Communications
Suite 400
1515 S. Federal Highway
Boca Raton, FL 33432
(407) 750-2529

Floyd R. Self, Esq.
Norman H. Horton, Esq.
Messer, Caparello, Madsen,
Goldman & Metz, P.A.
215 South Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Atty. for LDDS WorldCom Comm.
(904) 222-0720

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Atty. for FCCA
(904) 222-2525

Thomas K. Bond
MCI Telecommunications Corp.
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342
(404) 267-6315

Richard D. Melson
Hopping Green Sams & Smith
123 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314
(904) 222-7500

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs,
Odom & Ervin
305 South Gadsden Street
P.O. Drawer 1170
Tallahassee, FL 32302
Atty. for Sprint
(904) 224-9135

Benjamin W. Fincher
3100 Cumberland Circle
Atlanta, Georgia 30339
Atty. for Sprint
(404) 649-5145

Monica Barone
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Patrick K. Wiggins, Esq.
Donna L. Canzano, Esq.
Wiggins & Villacorta, P.A.
501 East Tennessee Street
Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302
Tel. (904) 222-1534
Fax. (904) 222-1689
Attys. for Intermedia

Patricia Kurlin
Intermedia Comm., Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309
(813) 829-0011

Peter M. Dunbar, Esq.
Robert S. Cohen, Esq.
Pennington, Culpepper, Moore,
Wilkinson, Dunbar &
Dunlap, P.A.
215 South Monroe Street
2nd Floor
Post Office Box 10095
Tallahassee, FL 32302
(904) 222-3533

Sue E. Weiske, Esq.
Time Warner Communications
160 Inverness Drive West
2nd Floor North
Englewood, Colorado 80112
(303) 799-5513

Tracy Hatch, Esq.
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
(904) 425-6364

Marsha E. Rule, Esq.
c/o Doris M. Franklin
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301

Andrew O. Isar
Director - Industry Relations
Telecomm. Resellers Assoc.
4312 92nd Avenue, N.W.
P.O. Box 2461
Gig Harbor, WA 98335-4461
(206) 265-3910

Richard M. Rindler
Swindler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Tel. (202) 424-7771
Fax. (202) 424-7645

Kenneth A. Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 South Monroe Street
Suite 420
Tallahassee, FL 32301-1841
(850) 681-6788

Mr. Paul Kouroupas
TCG-Washington
2 Lafayette Centre
1133 Twenty First Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 739-0030

Laura L. Wilson
Vice President
Regulatory Affairs
Florida Cable Telecomm. Assoc.
310 North Monroe Street
Tallahassee, FL 32301
Tel. (904) 681-1990
Fax. (904) 681-9676

John R. Marks, III
Knowles, Marks & Randolph
528 East Park Avenue
Tallahassee, Florida 32301
Tel. (850) 222-3768
Fax. (850) 561-0397

Kenneth S. Ruth, Florida
Director
COMMUNICATIONS WORKERS OF
AMERICA
1040 Woodcock Road
Suite 200
Orlando, FL 32813-3515
Tel. (407) 894-9781
Fax. (407) 894-9684


J. Phillip Carver (or)

TABLE OF CONTENTS

<u>STATEMENT OF THE CASE</u>	1
<u>STATEMENT OF BASIC POSITION</u>	2
<u>Issue 1.A.</u> : Has BellSouth met the requirements of Section 271(c)(1)(A) of the Telecommunications Act of 1996?.....	5
(a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?.....	5
(b) Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?.....	5
(c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?.....	5
<u>Issue 1.B.</u> : Has BellSouth met the requirements of Section 271(c)(1)(B) of the Telecommunications Act of 1996?.....	12
(a) Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?.....	12
(b) Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?.....	12
<u>Issue 1.C.</u> : Can BellSouth meet the requirements of Section 271(c)(1) through a combination of Track A (Section 271(c)(1)(A)) and Track B (Section 271(c)(1)(B))? If so, has BellSouth met all of the requirements of those sections?.....	18
<u>Issue 2</u> : Has BellSouth provided interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?.....	22
<u>Issue 3</u> : Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?.....	26
(a) Has BellSouth developed performance standards and measurements?	

If so, are they being met?.....	44
<u>Issue 4:</u> Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?.....	48
<u>Issue 5:</u> Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?.....	49
<u>Issue 6:</u> Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?.....	51
<u>Issue 7:</u> Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?.....	53
<u>Issue 8:</u> Has BellSouth provided nondiscriminatory access to the following, pursuant to Section 271(c)(B)(vii) and applicable rules promulgated by the FCC:.....	58
(a) 911 and E911 services.....	58
(b) Directory Assistance Services to allow the other telecommunications carrier's customers to obtain telephone numbers; and.....	59
(c) Operator call completion services?.....	61
<u>Issue 9:</u> Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(B)(viii) and applicable rules promulgated by the FCC?.....	61
<u>Issue 10:</u> Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?.....	63
<u>Issue 11:</u> Has BellSouth provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?.....	64

<u>Issue 12:</u> Has BellSouth provided number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?.....	66
<u>Issue 13:</u> Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?.....	69
<u>Issue 14:</u> Has BellSouth provided reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?.....	71
<u>Issue 15:</u> Has BellSouth provided telecommunications services available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?.....	72
(a) Has BellSouth developed performance standards and measurements? If so, are they being met?.....	75
<u>Issue 16:</u> By what date does BellSouth propose to provide interLATA [sic] toll dialing parity throughout Florida, pursuant to Section 271(e)(2)(A) of the Telecommunications Act of 1996?.....	75
<u>Issue 17:</u> If the answer to issues 2-15 is “yes”, have those requirements been met in a single agreement or through a combination of agreements?.....	77
<u>Issue 18:</u> Should this docket be closed?.....	78
<u>CONCLUSION</u>	79

STATEMENT OF THE CASE

Section 271(d) of the Telecommunications Act of 1996 ("Act") provides that a Bell Operating Company ("BOC") or its affiliate may apply to the Federal Communications Commission ("FCC" or "Commission") at any time after the date of enactment for "authorization to provide interlata services originating in any in-region state". This section of the Act further provides that the Commission shall issue within 90 days a written determination either approving or denying the requested authorization (§ 271(d)(3)). In order to approve an application, the FCC must find that the BOC has satisfied the requirements of 271(c)(1) and 371(c)(2). The Act further provides as follows:

(B) CONSULTATION WITH STATE COMMISSIONS.--Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of subsection (c).

On June 28, 1996, the Florida Public Service Commission ("Commission") opened the subject docket in order to undertake its consultative role to the FCC. Subsequently, 18 issues (with subparts) were identified for resolution in this proceeding. On June 12, 1997, the Commission issued Order No. PSC-97-0703-PCO-TL, which set the hearing in this matter to begin on September 2, 1997. The hearing took place on September 2-5, 8, and 10. BellSouth presented the direct and rebuttal testimony of Alphonso J. Varner, Senior Director for Regulatory; Robert C. Scheye, Senior Director; W. Keith Milner, Director of Interconnection Operations; Gloria Calhoun, Director of Regulatory Planning; and William N. Stacy, Assistant Vice President-Services for Interconnection Operations. Testimony was also given by

seventeen other witnesses, who appeared on behalf of nine intervenors.¹ One intervenor, Time Warner, withdrew the testimony of its witness during the hearing. The hearing produced a transcript of 3545 pages and 125 exhibits.

This Brief of the Evidence is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. A summary of BellSouth's position on each of the issues to be resolved in this docket is set forth immediately after the statement of the respective issue, and is marked with an asterisk.

STATEMENT OF BASIC POSITION

In this proceeding, BellSouth requests that this Commission issue an Order approving its Statement of Generally Available Terms and Conditions ("Statement" or "SGAT") under Section 252(f). BellSouth also requests that this Commission, acting in its consultative role under Section 271(d)(2)(B), find that BellSouth's Statement satisfies the 14-point competitive checklist in 271(c)(2)(B) and set forth in its Order *factual findings sufficient* to support the conclusion that the requirements of § 271(c)(1) have been met in Florida.

BellSouth's Statement makes available to alternative local exchange carriers ("ALECs") in Florida each of the functions, capabilities, and services that the Act requires in order to allow them to enter the local exchange market. These functions, capabilities and services (and the associated rates) that BST must make available pursuant to Sections 251 and 252(d) of the Act are identical to the items set forth in the 14-point competitive checklist

¹ The intervenors to this action were American Communications Services of Jacksonville, Inc. (ACSI); AT&T Communications of the Southern States, Inc. (AT&T); Florida Competitive Carriers Association (FCCA); Florida Cable Telecommunications Association (FCTA); Intermedia Communications, Inc. (Intermedia or ICI); MCI Telecommunications Corporation (MCI); Metropolitan Fiber Systems of Florida, Inc., and Worldcom, Inc. (WorldCom); Sprint Communications Company Limited Partnership and Sprint Metropolitan Networks, Inc. (SPRINT/SMNI); Teleport Communications Group, Inc. (TCG); and Time Warner AxS of Florida, L.P. and Digital Media Partners (Time Warner).

contained in Section 271 of the Act. Therefore, in finding that BST's Statement satisfies BST's obligations under Section 251 and 252(d), the Commission will simultaneously conclude that the Statement meets the competitive checklist in Section 271(c)(2)(B).

The Act requires only that BST make available the functions, capabilities and services in compliance with Section 251 and 252(d); it does not require that they be implemented on any particular scale or in any particular quantity. Although not all of the functions, capabilities and services in the Statement have been used by ALECs in Florida there is ample record evidence to conclude that BellSouth has actually provided each item described in the 14-point competitive checklist in Florida. (See, Ex. 20).

Commission approval of BellSouth's Statement will allow BellSouth to take the first step in the process it must follow to obtain interLATA authority--the filing of an application with the FCC. There is no serious dispute that BellSouth's entry into the interLATA market in Florida will bring significant consumer benefits to that market. Moreover, allowing BST entry into the interLATA market in Florida will provide appropriate incentives for the potential major players in the local market that are currently in the long distance market--particularly AT&T, MCI and Sprint--to begin construction of facilities-based networks of their own. Unfortunately, these intervenors still operate under perverse financial incentives that delay, not facilitate, the development of local competition for residence and business customers in Florida. By delaying BellSouth's entry into the long distance market, they protect that lucrative market from substantial competition.

The record in this proceeding is replete with examples of the extreme attempts (both procedurally and substantively) that the various intervenors have made to delay this

Commission's approval of BellSouth's Statement. These attempts have included arguing for hypertechnical constructions of the Act that would make § 271 relief a virtual impossibility; attempting to engraft onto the fourteen point checklist additional requirements beyond those listed in the Act; wildly conjecturing as to possible future problems with BellSouth's offerings; and wrongly extrapolating from any alleged problem with any BellSouth offering that the offering is inadequate to meet the checklist. The Commission should reject the numerous claims asserted by the Intervenors in this proceeding both in opposition to approval to the Statement and to a finding by this Commission that BellSouth has complied fully with the fourteen point checklist.

Again, the local market is open to competition once the incumbent LEC has made the functions, capabilities, and services described in Section 251 (and summarized in the competitive checklist under Section 271) available to competitors. This docket is not the place to reargue policy issues regarding the appropriate circumstances under which a Bell Operating Company ("BOC") may enter into the interLATA market. Congress has spoken to this issue. Rather, the Commission should use this docket as a vehicle to move forward as expeditiously as possible to attain the ultimate goal of the Act--competition in all telecommunications markets in Florida.

Finally, this Commission should utilize this docket to set forth factual findings to demonstrate that the requirements of 271(c)(1) have been met in Florida. Specifically, there are currently facilities-based providers offering services to both business and residential customers in Florida. Thus, the requirements of Track A have been met. At the same time, there are a number of potential new entrants in the local market that either have made no specific plans to

offer service to residential customers or who, although purporting to have done so, have done absolutely nothing to utilize the interconnection agreements into which they have entered for this purpose. Thus, the facts demonstrate that even if BellSouth were not eligible to file an application with the FCC pursuant to Track A, it should remain eligible for Track B.

STATEMENT OF POSITIONS ON THE ISSUES

Issue 1.A.: Has BellSouth met the requirements of Section 271(c)(1)(A) of the Telecommunications Act of 1996?

****Position:** Yes. However, this Commission need not reach a conclusion as to whether BellSouth should file its application with the FCC pursuant to Track A or B. Instead, this Commission should develop as complete a factual record as possible to allow the FCC to consider which Track is appropriate. Nevertheless, BellSouth believes that Track A has been met.

(a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?

(b) Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?

(c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

****Position:** Yes. (a) BellSouth has entered into a number of binding agreements approved under Section 252 with unaffiliated competing providers; (b) BellSouth is

providing access and interconnection to competitive providers that (c) are providing service to residential and business customers.

BellSouth's consistent position in this docket has been that the FCC is the agency charged with the responsibility under the 1996 Act to determine whether the requirements of Track A or Track B are satisfied based upon the record before it at the time the application is filed. Therefore, this Commission need not reach this issue at this time.

As this Commission is well aware, its role under Section 271 is specifically spelled out in the Act -- to consult with the FCC after a Bell Operating Company ("BOC") has applied for in-region interLATA authority to verify that either a state-approved interconnection agreement(s) and/or statement of generally available terms and conditions satisfies the competitive checklist. See 47 U.S.C. § 271(d)(2)(B). The FCC determines the issue of whether Track A or Track B is the appropriate route to pursue based upon the conditions in the marketplace at the time the application is filed. Consequently, BellSouth has not requested this Commission to endorse either approach. BellSouth has requested that this Commission approve BellSouth's statement under Section 252(f) and find that BellSouth's statement satisfies the 14-point competitive checklist in Section 271(c)(2)(B).

At the same time, BellSouth's witness, Alphonso Varner stressed that "it is also important for the Commission to assess the current market conditions existing in Florida. This assessment will assist this Commission in consulting with the FCC as to whether BellSouth has met the requirements . . ." of Track A or Track B (TR. 108-09). This, of course, raises the question of what BellSouth believes the Commission should do specifically and if it is

necessary to relate to the FCC an opinion as to whether BellSouth meets Track A or Track B.

During the hearing, Mr. Varner stated the following on this point:

I think what you are doing is that you are gathering the information that you will need in order to be able to tell the FCC what the conditions are in Florida so that they'll be able to make that determination when the application is filed. You will be in a position to know whether or not we have agreements with competitors, whether they are providing service to residents and business customers, . . . [and] ...whether they are doing it over their own facilities or not. That's the information that you will need to give the FCC for them to make the determination on whether or not the appropriate Track is followed when we file.

(Tr. 365-66).

Mr. Varner went on to respond to a follow-up question by Commission Clark as follows:

Commission Clark: Why doesn't that include a recommendation from us that we think one or the other is appropriate?

Witness Varner: Oh it can. There is nothing that prevents that from happening. All I was pointing out here is that you don't have to.

Commission Clark: Okay. Would you prefer we didn't?

Witness Varner: No. I think you should do whichever one you feel most comfortable with.

(Tr. 367-68).

This exchange set forth succinctly BellSouth's position as to this Commission's role regarding Track A/Track B. The primary role is to gather information. Beyond this, the Commission may provide the FCC with a benefit of its opinion as to whether BellSouth should file under Track A or Track B, or it may decline to provide this opinion.

All of the above leads to what should be the paramount goal of this proceeding: to determine whether the local market is open, i.e., whether BellSouth has made available the tools for competition. The Act was enacted “to provide for a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition”. S.Rep.No. 230, 104th Cong, 2d sess.(1996)(Conference Report). Given this, the inquiry as to whether competition has been made possible by the efforts of any particular BOC to open its market should involve simply determining what the company offers (either by way of Agreements or the SGAT) and whether those offerings are adequate to allow new entrants to compete. The application of the Act should be consistent with the spirit of it, meaning that the overriding question of what will benefit competition in all markets should inform every consideration. The Act should not be read (nor should any asserted reading be allowed) to hinder the competitive efforts of any provider, either long distance carrier or ILEC.

Regrettably, this has not been the approach taken by the various intervenors in this docket who oppose BellSouth’s application. Instead, they have argued in the past through a myriad of motions for a hypertechnical construction of Section 271(c)(1) in order to cast BellSouth into a sort of limbo in which the existence of interconnection agreements would prevent BellSouth from being Track B compliant, while the disinclination of many of these same intervenors to use these interconnection agreements to enter the market perpetually hamstring BellSouth’s efforts to comply with Track A. Put simply, this is not what the Act is about, and the technical skirmishing of the various intervenors should be rejected in favor of a

consideration of the simple question of whether the market is open. Having stated the foregoing, BellSouth will also state that it believes that Track A has been met in Florida. The facts that demonstrate this are relatively straightforward.

BellSouth has entered into over 55 local interconnection agreements in Florida (Tr. 108), many (or all) of which have been approved by this Commission. This fact would appear to be uncontroverted, and the straightforward answer to Issue 1A.(a) is “yes”.

As to 1A.(b), it is equally uncontroverted that BellSouth is providing access and interconnection to its network facilities for competing providers.² However, the various intervenors have almost uniformly answered this question in the negative, as one would expect them to do, given their uniform opposition to BellSouth’s entry into the long distance market and their obvious business reasons for opposing this entry. At the same time, a review of the positions of the parties (as reflected in the Pre-Hearing Order, pp. 19-23) reveals that no intervenor really contends that interconnection and access is not being provided. In fact, BellSouth established through the testimony of Mr. Milner that offerings that address each and every one of the fourteen checklist items have not only been made to interconnectors, they have actually been ordered. (See also, Ex. 20, “Checklist Items Which Are Available”). There was *no testimony offered* by any party to contradict this fact. Instead, the position of most parties would appear not to be that BellSouth has not provided *interconnection and access*, but rather that the interconnection and access offered is, for one reason or another, *not adequate* to meet the requirements of the checklist. Obviously, BellSouth disagrees with this conclusion, and

² Although presumably this issue has been laid to rest, there may be some debate among the parties as to what it means to “provide” access and interconnection. As set forth below as a part of the response to Issue 1B, it is clear under both the Act and the recent FCC Orders that to “provide” an item can either mean to “furnish” it, or, alternatively, to make it available.

submits that its offerings (as they appear both in Interconnection Agreements and in the SGAT) fully satisfy the requirements of the 14 point checklist.³

Section 271(c)(1)(A) requires for compliance with “Track A” that BellSouth provide “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. “Telephone exchange service” is defined for the purposes of this subsection as service “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 a telecommunications service of another carrier.” (271(c)(1)(A)). Thus, the Act does not require that a particular volume of customers be served. Instead, it requires only that BellSouth provide interconnection and access to one or more facilities-based providers that, taken together, serve at least one residential and one business customer.

No doubt some parties in this proceeding will argue that, contrary to the clear language of the Act, Track A requires a huge volume of customers be served by the new entrant. This approach, however, is not only unsupported by the language of the Act, it is a transparent effort to erect impediments to BellSouth’s entry into the long distance market that are inconsistent with both the language and the goals of the Act.

There is no question but that this requirement is met as to business customers. No less than five interconnectors⁴ are currently serving customers in a way that meets this

³ BellSouth sets forth more specific support for this position in response to issues 2-15, and, therefore, will not reiterate it here.

requirement. At the same time, the record evidence shows that there are currently at least two facilities-based providers that are serving residential customers. (1) It also became clear from an answer provided on behalf of MediaOne, that it is serving residential customers in two different local markets in Florida. (Ex. 87). (2) Mr. Paul Kouroupas testified on behalf of TCG that it is currently providing service that is 100% facilities-based to at least one company that is, in turn, reselling this service to residential subscribers. (TR. 3503; Ex. 123, Late filed Exhibit No. 5 to Kouroupas Deposition) Thus, it is clear that facilities-based providers that have interconnection agreements with BellSouth are providing service (albeit one by way of a reseller) to residential customers.

Presumably, some parties will contend that since TCG's customer is a business, the provision of service to residential customers by this business/reseller does not satisfy Track A. BellSouth will respond only briefly to this contention because it is so obviously contrary to the purpose of this subsection of the Act, which is to ensure that residential service is being provided by a new entrant that presents an alternative to service by the incumbent LEC. In this instance, facilities owned by an ALEC are being utilized to provide local service to residential customers. Nothing about the presence of a reseller between TCG and the residential customers changes this. Moreover, if the existence of a reseller were deemed to make this offering of service noncompliant, then presumably any company that wished to serve residential customers with its own facilities, while avoiding a situation that satisfies Track A, could do so by providing service through an intermediary. Clearly, this is not the result intended by the Act. Instead, the service provided by TCG satisfies this portion of the requirements of Track A.

⁴ MCI (Tr. 3163-67); ICI (Ex. 79, Strow Deposition, p. 21); Sprint (Ex. 89, Closz Deposition, pp. 49-52); TCG (Ex. 123, Kouroupas Deposition, p. 7); MediaOne (Ex. 87).

Issue 1.B.: Has BellSouth met the requirements of Section 271(c)(1)(B) of the Telecommunications Act of 1996?

(a) Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?

****Position:** Yes, and agreements have been entered into, as described above in answer to Issue 1. It is unclear, however, whether the requests that have resulted in interconnection agreements that remain unutilized constitute "qualifying requests."

(b) Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?

****Position:** Not yet. BellSouth's Statement has not yet been approved by this Commission. BellSouth's Statement, however, is fully compliant with Section 252(f) and should be approved.

To address Issue 1.B., (b) somewhat out of sequence, BellSouth has filed a Statement of Generally Available Terms and Conditions, and this SGAT meets each of the fourteen checklist items. Given the exact wording of the issue, and the circumstances surrounding the development of this wording, which was discussed at length during the argument of the various intervenors' motion to strike SGAT (TR. 2001-2079), the literal answer to part 1.B. would be "No, BellSouth has not yet met the agreement." The final version of the SGAT was filed on September 18, 1997, (Ex. 125) and it was precisely the same as the revised draft SGAT filed on August 25, 1997. The specifics of the various offerings that satisfy the

checklist items are addressed respectively in Issues 2-15. Under each of these issues, BellSouth discusses the specific reasons that the pertinent portion of the SGAT complies with the particular checklist item. For the reasons set forth in the context of those discussions, the Commission should find that BellSouth has satisfied the checklist through each of its offerings, and should also approve the SGAT.

Having said this, a more difficult question arises, i.e., whether the SGAT can be used to support a viable Track B application by BellSouth. For the reasons set forth below, BellSouth submits that this question also should be answered in the affirmative. As set forth previously, 271(c)(1) requires BellSouth to provide access and interconnection for the “network facilities” of one or more “unaffiliated competing providers” of telephone exchange service. The second sentence of Track A requires that the competitor’s “network facilities” be sufficient to make the competitor “exclusively” or “predominantly” facilities-based. (271(1)(A)). Thus, unquestionably, Track A requires the presence of a “unaffiliated competing provider”. In order to meet this requirement, it is necessary that the provider have network facilities of its own over which it is actually delivering telephone exchange service.

These provisions of Track A are attributable to the belief of Congress that cable companies would emerge quickly as facilities-based local market competitors. The Conference Report stated in this regard that “[s]ome of the initial forays of cable companies into the field of local telephony . . . hold the promise of providing the sort of local residential competition that has consistently been contemplated”. (Conference Report, at 148). Because of the possibility that cable companies would emerge quickly as facilities-based competitors to local telephone companies, Congress created Track A to permit an expedited route for BOCs to enter the long

distance market (unlike Track B, Track A requires no waiting period). It is clear from the language of the Act, that Congress intended that Track A would be available for facilities-based providers that are already in the market. Thus, in order to determine whether BellSouth is eligible for Track B would require a factual record adequate to determine if any of the interconnection agreements that have been entered into by BellSouth are with companies that were providing local service by way of their own facilities at the time of the request. There is no evidence in the record to suggest that this is the case. Thus, if this Commission determines (or creates a factual record that supports a determination) that BellSouth has not met Track A, then BellSouth should continue to be eligible for Track B entry.

Despite the clear language of the Act, the FCC interpreted this language to mean that a facilities-based provider is not necessarily required in order to make Track B unavailable to a BOC (Memorandum Opinion and Order, CC Docket No. 97-121, par. 50-52)(hereinafter “SBC”). Instead, the FCC held in the SBC case that a request by a new entrant that has the “potential” to be a facilities-based provider is enough to make Track B unavailable. However, even while creating a standard that is considerably stricter than anything contemplated by the Act, the FCC also made it clear that not every request for interconnection is a “qualifying request”. Instead, the FCC stated that a qualifying request is “one that, if implemented, will satisfy Section 271(c)(1)(A).” (SBC, par. 54).

The FCC further stated the following:

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. 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.

(SBC, par. 56)

The FCC went on to note “the incentive of potential local exchange competitors to delay the BOC’s entry into in-region interLATA services” (SBC, par. 57) and the resulting need to scrutinize the behavior of new entrants that have requested interconnection:

We recognize...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).

(SBC, par. 57).

Further, the FCC noted that, even after it has determined that Track B “is foreclosed in a particular state”, it would, nevertheless, “reevaluate whether [a BOC] 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).” (SBC, par. 58).

Therefore, it is of extreme importance for this Commission to develop a factual record as to whether the type of market entry by ALECs that would satisfy Track A is actually occurring. The difficulty in compiling this record arises from the fact that in Florida the largest ALECs-- which presumably have the greatest potential to provide competition--have been less than forthcoming as to when they plan to enter the market and in what manner. Mr. Gillan, who testified on behalf of numerous individual companies as well as a trade association with a host of ALEC members, stated that he had no information as to the specifics of the market entry plan of any of the carriers whom he represented (Tr. 1902-04). He also said he knew nothing about

the timing of their prospective entries. (Tr. 1906) Similarly, none of AT&T's witnesses knew any of the specifics of the company's entry plans in Florida. (Tr. 2715-2721).⁵ Ironically, the only witness who admitted to having knowledge of AT&T's business plans was the representative of TCG, Mr. Kouroupas, who stated that "AT&T has made no secret of the fact that they intend initially, at least, to offer service to customers on a resale basis by rebranding BellSouth's end-to-end local exchange service." (Tr. 3503-04). If Mr. Kouroupas is correct, then presumably the only persons who do not share this common knowledge are the three AT&T employees who the company selected to testify on its behalf.

Likewise, one of MCI's two witnesses, Mr. Gulino could provide no information as to when MCI plans to serve residential customers. (Tr. 3165) The other witness for MCI, Mr. Martinez, stated that when MCI begins to provide additional facilities-based service to business customers in the coming months, it may also provide service to residential customers who happen to be located along the routes of the pre-existing loops that MCI will lease from other carriers. (Tr. 3307-10). However, he also said that residential service in this manner is "highly unlikely." (Tr. 3309). Although few of the other ALECs were quite as disinclined (or, to give them the benefit of the doubt, unable) to reveal their market plans, none could be called forthcoming on this account.

BellSouth believes that the record evidence is sufficient to allow this Commission to conclude that many of the ALECs/Intervenors in this docket have made requests

⁵ On the pages cited, Mr. Hamman demonstrated at length his lack of knowledge regarding AT&T's market entry plans. Mr. Hamman was also asked specifically if AT&T had any witness in the proceeding who could "give the Commission more detail about AT&T's market entry plans." (Tr. 2719). Mr. Hamman responded by stating that "there are nor [sic] folks here from AT&T who are from the marketing organization who know the marketing plans. (Tr. 2719).

that may well not “qualify” under Track A because of the total lack of any indication that they will be providing facilities-based service to residential or business customers in the foreseeable future.

At the same time, several State Commissions in BellSouth’s region have undertaken to affirmatively require ALECs to report on their future market entry plans.⁶ Given the reticence of the carriers discussed above to provide their market plans, BellSouth believes that this Commission would do well to follow the lead of other states and request this information. The information gathered through this effort would allow this Commission to continue to supplement the factual record so that in the event that BellSouth does file a Track B application, there would be adequate information to allow the FCC to make a determination as to whether the disinclination of any of these carriers to enter the market to date (and expressed vagueness as to future plans) does, in fact, reflect a business decision to simply postpone market entry for some undisclosed reason.

Indeed, this information would be useful in any event in that the FCC has made clear that it expects the State Commissions to develop and submit to it “a record concerning the state of local competition as part of its consultation.” Ameritech Order, at 34.⁷ According to the FCC, the State commissions “should, if possible, submit information concerning the identity

⁶ See E. G., Order of the North Carolina Utilities Commission, Docket No. P-55, Sub 1022, August 11, 1997, which requires ALECs to file monthly reports. See also, the Alabama Public Service Commission’s “Survey of Competitive Local Exchange Carriers.” Copies of the North Carolina Order and the Alabama Survey are attached as Appendix “B”.

⁷ During the hearing, Chairman Johnson requested that BellSouth provide its analysis of the instances in which “the Ameritech Order should be binding and where it should not?” (Tr. 375). BellSouth has provided that analysis as Appendix A to this brief.

and number of competing providers of local exchange service, as well as the number, type, and geographic location of customers served by such competing providers.” Id.

In any event, the hesitancy of some interconnectors to enter the local market creates, at a minimum, a factual question as to whether they are truly potential facilities-based competitors. Thus, this Commission might do well, if it believes that Track A has not been met, to decline to give an opinion as to whether Track B is available. Instead, the safer course would likely be to create a record for consideration by the FCC of the market conditions that currently pertain in Florida. As stated above, these conditions demonstrate a basis upon which the FCC may rule that Track B continues to remain open.

Issue 1.C.: Can BellSouth meet the requirements of Section 271(c)(1) through a combination of Track A (Section 271(c)(1)(A)) and Track B (Section 271(c)(1)(B))? If so, has BellSouth met all of the requirements of those sections?

****Position:** No. BellSouth cannot combine Track A and Track B. BellSouth can, however, utilize the Statement to demonstrate that checklist items are available even if it elects to file with the FCC an application for authority pursuant to Track A.

FCCA, AT&T and MCI (among others) made several attempts (both prior to and during the hearing) to have this Commission refuse to consider BellSouth's Statement because of BellSouth's alleged Track B ineligibility. The Commission wisely declined this invitation on each occasion. Undoubtedly, those intervenors will argue for such relief again in their post

hearings briefs. The Commission should again deny such efforts to prevent consideration of BellSouth's SGAT.

Even if this Commission could ultimately make a finding that BellSouth cannot pursue interLATA relief in Florida under Track B, this would not foreclose the Commission's approval of BellSouth's Statement, as these intervenors contend. To the contrary, BellSouth can rely on an approved Statement--not only under Track B, but also under Track A--to supplement one or more binding agreements in order to demonstrate full compliance with the 14-point competitive checklist. Although the FCC declined to reach this issue in the SBC Oklahoma case, FCC Order at ¶ 59, the Department of Justice explicitly endorsed using a Statement to meet checklist obligations under Track A under certain circumstances. (See Evaluation of the United States Department of Justice, *In re: Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, CC Docket No. 97-121, at 22-24 (May 16, 1997).

Moreover, the plain language of Section 271(c) supports the use of the SGAT in connection with Track A. As discussed previously 271(c)(1) provides the requirements that a BOC must meet either to satisfy Track A or Track B. In the next, separate subsection, 271(c)(2), the Act requires that the "access and interconnection that the BOC is providing", meet the competitive checklist. There is nothing in the language of Section 271 to suggest, as the intervenors have consistently argued, that the Statement cannot be used to demonstrate the availability of checklist items that have been "provided" to an interconnector (that is, made available) but not actually furnished.

Further, several intervenors have argued, and will presumably argue again in their briefs, that Ameritech somehow prevents this logical result. A close and correct reading of Ameritech, however, shows that it simply does not stand for this proposition. In Ameritech, AT&T and other intervenors contended that in order for an item to be “provided” pursuant to Track A, it had to actually be furnished (i.e., used), by an ALEC. (Ameritech, par. 112). Ameritech and Bell Atlantic argued that, to the contrary, an item may be provided either by furnishing it, or by making it available pursuant to a State approved interconnection agreement. (par. 109). The FCC rejected the argument of AT&T and the other IXCs, and accepted the contention of Ameritech. (par. 110). In the Ameritech case, however, Ameritech did not have a State Approved SGAT, and, therefore, did not propose the use of a State Approved SGAT as a means to demonstrate that the items were being made available in a concrete, legally binding manner.

At the same time, the FCC stated in dictum that merely to “offer” an item was not enough, since the offer might not be backed up by the ability to provide the item. (Id.). Certain intervenors have argued that this dictum means that a State Approved SGAT cannot be used to demonstrate the availability of a particular item if the BOC is filing an application under Track A. This contention is belied, however, by the facts: (1), Ameritech did not have a State Approved SGAT, (2) Ameritech did not suggest to the FCC that it consider whether a State Approved SGAT can constitute the sort of concrete binding obligation that will demonstrate availability. Moreover, in its dictum, the FCC did not make any reference whatsoever to a “State Approved SGAT”, “state approved agreement”, or a state approved “offer”. (See, paras.

107-115). The contention of certain intervenors that this is the meaning of the Ameritech decision simply is not supported by the language of that decision.

Moreover, this contention is illogical. The proper purpose of this proceeding, once again, should be to determine whether BellSouth has either furnished or made available the tools needed by new entrants in the local market to compete. This obviously necessitates that BellSouth's offerings be scrutinized. It makes no difference whether the scrutiny is based upon a review of the Statement or by review of the interconnection agreement, which, in BellSouth's case, contain the same offerings as those set forth in the SGAT. On the other hand, the benefit of the SGAT is that it provides in one place a comprehensive listing of all that BellSouth offers, and which it submits to be checklist compliant. The utility of the SGAT was demonstrated during the hearing by the fact that the principal policy witness, for several of the intervenors, Mr. Gillan, gave testimony that revealed that, in considering BellSouth's offerings, he relied considerably more on a review of the SGAT than on any Agreement (Tr. 1857-58).⁸ At the same time, in response to a direct question from Commissioner Clark, Mr. Gillan admitted "as an economist", that it made no difference whether the offerings scrutinized were contained in an SGAT or in an agreement. (Tr. 1918-19).

⁸ Mr. Gillan, in fact, appeared to lack even a rudimentary grasp of the contents of the two most comprehensive agreements.

Q. So you didn't actually look at, for example, the AT&T agreement, correct?

A. I can't recall if I looked at the contract itself. I may have. I may not have.

Q. Same with MCI, you may have and may not have?

A. That's correct?

(Tr. 1859).

BellSouth submits that to the extent an SGAT, such as BellSouth's, incorporates the terms of arbitrated agreements, it is as concrete and legally binding as the agreements themselves. Moreover, it should be obvious to everyone that once BellSouth obtains approval of its SGAT, it will not have the ability to unilaterally withdraw offerings or materially change the terms of the offerings without the threat of a swift response either by this Commission or by the FCC. In other words, even if BellSouth's SGAT were not drawn from contracts in actual existence, the fact of State Approval, and BellSouth's reliance on that approval, would be more than adequate to make the offerings set forth in the SGAT the type of legally binding obligation that the FCC contemplated in Ameritech. For all of these reasons, the SGAT can be used to demonstrate the availability of checklist items even if BellSouth elects to file a Track A application with the FCC.

Issue 2: Has BellSouth provided interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

****Position:** Yes. Interconnection Services are functionally available from BellSouth, and BellSouth has procedures in place for the ordering, provisioning and maintenance of its interconnection services. As of July 1, 1997 BellSouth has provisioned approximately 7,828 trunks to interconnect its network with the network of ALECs in Florida, and over 22,830 local interconnection trunks in its nine-state region.

Interconnection permits the exchange of local traffic between the networks of BellSouth and an ALEC over trunks terminated at specified interconnection points. Section I of BellSouth's Statement provides for complete and efficient interconnection of requesting telecommunications carriers' facilities and equipment with BellSouth's network. This involves the following components: (1) trunk termination points generally at BellSouth tandems or end offices for the reciprocal exchange of local traffic; (2) trunk directionality allowing the routing of traffic over a single one-way trunk group or a two-way trunk group depending upon the type of traffic; (3) trunk termination through virtual collocation, physical collocation, and interconnection via purchase of facilities from either company by the other company; (4) intermediary local tandem switching and transport services for interconnection of ALECs to each other; and (5) interconnection billing. (Tr. at 399-402). BellSouth's Statement offers a reasonable means of interconnection for any company electing to operate under the terms, conditions and prices of the Statement. For interconnection arrangements that are not described in the Statement, an ALEC may take advantage of the Bona Fide Request Process to request such arrangements. (Tr. at 402).

BellSouth has procedures in place for the ordering, provisioning, and maintenance of its interconnection services as well as technical service descriptions outlining its local interconnection trunking arrangements and switched local channel interconnection. (Tr. at 720). BellSouth presented unrefuted testimony that, as of July 1, 1997, BellSouth had installed approximately 22,830 interconnection trunks from ALECs' switches to BellSouth's switches in BellSouth's nine-state region, including 7,828 trunks in Florida. (Id.). In addition to its actual

provisioning experience, BellSouth has also successfully tested its capabilities to provide each of the interconnection services contained in the Statement. (Tr. at 843).

BellSouth's interconnection rates comply with orders issued by this Commission and meet the cost-based standards of Section 252(d)(1). In its Dec. 31, 1996 arbitration order in the consolidated BellSouth-AT&T/MCI proceeding, the Commission established permanent rates for transport and termination, including end office switching and tandem switching. Also, in its October 1, 1996 order in Docket No. 950985-TP, the Commission set the rates for BellSouth to charge for intermediary handling of local traffic. All of the above-referenced rates have been included in BellSouth's Statement, and the cost-based nature of these rates, at the levels previously set by this Commission, was not challenged by any party.

The Intervenors presented no credible evidence to rebut BellSouth's proven ability to offer this checklist item. AT&T witness Mr. Hamman opined that BellSouth had not met this checklist item, because BellSouth had purportedly not fully satisfied AT&T's interconnection needs as set forth in the parties' interconnection agreement. However, since Mr. Hamman also testified that BellSouth had not met a single checklist item, his criticisms of BellSouth's interconnection offering must be taken with a proverbial grain of salt. (Tr. 2721). Although he testified that local, intraLATA and interLATA calls should be carried over two-way trunks, the majority of carriers believe that one-way trunks are not only adequate, but would also be the most efficient. (Tr. 504). Indeed, the AT&T-BellSouth interconnection agreement includes one-way trunking arrangements. (Id.).

Furthermore, AT&T has no local switches in Florida, as Mr. Hamman admitted, and has no immediate plans to install such switches. (Tr. 2716). Since an interconnection trunk

would connect an AT&T local switch with a BellSouth local switch, Mr. Hamman's criticisms of BellSouth's interconnection offerings have no basis in fact. Further, Mr. Hamman also admitted that AT&T has no intention of ordering anything (interconnection services or otherwise) from BellSouth's Statement. All of these facts demonstrate vividly that AT&T's criticisms of the Statement's interconnection offerings are directed solely toward delay of the Statement's approval, not toward addressing a legitimate concern by AT&T about the impact of the Statement on AT&T's business plans in Florida. The test that BellSouth must meet in this proceeding is not whether BellSouth has satisfied every condition of a private arbitration agreement with AT&T, but rather whether it has made interconnection generally available to ALECs, as required by Section 252(f) and 271.

Although TCG witness Hoffman testified that his company's interconnection arrangements with BellSouth had caused TCG's customer to experience intermittent call blocking, he admitted on cross-examination that he could not quantify the blockage; he had no personal knowledge of the alleged blocking beyond what others had told him; he had no basis to dispute data in Late Filed Exhibit 59 (ARMIS report) that showed no blocking between particular end offices and tandems; and that he had no knowledge of the steps that must be taken to add trunk groups between TCG's point of presence and the BellSouth tandem. Mr. Hoffman also did not know the amount of time needed to add trunks or whether TCG had informed BellSouth in advance of traffic increases that would require additional trunks (Tr. 3448-3458). Such testimony is hardly the basis for a conclusion by this Commission that BellSouth's interconnection arrangements as offered by the Statement are insufficient to meet the competitive checklist.

Issue 3: Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

****Position:** Yes. Access is available and provided to network elements on a nondiscriminatory basis. Also, a number of physical collocation arrangements are in progress.

This checklist item reflects BellSouth's general obligation under Section 251(c)(3) to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under just and reasonable rates, terms, and conditions. Since many of the unbundled network elements BellSouth will provide are addressed under other issues in this Brief, BellSouth will discuss those specific elements under those issues. The discussion here will address the rates contained in the Statement, collocation issues, operations support systems, and the Bona Fide Request process that BellSouth will use to facilitate requests by any new entrant for interconnection or UNE's not specifically included in the checklist or in BellSouth's Statement.

A. The Rates Contained in the Statement for Interconnection and Unbundled Network Elements Comply With Section 252(d)

BellSouth's Statement incorporates rates from several sources. Where a rate was arbitrated, the Commission's ordered rates (primarily from its Dec. 31, 1996 Order No. 96-1579-FOF-TP) were incorporated into the Statement. The Commission-ordered permanent

rates are based on BellSouth Total Service Long Run Incremental Cost (TSLRIC) studies. In its Dec. 31, 1996 Order, the Commission found TSLRIC to be the “appropriate costing methodology” for setting rates for UNEs and interconnection. Most of the major network elements and services needed by an ALEC to enter the local exchange market through use of the Statement have permanent recurring and nonrecurring rates. For example, the following categories of UNEs have permanent recurring rates: all unbundled loops; all loop distribution (with the exception of end office switching for a 4-wire analog port); all signaling; channelization; common transport; dedicated transport; tandem switching; and all operator services (with the exception of three subofferings of DA transport). Permanent nonrecurring rates include: all unbundled loops; all end office switching (except for the 4-wire analog port); signaling links; channelization; and direct access to DA service. (See Tables 1 and 2 to Order). In those instances where BellSouth did not provide a TSLRIC study for certain functions, the Commission set interim rates based on either the AT&T and MCI-sponsored Hatfield study results (with some modifications) or BellSouth's existing tariff rates. The Commission then ordered BellSouth to file TSLRIC studies for the rates that were designated as interim rates. BellSouth filed those TSLRIC studies on March 18, 1997.⁹

The fact that the Statement includes interim rates that are subject to future adjustment does not render the Statement non-compliant with the Act. From a legal standpoint, the notion that a rate cannot comply with the checklist unless it is “permanent” is not supported by the Act. Simply put, there is nothing in Sections 251, 252 or 271 that requires “permanent

⁹ In the instances in which a rate was not arbitrated, BellSouth relied on a number of sources, including existing tariff rates and rates used in interconnection agreements that BellSouth voluntarily negotiated with other ALECs. (Tr. 395).

rates.” The duration of the pertinent rates was simply not addressed by Congress. Indeed, the FCC itself recognized the appropriateness of “interim arbitrated rates” that “might provide a faster, administratively simpler, and less costly approach to establishing prices”(First Report and Order, CC Docket No. 96-325 at ¶ 767 (August 8, 1996)). The FCC specifically adopted a schedule of interim proxy rates, and authorized the state commissions to apply them in their arbitration proceedings in the event the commissions were unable, due to time constraints, to set rates generated by the forward-looking costing methodology described in the FCC’s Local Competition Order.

The rates proposed by the FCC did not spring from a single source or a single methodology. Obviously, the FCC believed that these rates were permissible under the Act, since it expressly authorized state commissions to apply them in meeting their arbitration obligations under the Act. States that set prices based upon the default proxies were required to order parties to update those prices after the state conducted or approved of a cost study that met the FCC Order’s pricing guidelines. (Id. at ¶ 769).

Even Dr. David Kaserman, an economist who has testified on behalf of AT&T in this docket and in other arbitration proceedings, has acknowledged that rate-setting is an *ongoing process*. In a recent Mississippi arbitration proceeding, Dr. Kaserman testified that “no rate is permanent; at no time is there perfect information.” (Tr. 1163).(CHECK). (See, Mississippi Docket No. 96-AD-0559, February 10, 1997, Tr. 115). In further answering a cross examination question in that proceeding, he stated:

[W]e are not going to decide today permanent rates, and you won’t decide in six months. I don’t think there is any such thing as a permanent rate. You’re going to be coming back and re-examining costs as long as this firm has a monopoly position and until the firm is deregulated. Whoever is in charge is going to be looking periodically at cost figures supplied by this firm to change the rates that

are in place. That's going to be an ongoing process. And I think it's going to be around for a long time.

(Id.) (emphasis supplied).

The fact that the Commission has not yet made permanent the interim rates for which BellSouth submitted additional TSLRIC studies does not make the Statement's rates non-compliant with Section 252(d). Section 252(d) requires that the rates for interconnection and unbundled network elements simply be based on cost; it does not specify what methodology this Commission must use. There is nothing in the Act that precludes the Commission from using one methodology in establishing initial cost-based rates, while utilizing a different methodology to establish other cost-based rates at a later date. Indeed, because it is envisioned that the Statement will be updated in two years after its initial effective date, it is certainly possible that different methods could be used to meet the requirements of Section 252(d). In either instance, the rates would be cost based, which is all that Section 252(d) requires.

In addition to being legally unsupported, the Intervenors' argument that BellSouth's Statement cannot satisfy Section 252(d) until permanent rates have been set is completely incompatible with Congress's desire to "open all telecommunications markets to competition." In finding their local exchange markets open to competition by approval of BellSouth's Statement, both the South Carolina and Louisiana Public Service Commissions have rejected similar arguments by the intervenors and have found that interim rates satisfy the cost-based standards of the Act. Thus, the Commission should find that interim rates in BellSouth's Statement are sufficient to meet the cost-based requirements of Section 252(d)(1).

B. Collocation

While not specifically mentioned as a checklist item, Section 251(c)(6) charges BellSouth with the duty to provide for the physical collocation of equipment necessary for interconnection or access to UNE's at rates, terms and conditions that are just and reasonable. This process will allow an ALEC access to BellSouth's switching offices, for example, so that the ALEC may place its switches alongside BellSouth's equipment. BellSouth will provide virtual collocation where physical collocation is not practical for technical reasons or space limitations. (Tr. 409-410).

Mr. Milner testified that BellSouth has technical service descriptions and procedures in place for the ordering, provisioning and maintenance of its collocation services. (Tr. 773). The collocation ordering process involves two phases--Application Inquiry and Firm Order. Both phases are coordinated through the ALEC BellSouth Account Team using an Application Inquiry document and Bona Fide Firm Order document. (Tr. 412-13). The interval for installation of a collocation arrangement varies based on the building modifications required for the particular central office and the time required by the ALEC's equipment vendor to install the ALEC's equipment. The subsequent billing of the arrangement is accomplished through the Carrier Access Billing System (CABS). (Id.)

BellSouth offers collocation in its Statement at the rates ordered by the Commission in the BellSouth-MFS arbitration proceeding (Docket No. 980757-TP). To the extent rates were not specified in that proceeding, BellSouth has included rates from its interconnection agreement with AT&T. (Tr. 411). BellSouth has also reached agreement with several new entrants on the rates, terms and conditions of collocation. (Tr. 412). ACSI witness Falvey testified that his firm was nearing completion of such an arrangement with BellSouth in

Jacksonville and that BellSouth had provided everything that ACSI had desired for its collocation arrangement. (Tr. 2296). As of June 15, 1997 BellSouth had more than 246 collocation arrangements in place or in progress throughout its region, with 65 of those arrangements in Florida. (Tr. 509).

While MCI's witness, Mr. Gulino, complained about the time it has taken BellSouth to process four collocation requests, it is undisputed that work is underway to provide physical collocation space to MCI. All four sites require permits from local authorities and final firm completion dates will be set for those locations once the required permits are granted. All work that can proceed without the required permits in hand by BellSouth is on schedule. (Tr. 811). Furthermore, cross-examination of Mr. Gulino revealed that his personal knowledge of the collocation arrangements between BellSouth and MCI was sorely lacking. (Tr. 3179-3181). Although he testified that BellSouth's power requirements were an impediment to MCI's ability to collocate quickly, he admitted that had not read the part of the collocation agreement concerning power requirements. (Tr. 3183). He also had not read the portion of the agreement that gave BellSouth the sole right to determine if sufficient physical floor space existed to accommodate physical collocation. (Tr. 3185). Finally, although he testified that the collocation agreement did not address the issue of security escorts, when shown the agreement on the witness stand, he admitted that not only did the agreement address the issue, it actually authorized the use of escorts when MCI desired access to its collocated space. (Tr. 3189-90). The record, thus, reveals that BellSouth has met its collocation obligations under Section 251(f)(6).

B. Operations Support Systems

BellSouth's electronic interfaces, through which the ALECs must access necessary operations support systems ("OSSs"), permit the ALECs to access those systems in a nondiscriminatory manner. Not only did the testimony of BellSouth's witness, Ms. Gloria Calhoun, establish that BellSouth's OSS's provide ALECs with the functionalities they need to provide local telecommunications services in competition with BellSouth, her testimony also demonstrated that the ALECs who desire access to these OSSs have adequate access to them. (See generally, Tr. 1042-1157).

In summary, BellSouth offers pre-ordering through the Local Exchange Navigation System ("LENS") interface; ordering and provisioning through the Electronic Data Interchange ("EDI"), Exchange Access Control and Tracking System ("EXACT"), and LENS interfaces; maintenance and trouble reporting through the ALEC Trouble Analysis Facilitation Interface ("TAFI") as well as the same electronic bonding interface currently used by IXC's for access service; and billing through access to the Billing Daily Usage File. (Tr. 1042-1106).

These electronic interfaces provide non-discriminatory access to BellSouth's OSSs in the manner required by the Act and the FCC in its August 8, 1996 Local Interconnection Order. The FCC has stated that the ALECs must have access to the ILEC's OSSs "in substantially the same time and manner that an incumbent can for itself." See FCC First Report and Order at ¶ 518. Further, the FCC also required ILECs to provide access to OSSs "under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete." *Id.* at ¶ 315. Ms. Calhoun's testimony confirmed that BellSouth's electronic interfaces provide access to BellSouth's OSSs for pre-ordering, ordering,

maintenance and repair, and billing that is substantially the same as, and in many cases better than, that which it provides to personnel supporting BellSouth's retail customers.¹⁰

In evaluating these interfaces, the Commission must be careful to distinguish between the legal standard that BellSouth must meet in order to show compliance with the requirements of Section 251 and the higher standard that BellSouth has set for itself in seeking to accommodate the desires of certain large ALECs, such as AT&T. That BellSouth has committed to provide AT&T, MCI and Sprint with machine-to-machine interfaces by the end of 1997 does not mean that such interfaces are a prerequisite to providing nondiscriminatory access to OSSs for all ALECs. Indeed, everyone apparently agrees that only the large ALECs are likely to commit the resources necessary to utilize such machine-to-machine interfaces.

Section 251 is simply the minimum standard that BellSouth must meet in order to seek permission to enter the in-region interLATA long distance market. Although that minimum standard has already been reached, BellSouth's testimony shows that it will continue to upgrade and to enhance its operations support systems. The Commission should not construe, however, the continuing improvement of certain aspects of BellSouth's interfaces as an admission that the systems do not already fulfill the requirements of the competitive checklist. The protestations of AT&T and others notwithstanding, the fact is that the electronic interfaces for pre-ordering, ordering and provisioning, maintenance and repair, and billing are

¹⁰ Although in its recent Ameritech order the FCC has greatly expanded its position on what it believes nondiscriminatory access to OSSs to be, these new requirements (particularly those suggesting that Section 271 applicants will have to meet federally prescribed performance measurements relating to OSS) are nothing more than an illegal extension of the competitive checklist and are inconsistent with the nondiscriminatory standards of the Act. This Commission should make its own independent judgment when evaluating what constitutes nondiscriminatory access to BellSouth's OSSs under the Act, rather than blindly following the FCC's onerous and illegal interpretation of what the Act requires.

fully operational and fully comply with Section 251 today. These interfaces and related issues are discussed briefly hereinbelow.

1. Pre-ordering

Ms. Calhoun's testimony established that BellSouth's electronic interfaces for pre-ordering comply fully with the requirements of the Act and the FCC Local Competitive Order. The LENS interface permits ALECs to obtain, in substantially the same time and manner as BellSouth, the following:

- (1) address validation;
- (2) telephone number selection, including special number assignment;
- (3) product and service selection;
- (4) due date information; and
- (5) customer record information

(Tr. at 1059-1076).

LENS provides ALECs with access to BellSouth's pre-ordering databases in substantially the same time and manner as BellSouth's retail personnel obtain access to such databases. Ms. Calhoun testified at length regarding BellSouth's RNS, which is used for most types of residence orders, and its Service Order Negotiation System (SONGS) and Direct Order Entry (DOE) systems, which are used for business orders and for residence customers not supported by RNS. (Tr. 1061-1073). BellSouth presented copies of the actual screens from LENS, RNS and DOE, which specifically illustrate the substantially similar manner in which BellSouth and ALECs access BellSouth's pre-ordering databases. (Exhibit 41). Furthermore, it is undisputed that LENS, RNS and DOE access the same BellSouth databases and the requested

pre-ordering information is returned without regard to whether the request originated through an ALEC or from BellSouth. (Tr. 1061-1073).

In many respects, LENS is superior to BellSouth's systems. LENS is a graphic "point and click" interface which also contains a drop-down box and menu format that ALECs may use region-wide for both residence and business service support. (Tr. 1061-62). In contrast, for processing retail orders in Florida, BellSouth personnel must use at least two systems, one supporting residence (RNS) and one supporting business (DOE). (Tr. 564).

In addition, BellSouth has agreed to provide AT&T with a customized pre-ordering interface designed to AT&T's specifications, which goes beyond the requirements of the Act. (Tr. 1049). BellSouth's willingness to accommodate AT&T should not be construed as proof that LENS is non-compliant. It is important to recognize that, while AT&T criticizes LENS as being a non-industry standard interface, there is currently no industry standard for pre-ordering. (Tr. at p. 1047-49). Thus, even AT&T's own customized interface is not an industry standard.

2. Ordering and Provisioning

BellSouth's ordering and provisioning systems accumulate and format the information, such as pre-ordering information, needed to enter an order in BellSouth's Service Order Control System ("SOCS"). Without repeating the detailed discussion of these systems set forth in Ms. Calhoun's testimony (Tr. 1076-86), BellSouth notes that it employs two industry-standard ordering systems, depending upon the type of service ordered. The first is the Electronic Data Interchange (EDI) interface for resale orders and simple unbundled network elements, such as unbundled loops and ports. The second is the Exchange Access Control and

Tracking System (EXACT), which is used for access orders by interexchange carriers and by ALECs for interconnection trunking and other complex unbundled elements. (Tr. 1077-78).

EDI is the electronic interface sanctioned by the national Ordering and Billing Forum (OBF) for local service request communications. (Id.). EDI permits ALECs to order for resale some thirty (30) retail services that account for 80-85 percent of BellSouth's retail revenue. These orders can be entered without manual intervention. EDI also can be used to support orders for unbundled local loops, unbundled ports, interim number portability, and local loop/interim number portability combinations. ¹¹ (Tr. 1079-80).

Additionally, EDI allows ALECs to place orders for four "complex" services, such as PBX trunks or SynchroNet[®] service. Other complex services, not currently supported by EDI, such as SmartRing[®] service, are handled in the same manner for both ALEC customers and BellSouth retail customers. (Tr. 1079-84). Many complex services ordered by BellSouth retail customers involve a significant amount of manual paper work and telephone calling. The fact that an ALEC customer may have to experience this same manual ordering process for these same services does not place the ALEC at a competitive disadvantage with BellSouth.

BellSouth's existing EXACT interface also allows ALECs to order *interconnection trunking and other more infrastructure-type unbundled network elements*. The EXACT ordering system is the same industry-standard interface used by BellSouth for processing access service requests from interexchange carriers. (Tr. 1077).

¹¹ The EDI interface is not, as some have suggested, only for larger ALECs such as AT&T. As Ms. Calhoun testified, the EDI interface is available to any ALEC. To accommodate smaller ALECs, BellSouth worked with a third-party software vendor--Harbinger--to develop an "off-the-shelf" PC-based EDI package that can be used with very little development effort. (Tr. 1114-15).

Whether an ALEC submits an order through EDI or LENS, the request is screened for formatting errors, and the complete and correct service request is then passed to BellSouth's Local Exchange Ordering (LEO) system. LEO performs certain edit checks and data formatting checks to determine if the required information has been provided. If not, the system will return error messages similar to those received by BellSouth service representatives. (Tr. 1080-84).

LEO will pass a complete and correct service request to BellSouth's Local Exchange Service Order Generator (LESOG) for mechanized order generation, or to a LCSC worklist for further handling by a BellSouth service representative. LESOG will mechanically format many service requests into BellSouth service order record formats which can be handled by SOCS and the other downstream systems through which BellSouth's service orders are also processed. (Id.) LESOG requires no manual intervention by a BellSouth service representative. Those services for which mechanized order generation is available through LESOG without manual intervention represent most of BellSouth's total retail operating revenue in Florida.¹² (Id.)

BellSouth's ordering systems for ALECs are fully operational. The EXACT interface has been available since approximately 1985, and ALECs are currently using EXACT to process orders for local interconnection trunking and unbundled loops. BellSouth's EDI

¹² The software in EDI and LENS checks submitted orders for errors, just as BellSouth's retail ordering systems do. ALECs also can obtain firm order confirmations, completion information, and other status information, just as BellSouth customer service representatives can. Both the retail and ALEC orders are also subject to subsequent edit checks by SOCS after the order has been released to the system. In the event of SOCS errors, both ALEC and BellSouth service representatives must subsequently check for errors and retrieve any orders needing error correction. (Tr. at 1084-86).

interface has been available since December 1996; EDI itself has been in commercial use for almost 30 years. LENS has been available since April 28, 1997. (Tr. 1096-98).

BellSouth's ALEC ordering and provisioning systems are capable of processing a sufficient number of orders to permit meaningful competition in Florida. (Tr. at 1098-1106). The combined capacity of the EDI and LENS ordering systems, including the mechanized order generation capability in LESOG, has been verified as being at least 5,000 local service requests per day, which is the capacity for which this system was initially designed based on forecasted ordering volumes supplied by ALECs themselves to BellSouth (Id.) Additional capacity is available for rapid turn-up that would double the capacity to 10,000 orders per day. (Id.). As Ms. Calhoun confirmed, ALEC ordering activity to date has not even come close to approaching the forecasted volume. (Id.). Compliance with the Act does not require BellSouth to build out capacity for which there is no reasonable expectation at this time. BellSouth will continue to size its systems based on ordering volumes from the ALEC's input.

3. Maintenance and repair.

ALECs may access maintenance and repair information in substantially the same time and manner as BellSouth. (Tr. 1086-1092). For designed circuits, BellSouth provides ALECs with the same industry-standard, real-time electronic trouble reporting interface that has been available to interexchange carriers since 1995. (Tr. 1092). ALECs also have access to the same local exchange service trouble reporting system that BellSouth uses for its retail customers -- the Trouble Analysis Facilitation Interface ("TAFI") system. (Tr. 1087-92). The TAFI system, which analyzes troubles, initiates testing, and provides ALECs with recommendations for clearing the trouble, is the same as the TAFI system used by BellSouth. In fact, in some

respects ALECs' access to BellSouth's TAFI system is superior to that BellSouth provides to itself. (Id.) The only difference is an electronic and nearly instant security check that verifies that an ALEC is accessing only its customers' information.

BellSouth's maintenance and repair interfaces are fully operational. As stated above, the electronic trouble reporting interface for designed circuits has been available since December 1995. The ALEC TAFI system has been available since March 28, 1997 and was thoroughly tested before being offered to ALECs. From March 17 through April 16, 1997, a group of BellSouth repair attendants used the ALEC version of TAFI to process about 10,000 trouble reports from real customers utilizing a single ALEC TAFI processor. (Tr. 1102-03). The ALEC version of TAFI worked in the same time and manner as BellSouth's TAFI. Two ALECs have entered trouble reports via TAFI, and BellSouth has also conducted TAFI training for personnel with 10 other ALECs. It has also scheduled training for additional ALECs. (Tr. 1097)

BellSouth's ALEC maintenance and repair systems are capable of handling a sufficient volume to permit meaningful competition in Florida. TAFI currently will support 65 simultaneous users with a volume of 1,300 troubles handled per hour. BellSouth is in the process of activating a second processor that will double the capacity to 130 simultaneous users and 2,600 troubles handled per hour. Furthermore, a "hot spare" arrangement is in place for TAFI that can be activated almost immediately and would increase capacity by an additional 65 users and 1,300 troubles per hour for a combined total of 195 simultaneous users and 3,900 troubles handled per hour. (Tr. 1102-03). The current capacity far exceeds usage to date and forecasted usage in the immediate future. (Id.)

4. Billing

BellSouth provides ALECs with an electronic interface for customer billable usage data transfer, known as the Billable Daily Usage File. (Tr. 1094). The specific types of data include: intraLATA toll, billable local calls, billable feature activations, operator services and WATS/800 Service. The file provides billable call detail records in a Bellcore-supported, industry-standard format known as Exchange Message Record format and is offered with several methods of data delivery. (Id.).

ALECs have electronic access to daily billable usage data in substantially the same time and manner as BellSouth. (Tr. 1095). BellSouth runs its billing system five work days a week. Usage processing begins each morning, and the billing system cycle completes the following morning with the creation of actual bills. For ALECs that establish electronic data transmission capability with BellSouth, the usage is then transmitted immediately. (Id.).

BellSouth's billing interface is fully operational and is capable of handling a sufficient volume to permit meaningful competition in Florida. (Tr. 1098). Twelve ALEC customers now receive the daily usage files. The interface was thoroughly tested before being offering to ALECs, and BellSouth conducts individual tests with each ALEC prior to their establishing a daily production feed and is prepared to conduct additional testing in a "live" mode, if the ALEC so desires. (Tr. 1104-1106).

Because these daily billable usage files are generated through the same mainframe-based systems that have been used to bill for IXCs for some time, there are no constraints to its capacity to process daily usage files for ALECs. (Id.). In fact, average daily

message volumes delivered to the combined twelve (12) ALECs during April, 1997 was 13, 040 messages per day and 22, 213 messages per day for May 1997. (Id.)

5. System Training, Documentation and Ongoing Support

BellSouth has provided ALECs with extensive documentation about each of its electronic interfaces. BellSouth also has conducted regular ALEC training sessions that include training on BellSouth's interfaces. BellSouth also offers ALECs access to its training lab and provides "help desk" support for ALECs using the electronic interfaces. (Tr.1106-1111).

ALECs are advised of changes in BellSouth's proprietary interfaces (such as LENS and TAFI) through ongoing ALEC conferences, the ALEC account teams, and updated reference materials, including on-line release notes. (Id.) Changes in interfaces supported by industry standards, such as EDI, are communicated through industry fora. (Id.) This is the same manner in which BellSouth service representatives are advised of changes to BellSouth's operating systems. (Id.)

6. Intervenors' OSS complaints

Several of the Intervenors, notably AT&T and MCI, launched a full-scale assault on BellSouth's electronic interfaces in an attempt to convince the Commission to reject BellSouth's Statement. Although the intervenors' cross-examination of Gloria Calhoun accounts for 234 pages of the hearing transcript, the issues discussed with Ms. Calhoun have little or nothing to do with whether BellSouth is providing nondiscriminatory access to its OSSs. To address each of the specious OSS criticisms of the intervenors is not practical within the page limitations that apply to this brief. Further, these contentions are amply rebutted by the

record evidence in this matter. Instead, BellSouth will address herein for representative purposes only a few of these implausible criticisms.

For example, AT&T complains that pre-ordering information obtained through LENS is not automatically integrated into ordering through EDI. As Ms. Calhoun testified, however, an ALEC can readily integrate the systems with some development effort on its part. BellSouth is prepared to assist in that integration effort and has developed the necessary technical specifications. (Tr. 1125-26). To date, however, no ALEC has expressed any interest in integrating pre-ordering information through LENS with ordering in EDI. Thus, notwithstanding AT&T's suggestion to the contrary, the ALEC community apparently does not believe that such integration is a prerequisite to meaningful competition. (*Id.*). Nor, for that matter, is it required under the Act.

Equally unpersuasive is the attempt on the part of various Intervenors to underscore the perceived deficiencies in the ordering capabilities of LENS, while ignoring EDI and EXACT, which are BellSouth's industry-standard ordering interfaces. BellSouth, along with the industry, recommends EDI for ordering. (Tr. 1122-25). Currently, the primary function of the LENS interface is to obtain real-time, interactive access to the pre-ordering information in substantially the same time and manner as BellSouth's access to the same information. The fact that LENS for ordering does not yet provide all the capabilities available through the industry standard EDI ordering interface does not detract from the pre-ordering capabilities available through LENS. The ordering capabilities provided through LENS go beyond the requirements of the Act.

Although AT&T witness Bradbury devoted one-half of his pre-filed direct testimony to complaints regarding LENS, he acknowledged that AT&T will not use LENS as its long-term pre-ordering interface. (Tr. 2977-2979). Likewise, Mr. Bradbury complained about the capacity of TAFI, yet admitted that AT&T has no intentions of using TAFI either. (Id.). Moreover, while complaining generally about the inability of AT&T to have precisely the same access to BellSouth's databases that is available for BellSouth retail personnel to use, he conceded on cross-examination that BellSouth did not have to provide "identical treatment" to ALECs for OSS access to be considered nondiscriminatory. (Tr. 2944). For example, he admitted that the absence of driving instructions in LENS "would not have an effect on an ALEC's meaningful opportunity to compete." (Tr. 2950).

Finally, AT&T, MCI, and Sprint generally claim that BellSouth's interfaces cannot be deemed satisfactory until they have undergone "real world" experience to fully test the capacity of these systems. This is nothing more than another attempt to add a "market test" requirement to the 1996 Act, which Congress expressly rejected. Furthermore, neither AT&T, MCI, nor Sprint bothered to produce a policy witness in these proceedings who could provide specific evidence regarding their respective plans to offer local service in Florida. Thus, AT&T, MCI, and Sprint's claims of "insufficient capacity" in a "real world" environment ring hollow when they are not willing to reveal to the Commission their plans (or lack of plans) to provide Floridians with a choice of local service providers.

C. Bona Fide Request Process

Though not specifically addressed in the Act, the Bona Fide Request process provides a method by which BellSouth can satisfy its duty under the Act to provide

nondiscriminatory access to network elements as requested by any telecommunications carrier. It is appropriate to include the Bona Fide Request process in the Statement to recognize that new entrants may, over time, desire additional capabilities not specifically mentioned in the checklist.¹³ (Tr. 407-09).

BellSouth has jointly developed a Bona Fide Request process with AT&T to request a change to and/or new services and elements including features, capabilities or functionality. The Bona Fide Request process was not a subject of dispute in the AT&T-BellSouth arbitration. This process, which is provided as Attachment B to BellSouth's Statement, is available to any new entrant with a need for interconnection or unbundled capabilities not included in the Statement. This process addresses procedures and time frames for requests such that each party fully understands the progress of each request. (Id.).

3.(a) Has BellSouth developed performance standards and measurements? If so, are they being met?

****Position:** Yes. BellSouth has reached agreement for performance measurements with AT&T and with other ALECs. These measures ensure that BellSouth will provide the same level of performance to ALEC customers that BellSouth provides to its own retail customers. BellSouth has included in its Statement the same performance measures it

¹³ Further, this Commission has not addressed Bona Fide Requests in either generic proceedings or arbitration proceedings. (Id.). Handling of bona fide requests has not been an issue for arbitration between the parties. BellSouth has, however, negotiated agreements with new entrants that provide for handling of such requests. The inclusion of such a process should also provide assurance to the parties operating under the Statement that they will be able to request additional capabilities over time.

has negotiated with AT&T in the parties' nine-state agreement. Initial report to date indicate that the negotiated performance measurements are being met.

Although performance measures do not comprise an item on the competitive checklist, BellSouth has agreed to provide and further develop performance measures to ensure that the service it provides to its ALEC customers will be the same as the analogous service provided to its retail customers. As explained by BellSouth witness Stacy, BellSouth has included specific service performance measures in its Statement. Services that are measured include 1) plain old telephone service (POTS) delivered to residence customers where providing or maintaining that service requires a technician to be dispatched; 2) POTS residence where there is no need to dispatch a technician; 3) POTS business where there is a need for a dispatch; 4) POTS business where no dispatch is necessary; 5) unbundled network elements delivered to residence customers where a dispatch is needed; 6) unbundled network elements delivered to residence customers with no dispatch needed; 7) local interconnection trunking; and 8) design special services. (Tr. 1533-34).

There are eight measures that apply to determine whether BellSouth is provisioning and maintaining the above-described services in a nondiscriminatory manner. In addition to these measurements on maintenance, BellSouth also uses measures for the average duration in hours of a service outage, the percentage of appointments met, the number of repeated reports if the trouble is not fixed the first time, percentage of calls answered in 30 seconds in the BellSouth repair center and many other measures that cover billing, data bases, and account maintenance. (Tr. 1535).

BellSouth conducts its measurements using a statistical control process that allows for a simple direct comparison of results between services BellSouth provides to its retail customers and those it provides to ALECs. Briefly, this involves taking BellSouth's actual monthly performance in a given category and using that performance over time to establish three statistical control parameters. The parameters are recalculated each month based on BellSouth's history and its ability to provide that same service to its retail customers. Using these parameters, BellSouth's performance for its retail customers and ALEC customers is plotted on the same graph to aid in an easy comparison of results. (Tr. 1535-36). Through Exhibit 51, BellSouth provided data that compared BellSouth's performance to ALECs with its performance to its own retail customers. In every category, ALECs have received service that is comparable to and, in most cases, better than service received by BellSouth's retail customers. (Tr. 1508-09).

On May 9, 1997 BellSouth and AT&T signed an addendum to their interconnection agreement on service quality and parity measurements. The performance measures in BellSouth's Statement are the same as the measures included in the BellSouth-AT&T agreement. Although the Statement and the parties' agreement both recognize that performance measures will evolve as the industry changes, the agreed-upon measures are ready to be implemented today. The Commission should approve these measures as part of the Statement so that ALECs that wish to use the Statement to enter the Florida local exchange market can measure BellSouth's performance to its retail customers to BellSouth's performance to these ALECs.

The testimony of AT&T's witness, Mr. Pfau, that the BellSouth-AT&T performance measures (Exhibit 70) were not "constructed...to detect or monitor discrimination" is sophistry at its highest level. (Tr. 2205). The first sentence of paragraph 1.1 of the agreement states: "BellSouth, in providing services and elements to AT&T pursuant to this agreement, shall provide AT&T the same quality of service that BellSouth provides itself and its end users." Incredibly, Mr. Pfau would not agree that this language represents a standard for nondiscrimination. Rather, he stated that the quoted language is "merely an assertion." (Tr. 2209). In response to a direct question from Commissioner Clark, Mr. Pfau testified that the measures AT&T agreed to were sufficient to allow AT&T to gain entry into the local market, but not sufficient to allow BellSouth to demonstrate nondiscriminatory treatment of ALECs for Section 271 purposes. (Tr. 2219-21). Consistent with his employer's overarching theme of "delay, delay, delay," Mr. Pfau testified that, before BellSouth's statistical process control methodology could "efficiently detect nondiscrimination...you're probably talking about probably this time next year [September 1998] at the earliest...to make a demonstration like that." (Tr. 2236). The parties' criticisms of BellSouth's performance measures obviously stem from their motivation to delay BellSouth's entry into the Florida interLATA market, not from valid concerns that the measures cannot serve as a legitimate starting point to begin a comparison of service that BellSouth provides to its retail customers to service provided to ALECs in Florida.

Issue 4: Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?

****Position:** Yes. BellSouth provides nondiscriminatory access to poles, ducts, conduits and rights-of-way to any ALEC by way of a standard agreement. To date, 13 ALECs have executed this agreement. Also, the functional availability of this access is proven by the fact that BellSouth has provided it to interexchange carriers, cable television and power companies for years.

In Section III of the Statement, BellSouth offers access to poles, ducts, conduits and rights-of-way to any ALEC via a standard license agreement. (Tr. 419-21). As of the date of the hearing, thirteen (13) ALECs in Florida had executed license agreements with BellSouth to allow them to attach their facilities to BellSouth's poles and place their facilities in BellSouth's ducts and conduits. (Tr. 775).

The pole attachment rate is \$4.20 per pole, per year and the conduit occupancy rate is \$0.56 per foot, per year. These prices were developed in accordance with FCC accounting rules that were designed to produce cost-based rates. (Tr. 419-21). Contrary to Mr. Hamman's contentions, BellSouth has developed procedures for processing requests by ALECs for access to BellSouth's poles, ducts, conduits and rights-of-way. The ALEC sends a license application to the BellSouth Right-of-Way and Joint Use Group for an occupancy request. The

request is forwarded from this group to the geographic area affected by the request. Requests are processed on a first-come, first-served basis, and a response interval is negotiated with the ALEC. Billing is calculated on an annual basis and bills are generated through a standard billing procedure. (Id.)

BellSouth has been providing cable television companies and power companies with access to poles, ducts, conduits and rights-of-way in Florida and throughout its region for many years. No party to this proceeding introduced any evidence to dispute BellSouth's testimony that access to poles, ducts, conduits and rights-of-way is functionally available from BellSouth. Accordingly, BellSouth has met this checklist item.

Issue 5: Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?

****Position:** Yes. Unbundled local loop transmission is functionally available from BellSouth. BellSouth has implemented procedures for the ordering, provisioning, and maintenance of unbundled loops and sub-loops. As of July 1, 1997, BellSouth has provisioned 1,085 unbundled loops to ALECs in Florida.

The local loop is a dedicated facility (e.g., a cable pair) from the customer's premises to the main distribution frame of the serving central office. (Tr. 422). This checklist item, as well as checklist items 4-7 and 9-12, are functions and capabilities associated with a switch, and thus are only necessary for a facilities-based ALEC that has its own switch. An

ALEC's failure to request these items does not translate into a failure by BellSouth to meet the checklist because, as BellSouth's testimony demonstrates, each of these functions and features is available in the Statement.

In Section IV of the Statement, BellSouth offers several loop types that ALECs may request in order to meet the needs of their customers. Should an ALEC request loops that are not contained in the Statement, the ALEC may use the Bona Fide Request Process to obtain such additional loop types. (Tr. 422-27). In addition to the unbundled loops, ALECs may also request loop distribution, loop cross connects, loop concentration and access to Network Interface Devices (NIDs). (*Id.*). Prices for all loop types and subloop components are consistent with orders of this Commission and, as discussed under Issue No. 3 above, are cost-based under the Act.

BellSouth has technical service descriptions outlining unbundled loops and subloops that are available from BellSouth, and BellSouth has implemented procedures for the ordering, provisioning, and maintenance of unbundled loops and subloops. (Tr. 776-78). As of July 1, 1997, BellSouth had provided 1,392 unbundled loops to ALECs in Florida and had 3,575 unbundled loops in service throughout the BellSouth region. Some of those loops also involve unbundled local transport provided to connect the loop with a collocation arrangement in a different central office or an ALEC's own location. (Tr. 510).

While ACSI witness, Mr. Falvey, complained about ACSI's experience in other states regarding provisioning intervals involved in ordering and installation of unbundled loops, he acknowledged that ACSI has not ordered a single unbundled loop in Florida. There simply has been no proffer of evidence in this record that BellSouth has refused to provide ACSI with

unbundled loops or is incapable of installing and billing for those loops at the time ACSI orders them.

Issue 6: Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?

****Position:** Yes. Local transport is functionally available from BellSouth. BellSouth has technical service descriptions outlining dedicated and common interoffice transport and has procedures in place for the ordering, provisioning, and maintenance of these services. As of June 1, 1997, BellSouth has 277 dedicated trunks providing interoffice transport to ALECs in Florida.

There are two types of local transport--dedicated and common. Dedicated transport is used exclusively by a single carrier for the transmission of its traffic. For example, an ALEC switch can connect directly to a BellSouth switch through the use of dedicated transport. Common transport is used to carry the traffic of more than a single company for the transmission of their aggregate traffic. Common transport can connect a BellSouth end office to another BellSouth end office or to a BellSouth tandem. When a tandem switch is involved, a separate charge for tandem switching would apply in addition to the transport rates. This is similar to the application of a tandem switching charge for interconnection at a tandem switch. (Tr. 428-31).

BellSouth offers unbundled local transport in Section V of its Statement, with optional channelization for such local transport from the trunk side of its switch. BellSouth offers both dedicated and common transport for use by ALECs, including DS0 channels, DS1 channels in conjunction with central office multiplexing or concentration, and DS1 or DS3 transport. (Id.).

Mr. Milner testified that BellSouth has technical service descriptions outlining both dedicated and shared interoffice transport, and has procedures in place for the ordering, provisioning and maintenance of these services. (Tr. at 780-82). Further, BellSouth has tested its methods and procedures for these services and has demonstrated its ability to place these facilities in service and generate a timely and accurate bill for them. As of June 1, 1997, BellSouth has installed 277 trunks for dedicated transport for ALECs in Florida, and 716 trunks nationwide. (Tr. 780).

The rates contained in the Statement for local transport were set by the Commission in its Dec. 31, 1996 Order in the BellSouth-AT&T/MCI arbitration case. (Tr. 432). Thus, for the reasons discussed in more detail under Issue No. 3, the rates for local transport meet the cost-based requirements of Section 252(d)(1). The record clearly demonstrates that unbundled local transport is functionally available and that BellSouth has met this checklist item.

Issue 7: Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?

****Position:** Yes. Unbundled local switching is functionally available from BellSouth. BellSouth has a technical service description and has procedures in place for the ordering, provisioning, and maintenance of its switched services. As of June 1, 1997, BellSouth has seven unbundled switch ports in service in Florida.

BellSouth's witness, Robert Scheye, testified that local switching is the network element that provides the functionality required to connect the appropriate originating lines or trunks wired to the main distributing frame, or to the digital cross connect panel, to a desired terminating line or trunk. (Tr. 431). The most common local switching capability involves the line termination (port) and the line side switching (dial tone) capability in the central office. (Tr. 431-432). The functionality includes all of the features, functions, and capabilities provided for the given class of service, including features inherent to the switch and the switch software and includes vertical features, such as Call Waiting. It also provides access to additional capabilities, such as common and dedicated transport, out-of-band signaling, 911, operator services, directory services, repair service, etc. The ALEC in purchasing unbundled local switching will determine which vertical features it wishes to activate and which additional unbundled elements it wishes to use in conjunction with the unbundled switching. (Tr. 432).

BellSouth witness, Keith Milner, testified that, in Section VI of the Statement of General Available Terms and Conditions ("SGAT") BellSouth offers a variety of switching

ports and associated usage unbundled from transport, local loop transmission and other services. These include 2-wire and 4-wire analog ports, 2-wire and 4-wire ISDN ports, and hunting. Additional port types will be made available under the Bona Fide Request process. (Tr. 781). BellSouth offers local switching, unbundled from transport and local loop transmission. (Tr. 434).

Mr. Milner further testified that BellSouth has technical service descriptions and procedures in place for the ordering, provisioning and maintenance of its switching services. (Tr. 782). As of June 1, 1997, BellSouth had seven unbundled switch ports in service in Florida, which evidences the functional availability of unbundled local switching from BellSouth. In its nine state region, BellSouth had 26 unbundled switch ports in service as of June 1, 1997. (Id.). With the exception of the wiring of the loop to the port in the central office, this offering is virtually identical to BellSouth's existing retail services. (Tr. 511). Ordering a port typically requires an ALEC to provide its own loop to the BellSouth switch. (Id.).

Mr. Gillan, who testified on behalf of FCCA, AT&T, and MCI, implied that BellSouth will not provide local switching unbundled from transport, local loop transmission or other services as specified in the competitive checklist. (Tr. 1784). In terms of the unbundled switching element, BellSouth does indeed provide that capability unbundled from transport in accordance with the Act, the FCC Order and this Commission's decisions. (Tr. 530). Additionally, multiple local providers can use unbundled switching to provide their own services. (Tr. 531-532). Mr. Gillan, Mr. Hamman, on behalf of AT&T, and Mr. Wood on behalf of AT&T and MCI, have again defined unbundled switching in terms of the "platform" approach, a concept that has not been endorsed by any Commission to date within the BellSouth

region, nor is it a capability that the FCC Order, in defining unbundling, requires. (Tr. 1784, 1955, and 2651). The Act does not require Mr. Gillan's platform approach, which essentially means leasing switch capacity. The FCC rules do not require such provisioning. Neither did this Commission require such provisioning. The Statement is consistent with this Commission's Orders in the arbitration cases in which unbundled switching was arbitrated. (Tr. 530).

In connection with unbundled switching, BellSouth will also provide selective routing on an interim basis to an ALEC's desired platform using line class codes subject to availability and in accordance with the Commission's December 31, 1996 Final Order on Arbitration in Docket Nos. 960833-TP, 960846-TP, and 960916-TP. (Tr. 433-434). Selective routing will route original calls from the switch to a specific terminating line, platform or trunk. The most typical application will be to direct calls from the unbundled switch to an ALEC designated operator service. Initially, there may be a capacity limitation in some central offices due to the exhaustion of the line class codes that will be used to provide these functions. (Tr. 432). Should the codes become exhausted, new ALECs operating under the SGAT will not be able to purchase this feature until: 1) a longer term, more efficient means of offering selective routing is available; 2) carriers that have line class codes turn back some of them to BellSouth; or, 3) the Commission decides to alter the first-come, first-served methodology. BellSouth will work with the industry to design and implement a long-term solution for selective routing. (Tr. 434).

Although AT&T's Mr. Hamman testified that BellSouth had failed to make selective routing available to AT&T, the record reveals that AT&T has not requested the use of

selective routing in Florida. (Tr. 2752-2755). AT&T has only requested that BellSouth provide direct routing in BellSouth's switches in Georgia. BellSouth is in the process of deploying that capability to AT&T, which AT&T began utilizing in Georgia in July, 1997. (Tr. 2666-2667). Mr. Milner specifically testified that BellSouth could provide selective routing in Florida upon request. (Tr. 781). Further, there was no evidence presented to demonstrate that BellSouth would refuse such a request from AT&T once it was made. Indeed, Mr. Milner testified that BellSouth has tested its selective routing service. (Tr. 888-890).

The rates for unbundled switching vary depending on the type of port. (Tr. 435). The rates are those established by this Commission in the December 31, 1996 Final Order on Arbitration in Docket Nos. 960833-TP, 960846-TP and 960916-TP (Order No. PSC-96-1579-FOF-TP). The rate for selective routing is based on rates in BellSouth's Interconnection Agreements with AT&T in other states. (Id.) Moreover, the rate for unbundled local switching in the negotiated interconnection agreements includes vertical services. (Tr. 433).

The rate for unbundled local switching includes a monthly port charge and usage (a per minute charge). The bill for the monthly charges can be electronically generated. The usage charges vary by distance and the number of switches involved in completing the call. If an ALEC purchases unbundled switching from BellSouth, BellSouth will either render a manually calculated bill or retain the usage until a system generated bill is available, whichever the ALEC elects. (Tr. 782). Moreover, Mr. Milner testified that BellSouth expects to resolve the issue of creating an electronically prepared usage bill later in September 1997. (Tr. 851). Indeed, Mr. Scheye testified that electronic usage billing is now available, although a bill has not yet been rendered. (Tr. 1709-1711).

The Intervenors assert that ALECs must be able to purchase combinations of network elements, such as preexisting loop and switch combinations. (Tr. 1779-1784). The Commission addressed this issue during Docket Nos. 960833-TP, 960846-TP, and 960916-TP. In its December 31, 1996, Final Order on Arbitration in the consolidated dockets, the Commission allowed AT&T and MCI to combine unbundled network elements in any manner they choose, including recreating a BellSouth service, but the Commission did not rule on the pricing of recombined elements. (Order No. PSC-96-1579-FOF-TP, pages 37-38). Further, in its March 19, 1997 Final Order on Motions for Reconsideration on the consolidated dockets, regarding the rates for recombined elements, the Commission stated “it is inappropriate for us to make a determination on this issue at this time.” (Order No. PSC-97-0298-FOF-TP, page 7). On May 27, 1997, the Commission entered an Order (Order No. PSC-97-0602-FOF-TP) regarding the arbitrated Interconnection Agreement between BellSouth and AT&T. In that Order, the Commission said “...we stated that the pricing issue associated with the rebuilding of UNEs to duplicate a resold service was not arbitrated.” (Order, page 7) (emphasis added). (Tr. 530).

At this time, BellSouth is in compliance with the Commission’s decisions on this issue. BellSouth will provide recombined UNEs under the applicable interconnection agreements. (Tr. 528-530). BellSouth’s SGAT allows ALECs to combine unbundled network elements in any manner they choose. If the ALEC wishes BellSouth to perform the *recombination for the ALEC, then BellSouth and the ALEC will negotiate the price therefor.* This position is consistent with the Eighth Circuit’s recent opinion. (Tr. p.744). The record demonstrates that BellSouth has met this one checklist item.

Issue No. 8: Has BellSouth provided nondiscriminatory access to the following, pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:

- (a) 911 and E911 services;
- (b) Directory Assistance Services to allow the other telecommunications carrier's customers to obtain telephone numbers; and
- (c) Operator call completion services?

****Position:** (a) Yes. BellSouth's statement offers local exchange providers nondiscriminatory access to 911 and E911 service. BellSouth has had procedures in place since early 1996 by which ALECs can connect their switches to BellSouth E911 tandems. As of June 1, 1997, BellSouth had 88 trunks in service connecting ALECs with BellSouth E911 arrangements in Florida.

(b) Yes. Nondiscriminatory access to directory assistance (DA services) is functionally available from BellSouth. As of June 1, 1997, there were 156 directory assistance trunks in place serving ALECs in Florida.

(c) Yes. Operator call processing is functionally available from BellSouth, which allows ALECs to obtain both live operator and mechanized functionality. As of June 1, 1997, there were 31 such trunks in place serving ALECs in Florida.

(a) BellSouth offers to ALECs nondiscriminatory access to 911 and E911 service within Florida. In all situations, an ALEC's customer is able to dial "911" in the same manner as BellSouth's end user customers. BellSouth enables an ALEC customer to have 911 call routing to the appropriate Public Safety Answering Point (PSAP). BellSouth provides and

validates customer information to the PSAP. BellSouth uses its service order process to update and maintain the automatic Location Identification/Database Management system used to support E911/911 services on the same schedule that it uses for its end users. (Tr. 438). Under resale, BellSouth provide E911/911 in the same manner that it is provided in BellSouth's retail tariffs. (Tr. 438-439). BellSouth provides facilities-based ALECs equal access to provide their customer numbers and address information to 911 providers. The statement contains the terms and conditions that are required to provide this service. (Id.).

For 911 and E911, the ALEC will provide its own trunk facilities through Switched Dedicated Transport at the proposed rates in the SGAT or applicable tariffs. (Tr. 444). The rate for the provision of 911 will be billed to the appropriate municipality. (Id.)

As of June 1, 1997, BellSouth had 88 trunks in service in Florida connecting ALECs with BellSouth's 911 arrangements. (Tr. 511). BellSouth has also had experience loading data for several ALECs in BellSouth's 911 databases. (Tr. 511 and 784). No party to this proceeding presented any evidence that BellSouth's access to 911 and E911 service is discriminatory. BellSouth has met this checklist item.

(b) BellSouth's Directory Assistance is available on a nondiscriminatory basis to ALECs providing local exchange service to end user customers in exchanges served by BellSouth. As of June 1, 1997, there were 156 Directory Assistance trunks in place serving ALECs in Florida. (Tr. 511-512 and 786). End users can access BellSouth's Directory Assistance Service by dialing 411 or the appropriate area code and 555-1212. Additionally, BellSouth will provide routing of calls from an ALEC's customer to the ALEC's directory assistance platform through 411 and 555-1212 dialing arrangements. (Tr. 433-434 and 440).

In addition to routing to an ALEC's directory assistance platform as described in Issue 6 regarding unbundled switching, BellSouth will provide an ALEC access to BellSouth-provided Directory Assistance (DA) Services on a branded basis through selective routing. Such selective routing can only be provided in conjunction with unbundled local switching or BellSouth's resold local exchange service. (Tr. 441). BellSouth offers ALECs access to BellSouth's Directory Assistance database under the same terms and conditions currently offered to other telecommunications providers. (Tr. 441-442). BellSouth makes available its operator services in the same manner that it provides operator services to its own customers. (Id.) The rates proposed by BellSouth for Directory Assistance service are those set forth in the Commission's December 31, 1996 order in Docket Nos. 960833-TP, 960846-TP, and 960916-TP. (Tr. 446-447).

BellSouth includes both facilities-based and reseller ALEC's subscriber listings in BellSouth's Directory Assistance databases, and BellSouth does not charge the ALEC to maintain the Directory Assistance database. (Tr. 441). BellSouth also offers three services to ALECs that will provide them with access to BellSouth's Directory Assistance database under the same terms and conditions currently offered to other telecommunications providers. Directory Assistance Access Service is the service by which BellSouth currently provides Directory Assistance to IXC's. Direct Access Directory Assistance Service (DADAS), is the service which provides direct on-line access to BellSouth's directory assistance database; and Directory Assistance Database Service (DADS) is the service which provides a copy of the BellSouth Directory Assistance database. (Tr. 441-442). BellSouth has met this checklist item.

(c) BellSouth makes available its operator call completion to ALECs in the same manner that it provides operator services to its own customers. An ALEC's customer can dial "0" and be connected to a BellSouth operator or that call can be directed to an ALEC's operator services platform. Additionally, BellSouth will offer Centralized Message Distribution System - Hosting (CMDS-Hosting) and Non-Sent Paid Report System (NSPRS) processing. Other Operator Services Offerings include: Busy Line Verification ("BLV") and Busy Line Verification and Emergency Interrupt ("BLVI"); Operator Call Processing Access Service; and Operator Services Transport. (Tr. at 441-443). The rates proposed by BellSouth for operator call completion are those set by this Commission's December 31, 1996 order in Docket Nos. 960833-TP, 960846-TP, and 960916-TP. (Tr. 446-447). The call completion access termination per call attempt rate is from the Interconnection Agreement between ACSI and BellSouth. (Id.) As of June 1, 1997, there were 31 trunks in place to BellSouth's operator services system and 11 verification and inward operator trunks. (Tr. 512, 788). Further, BellSouth has tested its methods and procedures for these services and has demonstrated its ability to place these facilities in service and generate a timely and accurate bill for them. The record demonstrates that BellSouth has met this checklist item.

Issue No. 9: Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

****Position:** Yes. BellSouth arranges with its directory publisher to make available white pages directory listings to ALECs and their subscribers which include the subscriber's name, address, and telephone number at no charge.

BellSouth obtains directory publication services from one of its affiliates, BellSouth Advertising and Publishing Corporation (BAPCO). BellSouth arranges with its directory publisher to make available to any ALEC, for their subscribers, White Pages directory listings which include the subscriber's name, address and telephone number. ALEC subscribers receive no less favorable rates, terms and conditions for directory listings than are provided to BellSouth's subscribers. For example, the same information will be included, the same type size will be used and the geographic coverage will be the same. (Tr. 450).

Listings for an ALEC's residential and business customers are included in the appropriate White Pages or local alphabetical directories (including foreign language directories as appropriate). (Id.) These listings are included with all other LECs' listings without any distinction as to the LEC providing the local service. Copies of such directories are delivered to an ALEC's subscribers. (Tr. 440-451).

Subscriber primary listing information in the White Pages received in the standard format is provided at no charge to an ALEC or an ALEC's customer. Additional listings and optional listings in the White Pages is provided at rates set forth in BellSouth's intrastate *General Subscriber Service Tariffs*. (Tr. 451). As of May 15, 1997, BellSouth had processed orders for more than 49,000 resold local exchange services. As these orders included directory listings, these orders provide evidence of BellSouth's ability to process ALECs' orders

for white pages directory listings and to include these listings in the directory assistance database. (Tr. 514-515). BellSouth has met this checklist item.

Issue No. 10: Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?

****Position:** Yes. BellSouth's Statement provides nondiscriminatory access to telephone numbers. Also, BellSouth, as the North American Number Plan administrator for its territory, ensures that ALECs have nondiscriminatory access to telephone numbers for assignment to their customers. As of June 23, 1997, BellSouth had assigned a total of 140 NPA/NNX codes for ALECs in Florida.

BellSouth, as the North American Numbering Plan ("NANP") Administrator for its territory, ensures that ALECs have nondiscriminatory access to telephone numbers for assignment to their customers. (Tr. 791). At such time as BellSouth is no longer the NANP Administrator, BellSouth will comply with the final and non-appealable guidelines, plan or rules adopted pursuant to 47 U.S.C. section 251(e), which addresses the creation or designation by the FCC of numbering administrator(s). (Tr. 453). BellSouth has established procedures to provide nondiscriminatory NXX code assignments to ALECs. In fact, BellSouth has developed approximately 266 pages of procedures for assignment of telephone numbers (NXX Codes) to

ALECs. BellSouth's processes are consistent with Order No. PSC-96-0445-FOF-TP issued by this Commission on March 29, 1996 in Docket No. 950985-TP. (Tr. 454). As of June 23, 1997, BellSouth had activated a total of 130 NPA/NXX codes to ALECs in Florida. (Tr. p.791). ALECs have nondiscriminatory access to telephone numbers from BellSouth and BellSouth has met this checklist item.

Issue No. 11: Has BellSouth provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?

****Position:** Yes. BellSouth's Statement provides access to the signaling elements necessary for call routing and completion, including Signaling Links, Signal Transfer Points (STPs), and Service Control Points (SCPs). Moreover, from January through April, 1997, ALECs and other telecommunications providers made approximately 8 million queries to BellSouth's 800 database, which evidences the functional availability of these services.

BellSouth's agreements provide access to the signaling elements necessary for call routing and completion; including Signaling Links, which are dedicated transmission paths carrying signaling messages between carriers' switches and signaling networks, Signal Transfer Points ("STPs"), which are signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases, and Service Control Points ("SCPs"), which are databases containing customer and/or carrier-specific routing, billing or service

instructions. (Tr. 455-456). The SCPs/Databases to which ALECs have access include, but are not limited to, Line Information Database (“LIDB”), Toll Free Number Database, Automatic Location Identification and Data Management System, Advanced Intelligent Network (“AIN”). (Tr. 792).

Mr. Milner testified that BellSouth has technical service descriptions that outline access to these databases and has procedures in place for the ordering, provisioning and maintenance of these services. (Tr. 792-793). The rate for access to unbundled signaling is based on the December 31, 1996 Order No. PSC-96-1579-FOF-TP issued by this Commission in Docket Nos. 960833-TP, 960846-TP, and 960916-TP. (Tr. 460). The rate per message for AIN was included in the Commission’s March 19, 1997 Order on Reconsideration, Order No. PSC-97-0300-FOF-TP. (Tr. 461). Other rates for signaling database services are at tariffed rates per BellSouth’s interconnection agreements with various ALECs. (Tr. 461). From January, 1997 through April, 1997, ALECs across BellSouth’s nine state region made approximately eight (8) million queries to BellSouth’s 800 database, thus demonstrating its functional availability. (Tr. 793). Further, BellSouth’s LIDB received more than 129 million queries from ALECs and other service providers during that same time period. (Tr. 793).

Testing of BellSouth’s AIN Toolkit 1.0, which provides a ALEC with the ability to create and offer AIN-service applications to their end users, confirmed that service orders flowed through BellSouth’s systems properly and that accurate bills were rendered. (Tr. 793). Finally, BellSouth’s signaling service is also functionally available, as demonstrated by the fact that as of July 1, 1997, one ALEC was interconnected directly to BellSouth’s signaling network in Georgia, and seven other ALECs have interconnected using a third party signaling hub

provider which, in turn, accesses BellSouth's signaling network. (Tr. 794). BellSouth has satisfied this checklist item.

Issue No. 12: Has BellSouth provided number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?

****Position:** Yes. BellSouth's Statement describes the interim number portability arrangements that are available, which include Remote Call Forwarding (RCF) and Direct Inward Dialing (DID). Interim number portability is functionally available from BellSouth, as evidenced by the fact that as of June 10, 1997, BellSouth has ported 2,484 business directory numbers and 14 residence directory numbers in Florida using interim number portability.

Local number portability is a service arrangement that allows customers to retain, at the same location, their existing telephone numbers when switching from one carrier to another carrier. Mr. Scheye stated that, "BellSouth can provide interim number portability ("INP") through several methods". (Tr. 465). BellSouth's Statement includes offerings of the two of these methods that BellSouth anticipates most ALECs will want to use: Remote Call Forward ("RCF") and Direct Inward Dialing ("DID") (Tr. 465). These two arrangements are expressly contemplated in checklist item 11 (§ 271(c)(2)(B)(xi)) and comply with the FCC's July 2, 1996 First Report and Order in CC Docket No. 95-116 ("Number Portability Order"). Also, the rate structure for INP reflected in BellSouth's Statement is based specifically upon this

Commission's Order No. PSC-97-0476-FOF-TP, entered April 24, 1997 in Docket No. 950737-TP.

Further, Mr. Milner testified that BellSouth "has technical service descriptions outlining RCF and DID and has procedures in place for ordering, provisioning, and maintaining these services." (Tr. 761). BST has also demonstrated the functional availability of INP. Mr. Milner also testified that "as of June 10, 1997, BellSouth has ported 2,484 business directory numbers and 14 residence directory numbers in Florida using interim number portability." (Milner Direct, p. 35).

As to the intervenors, ICI, Sprint and MCI all acknowledge that BellSouth has provided INP. Moreover, ICI has further acknowledged that BellSouth provides INP in a way that is checklist compliant. (See positions of parties set forth in Pre-Hearing Order (Order No. PSC-97-1007-PHO-TL, entered August 22, 1997), pp. 48-50. On the other hand, the contrary positions taken by other intervenors are markedly lacking in plausibility.

For example, Mr. Hamman of AT&T acknowledged that BellSouth is providing interim number portability through RCF and DID but he nonetheless testified that BST has not complied with this checklist item because BST had not made a privately negotiated form of number portability, i.e., the route indexing-portability hub ("RI-PH") ready for use by AT&T. (Tr. 2674). Mr. Hamman conceded, however, that BST has agreed to provide RI-PH to AT&T, and that tests showed it to be technically feasible.

Mr. Hamman confuses BST's obligation to comply with a checklist item with BST's contractual commitments to AT&T. The fact that BST may negotiate multiple forms of interim number portability with ALECs does not translate into an obligation to include all of

those methods in its Statement. Despite Mr. Hamman's apparent confusion on this issue, BST's Mr. Milner testified that BST is willing and capable of providing interim number portability using RI-PH upon request of AT&T or another ALEC. (Tr. 832). Thus, BellSouth has agreed to provide to AT&T its preferred form of INP. It is perfectly appropriate for BellSouth, at the same time, to include in the SGAT only the forms of INP referenced in the Act, which are more likely to be ordered by most ALECs.

Likewise, MCI's witness, James Gulino, acknowledged that BellSouth provides INP, but contends that it is not offered in a checklist compliant manner because "BellSouth has a two-hour window in which to complete . . . the cutover." (Tr. 3156). However, he fails to explain why this would render BellSouth's provision of INP improper or inadequate. Mr. Gulino also contends that "MCI has experienced numerous problems with the scheduling" of INP, and that this has resulted in the interruption of service to customers. (Tr. 3156). In response to this contention, however, Mr. Milner testified that "the problem that . . . [Mr. Gulino] asserts is caused by BellSouth is simply a situation in which MCI notifies BellSouth too late in the process to prevent disruption of customer service." (Tr. 821).

It is undisputed that BST's Statement offers the two forms of interim number portability specified in checklist item 11, and the implausible complaints of the intervenors do not alter this fact. Accordingly, BST's provision of interim number portability complies with checklist item 11.

Issue No. 13: Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?

****Position:** Yes. Local service subscribers in BellSouth's service area in Florida dial the same number of digits to place a local call, without the use of an access code, regardless of their choice of local service provider. This satisfies the local dialing parity requirement.

Dialing parity permits local service subscribers to dial the same number of digits to place a local call, without the use of an access code, regardless of their choice of local service provider (Tr. 469). Mr. Scheye provided undisputed testimony that BST will interconnect with ALECs so that the same number of digits that are dialed by a BellSouth retail customer may be used by the ALEC customer to complete a call. (Tr. 469). In Mr. Scheye's words, since BST and ALECs can "use the same dialing and numbering plans, local dialing parity simply happens as ALECs begin operating." (Tr. 470). For this same reason, there is no rate associated with local dialing parity.

There are two intervenors that contend that local dialing parity does not exist, but neither disputed the facts testified to by Mr. Scheye. First, Mr. Gillan appeared on behalf of several intervenors, and purported to address three checklist items: unbundled network elements (item 2), unbundled local switching (item 6), and the subject item, local dialing parity. Mr. Gillan, however, provided no testimony that relates directly to dialing parity. Instead, he

appears to contend that the alleged lack of dialing parity follows from his conclusions regarding unbundled switching. As explained previously in response to Issue 3, Mr. Gillan is incorrect in his conclusions about unbundled switching. Even if he were correct, however, he still fails to explain how his contentions contradict the fact that when an ALEC's provision of local service commences, the number of digits to place a local call is the same as would be required for service provided by the incumbent.

MCI also attempts to create a dialing parity issue where none exists. Specifically, MCI contends in the testimony of Mr. Gulino that an isolated incident occurred in Atlanta, Georgia on approximately November 13, 1996, in which MCI customers were incorrectly routed to wrong numbers due to what MCI describes as "simply human error". (Tr. 3149-50). Likewise, Mr. Gulino contended that NXX problems have occurred in Florida over the past few months. He failed entirely, however, to offer any evidence that these problems were systematic, or that they provide a general or ongoing impediment to the dialing parity offered by BellSouth.

Finally, Mr. Gulino contended that there is no dialing parity because BellSouth cannot provide directory service listings for independent telephone companies. When asked upon cross-examination by Staff what MCI believes that BellSouth should do in a situation in which it is contractually obligated not to provide an independent LEC's directory assistance information to third parties, another MCI witness, Mr. Martinez, stated that BellSouth should simply ignore the contractual obligation. (Tr. 3352). His justification was apparently that he believes this is what the Act requires. MCI, however, failed to provide any explanation as to

why it could not simply enter into a contract with the independent company to obtain the same information in precisely the same way that it is provided, under contract, to BellSouth.

Again, it is essentially uncontroverted that, in the words of Mr. Scheye, dialing parity “simply happens”. The attempts of AT&T and MCI to create a disputed issue on this point are totally lacking in merit.

Issue No. 14: Has BellSouth provided reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?

****Position:** Yes. BellSouth has arrangements in place to provide reciprocal compensation. These arrangements provide for the mutual and reciprocal recovery of the costs of transporting and terminating local calls on BellSouth and ALEC networks.

This checklist item requires that reciprocal compensation arrangements for the exchange of traffic between local carriers must comply with Section 252(d)(2) of the Act. Under Section 252(d)(2), each carrier must receive “mutual and reciprocal recovery of costs associated with the transport and termination on each carrier’s facilities of calls that originate on the network facilities of the other carrier. The costs shall be based on the reasonable approximation of the additional costs of terminating such calls.” (Tr. 471).

In Order No. PSC-96-1579-FOF-TP (entered December 31, 1996), this Commission ordered a rate between BellSouth and AT&T of \$0.00125 per minute for tandem switching and \$0.002 for end office termination. (Tr. 471). Mr. Scheye testified that BellSouth has incorporated these rates into the Statement in this proceeding. (Id.). Therefore, BST's reciprocal compensation arrangements are in full compliance with this checklist item.

Most of the intervenors appear to either concede that BellSouth meets the checklist requirement for reciprocal compensation, or state that they have no basis to have an opinion one way or the other. The two exceptions are MCI and Sprint. MCI, however, states only that reciprocal compensation does not occur when an ALEC uses an end office switch to complete calls in an area in which it would be served by a tandem switch in BellSouth's Network (Pre-Hearing Order, p. 53). Beyond this statement of its position, however, MCI's witnesses do not address this issue whatsoever in prefiled testimony.¹⁴

At the same time, Sprint, while filing a lengthy and somewhat convoluted dissertation on bill and keep arrangements in its prehearing statement (Id.), also fails to address this issue at all in the prefiled testimony of its single witness, Ms. Closz. Again, the fact that this Commission has ruled on the manner in which reciprocal compensation should be provided, and that BellSouth is complying fully with this ruling, is essentially uncontroverted.

Issue No. 15: Has BellSouth provided telecommunications services available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the

¹⁴ Mr. Gulino did contend that an ostensible dispute over interconnection at local tandems relates to checklist item 1 (Tr. 3135), but he fails to state how this relates to issue 14.

Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?

****Position:** Yes. ALECs are able to resell BellSouth's telecommunications services. BellSouth has developed technical service descriptions in ordering, provisioning, and maintenance procedures for 50 of its top retail telecommunications services. As of May 15, 1997, over 49,000 of these services were being resold by ALECs in Florida.

BellSouth offers its tariffed retail telecommunications services for resale to other telecommunications carriers that will, in turn, sell such services to their end user customers. (Tr. 473). Both the terms and conditions of these services and the applicable rates are completely consistent with this Commission's Orders in the previous arbitrations. For example, the Statement outlines specific limitations on resale, which were described by Mr. Scheye as follows:

- (1) BellSouth offers for resale its promotions of 90 days or more at the wholesale discount rate. Promotions of less than 90 days are available for resale with no wholesale discount.
- (2) Lifeline and Linkup services are available for resale to subscribers who meet the criteria that BellSouth would apply to its end users.

(Tr. 464).

Further, "a reseller" of BellSouth's retail services is prohibited from selling residential services to nonresidential subscribers (Tr. 474). Again, these provisions are entirely consistent with the rulings of this Commission (See Order No. PSC-96-1579-FOF-TP, and Order No. PSC-97-0298-FOF-TP).

Likewise, the wholesale discount rate offered by BellSouth in the SGAT is 21.83% for residential services and 16.81% for business services (Tr. 475). These discounts are in the amount set by this Commission in Order No. PSC-97-0298-FOF-TP, entered December 31, 1996). As to the specific retail services that are available, Mr. Milner testified on behalf of BellSouth as follows:

BellSouth has developed technical service descriptions in the ordering, provisioning, and maintenance procedures for 50 of its "top" retail telecommunications services. The revenue from these "top 50" services represents the vast majority of BellSouth's retail service revenue.

Tr. 801.

Moreover, as of May 15, 1997, more than 49,000 of these services were being resold by ALECs in Florida. (Tr. 801). At the same time, other retail telecommunications services, although not yet ordered by ALECs for resale to date, are functionally available. These include, among others, primary rate ISDN, E911, FlexServ, Frame Relay, LightGate Service, off premises extensions, optional calling plans, SmartTask Service, SmartRing Service, and Visual Director. (Tr. 800-801). As Mr. Milner further stated, "testing has been conducted to verify that these services can be resold at the applicable discount and that a correct bill will be generated." (Tr. 802).

None of the intervenors have taken the position that BellSouth is not reselling services, or that BellSouth is reselling services in a way that conflicts in any regard with the Orders of this Commission. Instead, the parties appear to contend only that BellSouth has not provided appropriate operational support systems (OSS) to support the necessary ordering and preordering functions. For the reasons discussed previously in response to Issue No. 3, these contentions should be rejected. BellSouth

offers resale in a manner that meets the checklist requirements, and this portion of the SGAT should be approved by the Commission.

(a) Has BellSouth developed performance standards and measurements? If so, are they being met?

****Position:** BellSouth has developed processes for handling the ordering, provisioning, maintenance, and repair of all resold services. BellSouth has also put organizations and processes in place to ensure that service standards are met.

A full discussion of the performance measurements that have been developed by BellSouth, and the way in which BellSouth is meeting these measurements, is set forth above in response to Issue 3(a).

Issue No. 16: By what date does BellSouth propose to provide intraLATA toll dialing parity throughout Florida, pursuant to Section 271(e)(2)(A) of the Telecommunications Act of 1996?

****Position:** Section 271(e)(2)(A) requires the provision of intraLATA toll dialing parity by the time that BellSouth enters the interlata market. BellSouth has satisfied this requirement by providing 1+ intralata presubscription in all of its end offices since the end of March 1997.

Section 271(e)(2)(A) of the Act requires that BellSouth provide intraLATA toll dialing parity. There is no dispute about the fact that this has already been provided by BellSouth. By Order No. PSC-95-0203-FOF-TP (issued February 13, 1995, in Docket No. 930330-TP) this Commission set forth the requirements to implement intralata presubscription. In keeping with the requirements of that Order, BellSouth has filed a quarterly report with the Commission that tracks the implementation of intralata presubscription. These reports are public records retained by the Commission. The most recent report, dated April 30, 1997, reflects the fact that presubscription has been implemented as of the first quarter of 1997, in 100% of BellSouth's central offices, i.e., it has been implemented on 100% of the total access lines.

No party to this proceeding disputes this fact. MCI, however, has taken the position that the intralata dialing parity requirement has not been met because "the current provisions for cost recovery for implementation of intralata 1+ dialing do not comply with the requirements of FCC Order No. 96-333." (Pre-Hearing Order, p. 57). The pertinent provisions of the FCC Order, however, were recently vacated by the Eighth Circuit Court of Appeals. Specifically, the FCC promulgated dialing parity rules (47 C.F.R. Section 51.205-215) by which it purported to prevent LECs from recovering the costs of implementing dialing parity from other providers except under extremely limited circumstances. On August 22, 1997, the Eighth Circuit Court of Appeals ruled that the FCC exceeded its jurisdiction in attempting to set the subject rules for dialing parity and the related cost recovery (1997 U.S. App. Lexis 22343). Accordingly, the sole basis of MCI's contention that BellSouth does not meet the dialing parity

requirement simply no longer exists. Accordingly, BellSouth has unquestionably met this requirement of the checklist.

Issue No. 17: If the answer to issues 2-15 is “yes”, have those requirements been met in a single agreement or through a combination of agreements?

****Position:** These requirements have been met through a combination of Agreements, and have been met as well as BellSouth’s Statement of Generally Available Terms and Conditions.

As set forth previously, Issues 2-15 correspond to the fourteen point checklist, and BellSouth has met each of these checklist items through the offerings contained in its Statement. Moreover, the Statement is derived from arbitrated agreements entered into between BellSouth and other parties and approved by this Commission (See Ex. 20; See Also the discuss in issues 2-15, which identifies the source for each checklist item contained in the Statement). Although no party addresses this issue expressly in their testimony, several appear to take the position that all fourteen checklist items must be met in a single agreement. (See Pre-Hearing Order, pp. 58-59). Although BellSouth disagrees with this contention, it is essentially moot because the MCI agreement contains provisions that satisfy each and every one of the checklist items (Exhibit 20).¹⁵ Thus, while BellSouth takes issue with those parties that contend that one agreement must be used to demonstrate the availability of all checklist items (if, indeed,

¹⁵ As stated in Exhibit 20, which cross references the SGAT to the AT&T and MCI agreements, the AT&T and MCI agreements may well exceed the checklist requirements in some regards.

agreements are being used at all, as opposed to the SGAT), this issue need not be reached since the BellSouth offerings that comply with the checklist are both set forth in the SGAT and contained in the MCI agreement.

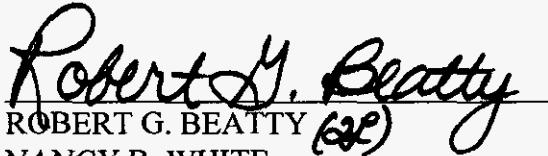
Issue No. 18: Should this docket be closed?

****Position:** This docket should be closed only after this Commission has concluded its consultative role to the FCC.

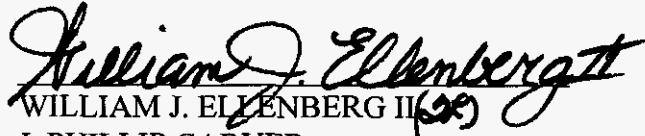
CONCLUSION

For the foregoing reasons, this Commission should approve BellSouth's SGAT and find based upon the evidence presented herein that BellSouth has met the requirements of 47 U.S.C. § 271(c)(2)(B) (the 14 point checklist). Approval of an SGAT will permit BellSouth to seek Section 271 relief under the track most appropriate at the time of its filing with the FCC. In addition, this Commission should develop a factual record to demonstrate that Track A Section 271(c)(1) has been met in Florida. Alternatively, this Commission should develop a factual record to establish that--given the lack of plans by certain ALECs to provide facilities-based service to customers in the foreseeable future--Track B should remain open.

BELLSOUTH TELECOMMUNICATIONS, INC.



ROBERT G. BEATTY (22)
NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5558



WILLIAM J. ELLENBERG II (22)
J. PHILLIP CARVER
EDWARD L. RANKIN, III
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0710

JOHN R. MARKS, III
Knowles, Marks & Randolph, P.A.
528 East Park Avenue
Tallahassee, Florida 32301

APPENDIX A

THE EFFECT OF FCC'S AMERITECH ORDER ON THESE PROCEEDINGS

I. Introduction

This Commission's role in the Section 271 process is to develop a thorough factual record on which it can provide a substantive evaluation of BellSouth's efforts to open the local exchange market. The Commission has several advantages over the FCC in conducting this evaluation, some factual and some based on its actual hands-on experience applying Sections 251 and 252. For example, the Commission has conducted detailed arbitration proceedings implementing the local competition provisions of Sections 251 and 252, which supply the meat of the Checklist. These proceedings involved exhaustive factual discovery, hearings and legal argument over the meaning of Sections 251 and 252. In addition, this Commission has had the benefit of detailed discovery and a hearing to evaluate BellSouth's compliance with Section 271.

The FCC's recent Ameritech Order does not change this Commission's role nor lessen its advantages. Memorandum Opinion and Order, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, (August 19, 1997) ("Ameritech Order"). As an initial matter, the Ameritech Order is an adjudicatory action, and thus not binding on this Commission. It was issued in the context of a particular application and based on a particular record developed during the FCC's comment cycle. The FCC explicitly chose to narrowly limit its holding to three areas in which Ameritech's factual showing was deemed insufficient by the FCC. The

decision is thus founded on resolving factual issues, not statutory ones. Any FCC statements that go beyond the basis for its decision in these narrow areas are dicta, and are not binding. In addition, this Commission is at least equally well positioned as the FCC to apply the various statutory Checklist requirements to a factual record, especially as the Checklist's obligations relate to the implementation of Sections 251 and 252, with which this Commission is so familiar. The infirmity of the FCC's statutory interpretation skills was recently highlighted in Iowa Utilities Board v. FCC, No. 96-3321, 1997 U.S. App. LEXIS 18183 (8th Cir. Jul. 18, 1997) (Iowa Utilities Board). Finally, although the FCC offered "guidance" in various areas, that guidance is not binding on the FCC, let alone other parties, and is too vague and dependent on the facts presented to be of substantial use.

II. The FCC's Ameritech Order Is Not Binding On This Commission

The Ameritech Order is an adjudicatory order based on weighing the facts presented. It is not a rulemaking. It is blackletter law that while rulemakings are generally applicable, an agency's adjudicatory orders are not. See 5 U.S.C. 551 (4), (5). In addition, the FCC's actual holding was narrowly limited to three particular areas. The FCC's grounds for rejecting Ameritech's application were (1) Ameritech had not presented sufficient facts to demonstrate to the FCC's satisfaction that it was providing non-discriminatory ordering and pre-ordering to ALECs for resale, Ameritech Order at Para. 128, (2) Ameritech had not presented sufficient facts to demonstrate to the FCC's satisfaction that it was providing non-discriminatory interconnection, Ameritech Order at Para. 222, and (3) Ameritech had not presented sufficient facts to demonstrate to the

FCC's satisfaction that it was providing non-discriminatory updates to its 911/E911 databases, Ameritech Order at Para. 256.¹ Any FCC statements regarding other issues were not part of its rationale for its adjudicatory ruling rejecting Ameritech's application. These statements, which are neither rules nor the basis for the FCC's decision, may not be relied on.

The fact that the FCC has chosen to offer "guidance" in its Ameritech Order regarding particular parts of the Checklist does not change any of this. In fact, agency "guidance," or policy statements are not binding rules but are akin to press statements. They do not bind the agency to follow them, let alone other parties. Thus, "a policy statement announces the agency's tentative intentions for the future." Pacific Gas & Electric Co. v. FPC, 506 F.2d 33, 38 (D.C. Cir 1974). "An agency cannot give such statements substantive effect in any subsequent proceeding without allowing parties to challenge the validity of the statement." Davis and Pierce, Administrative Law Treatise, Section 6.2 at 231 (1994). Davis and Pierce note that federal agencies have attempted to obtain industry compliance through "guidance" while attempting to circumvent the proper path of notice and comment and the potential legal challenge that binding rulemaking is subject to. Id. at 229.

¹ Petitions for reconsideration have been filed regarding several aspects of the FCC's Ameritech Order. Thus, even the narrow holding of the Order may be changed.

III. The Commission Is Well Placed To Interpret The Meaning Of The Checklist In That It Relies Principally on Sections 251 and 252 For Its Substance

The Checklist contains a fourteen point list of the items Congress decided would open the local market to competition. For the most part, the content of the Checklist is supplied by Sections 251 and 252. For example, “Section 271 requires the Commission to determine whether a BOC has satisfied its duty under section 251 to provide nondiscriminatory access.” Ameritech Order at Para. 131. This Commission has substantial hands-on experience with these sections gained through conducting arbitration proceedings and this proceeding. That experience provides the Commission with a larger base of experience to bring to the task of applying the Checklist’s requirements to the real world. The Commission is thus at least as well situated as the FCC to measure the facts presented in this proceeding against the Checklist.

In fact, the FCC’s track record interpreting the provisions of the Act is not impressive. The Eighth Circuit reversed the FCC’s interpretation of many key provisions of the Act in Iowa Utilities Board. That court reversed the FCC on its jurisdictional authority to prescribe prices under Section 252(d),² its interpretation of the “pick and choose provision” of Section 252(i), its interpretation of its complaint authority under Section 208, its misinterpretation of Section 252(a)(1)’s language concerning disclosure of preexisting agreements, its attempt, contrary to Section 251(c)(3) to make technical

² Rather than abide by the Eight Circuit’s order returning pricing jurisdiction to the states, the FCC is now attempting to reassert that jurisdiction in its Ameritech Order. Twenty-eight states, NARUC and the BOCs and GTE have petitioned the Eight Circuit to rein in the FCC again. See, e.g., Petition of the State Commission Parties and the National Association of Regulatory Utility Commissioners for Issuance and Enforcement of the Mandate, Iowa Utilities Board v. FCC, dated September 16, 1997.

feasibility the standard for unbundling network elements, its misreading of Section 251(c)(2)(C) to require superior interconnection, and its misinterpretation of Section 251(c)(3) to require incumbent LECs to combine network elements for others. Iowa Utilities Board at 47 U.S. App. LEXIS 18183. In light of its record to-date, the FCC's interpretation of the Checklist need not be given undue deference.

In addition, this Commission's role is to assess checklist compliance based on local market and regulatory conditions. This knowledge resides with this Commission, not the FCC. This Commission is thus better placed to evaluate the proper application of the Checklist based on local conditions, and more likely to achieve Congress's goal of opening the local exchange. After all, it is the states that have been "doing the hard job of promoting competition." Chairman Reed E. Hundt, Speech to Commission Staff (Washington, D.C. May 27 1997).

IV. The Issues Actually Decided in the Ameritech Order Are Narrow

The FCC rejected Ameritech's Section 271 application on three narrow grounds. All were based Ameritech's failure to factually demonstrate to the FCC's satisfaction that it was meeting non-discrimination obligations. Thus, the FCC found that Ameritech had not demonstrated that it met its non-discrimination obligation with reference to pre-ordering and ordering access to OSS for resale, interconnection trunk blockage rates and access to 911/E911 databases. Each of these is discussed below.

A. Operational Support Systems For Resale

The FCC found that Ameritech had not proven that pre-ordering and ordering access to its OSS for resale met the Checklist's nondiscrimination requirement. The

standard adopted by the FCC to implement the Act's nondiscrimination obligation for OSSs is whether the BOC allows ALECs to perform OSS functions "in substantially the same time and manner" as the BOC. Ameritech Order at Para. 135. Thus, BellSouth's OSSs must provide "an efficient competitor with a meaningful opportunity to compete." Ameritech Order at Para. 130. BellSouth believes that these formulations of the nondiscrimination standard are reasonable and could usefully be adopted by this Commission.

However, the FCC's discussion of the Checklist's OSS access obligation contains several important errors. First, the Ameritech Order confuses access to OSSs with access to the unbundled elements that are ordered through those OSSs. While the Act's provisions governing unbundled network elements require nondiscriminatory interfaces with, and processing by, a BOC's back-office systems, this obligation is separate from duties regarding the BOC's fulfillment of underlying requests for network facilities or services. Second, the performance standards envisioned in the Order may be read unlawfully to require something beyond the statutory obligations of nondiscriminatory access and to interfere with the statutory rights of state commissions to resolve, and individual competitors and BOCs to privately negotiate, performance standards. In addition, the Commission's "guidance" on the evidence that should be submitted regarding OSS cannot be read to preclude it, or this Commission, from considering all the evidence in the record in assessing compliance with the Checklist's nondiscrimination obligation.

1. Nondiscriminatory Access to Back-Office Systems

Because OSSs are network elements under section 251(c)(3), a BOC must provide “nondiscriminatory access to [those] network elements” in order to satisfy checklist item (ii). §271(c)(2)(B)(ii). As the FCC held in its Local Interconnection Order,³ ALECs must be able to “perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself.” Id. at 15674, ¶ 518.

What happens after BOCs’ and ALECs’ requests have made it through these back-office systems is governed not by the Act’s OSS provisions, but rather by the specific checklist requirements (if any) that address the underlying item ordered. And as the Act expressly states, “[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).” 47 U.S.C. § 271(d)(4).

The only instance in which an ALEC’s right of access to OSSs and its right to receive another checklist item raise the same legal issue is where the BOC does not itself use any OSS in connection with the other checklist item. In those instances the Commission has held that the obligation to offer access to OSS functions is “an essential component” of an incumbent LEC’s duty to offer access to all network elements and services for resale. Recon. Order ¶ 9 (citing Local Interconnection Order ¶¶ 316, 517).

³ First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, modified on reconsideration, 11 FCC Rcd 13042 (1996) (“Recon. Order”), vacated in part, Iowa Utils. Bd. v. FCC, No. 96-3321, 1997 U.S. App. Lexis 18183 (8th Cir. Jul. 18, 1997)

Thus any obligation respecting these OSSs arises not from the duty to provide access to the same OSSs the BOC provides itself, but rather from the BOC's obligation to make network elements or resold services available. Recon. Order ¶ 9.

2. The Order Unlawfully Extends The Act's OSS Requirements

In light of these principles, the Order's "guidance" regarding relevant performance measurements, which appears to confuse OSS access with access to the underlying facilities or services ALECs seek should be ignored. Purportedly to measure the adequacy of OSS access, the FCC required Ameritech to provide data on the underlying items requested by means of OSSs. Specifically, the FCC suggested that to meet its duty of nondiscriminatory access to OSSs under the checklist, Ameritech had a burden to provide evidence regarding average installation intervals for provisioning of resale orders and local loops, Ameritech Order ¶¶ 166, 171, 205, not just processing intervals for OSS systems.

Although a BOC might choose to demonstrate both nondiscriminatory access to its OSSs and access to the underlying checklist item simultaneously by comparing performance for ALEC orders to performance of the BOC's own retail orders all the way from order to completion, the BOC need not do so to demonstrate the adequacy of its OSSs. As explained above, the speed and accuracy with which a BOC fills a request after it has passed through the OSS is governed solely by the checklist item pertaining to the facility or service sought by the ALEC.

Further, the FCC's suggestion that a future record must contain certain evidence is inconsistent with its discussion of the burden of proof in section 271 proceedings.

BellSouth, or any BOC, may meet its burden of demonstrating that it provides access “in substantially the same time and manner” in various ways. The exact evidence that is necessary to meet this burden cannot, and should not, be specified or limited in advance. To a large extent, the evidence required will depend on any facts presented in opposition.

The FCC appears to recognize this in other parts of its Ameritech Order. Thus, the FCC specified that once a BOC presents a prima facie case, the burden of production shifts to its opponents. Ameritech Order at Para. 44. (“We believe that shifting the burden of production once a BOC has presented a prima facie case that its application satisfies section 271 is appropriate, because parties opposing a BOC’s application have the greatest incentive to produce, and generally have access to, information that would rebut the BOC’s case. In addition, absent such a shift in the burden of production, a BOC applicant would be in the untenable position of having to prove a negative”). Thus, whether BellSouth has made a prima facie case of nondiscriminatory access, and whether its opponents have come forward with real evidence to refute that case, depends not on particular performance measures, but on the evidence as a whole.

In addition to requiring irrelevant performance measurements, the Ameritech Order’s OSS discussion suggests that the FCC may seek to enforce impermissible performance standards. As noted above, nondiscrimination is the touchstone under the Act. Iowa Utilities Board., 1997 U.S. App. LEXIS 18183, at *79-80.

Yet the Ameritech Order suggests that a BOC may have to go beyond providing nondiscriminatory access to its existing OSSs and ensuring access to new OSSs that will make obtaining the underlying items feasible. Specifically, the FCC indicated that the BOC might have to meet particular performance standards that federal regulators deem

desirable to facilitate ALEC entry. Ameritech Order ¶ 141. This would exceed the FCC's statutory authority to ensure nondiscrimination, by requiring the BOC to provide a level of access that may be superior to what the BOC itself receives. In addition, this approach effectively requires the BOCs to include in their interconnection agreements with ALECs performance standards that reflect the preferences of federal regulators. It would override the voluntary negotiation/arbitration process established by the Act and infringe upon the authority of the states.

In the 1996 Act, Congress directed that local competition be implemented through negotiations between incumbent LECs and ALECs under the supervision of the state commissions. See 47 U.S.C. §§ 251-252. This process allows the market participants to negotiate (or arbitrate) performance or technical standards for OSS access that fit their systems and business plans, back-stopped by state commission oversight. State commissions have “the primary authority” to oversee this process and enforce the substantive terms of agreements made pursuant to sections 251 and 252. Iowa Utilities Board, 1997 U.S. App. LEXIS 18183, at *48.

The FCC may not circumvent this reservation of authority over intrastate matters to the states by dictating under section 271 standards that the BOCs must incorporate when they negotiate their agreements at the state level. See id. at *37 (Commission may not impose rules that “thwart the negotiation process”). In particular, if the states could not adopt standards that fit their own markets in the arbitration orders because the BOC had a functional federal duty to meet different standards, the state commissions would be unable to perform a core function reserved to them by Congress. Id. at *4 (state commissions are to approve all final agreements). The FCC, moreover, has no review or

enforcement duties relating to negotiated or arbitrated agreements that would allow it to mandate technical or performance standards. Id. at *45-50.

Accordingly, this Commission should not rely on these paragraphs of the FCC's Ameritech Order. A BOC's section 271 application may not properly be denied for failure to satisfy the OSS requirements on the basis that the BOC's showing does not include specific performance standards.

3. Additional OSS "Guidance"

In more non-binding guidance, the FCC suggested that OSS systems must be capable of processing orders for combinations of network elements, including the combination of all the elements necessary to mimic a BOC's retail services -- "the 'UNE Platform.'" Ameritech Order at Para. 160. This is another attempt by the FCC to avoid the Eighth Circuit's holding in Iowa Utilities Board. The Eighth Circuit made it clear in that case that a BOC has no duty to combine unbundled network elements for ALECs. Iowa Utilities Board, 1997 U.S. App. LEXIS 18183, at *81-83. Thus, a BOC has no duty to make OSSs available to order BOC-combined network elements.

B. Interconnection Trunk Blockage

Checklist item (i) requires the provision of nondiscriminatory interconnection. The FCC rejected Ameritech's application because the record lacked adequate data on trunk blocking. Ameritech Order at Para. 232. What data was present in the record suggested that ALEC interconnection trunks were blocked at a higher rate than Ameritech's. Order at Paras. 236-245. This grounds for rejection was based purely on the facts before the FCC.

C. Access to 911/E911 Databases

Checklist item (vii) requires nondiscriminatory access to 911/E911 services. The FCC rejected Ameritech's offering in this area because the evidence in the record indicated that Ameritech maintained 911 database entries for its customers with greater accuracy and reliability than it did for ALEC customer. Ameritech Order at Para. 260. Again, this ground for rejection was based purely on the facts before the FCC.

V. Other Checklist Items Discussed By The FCC But Not Resolved

The FCC discussed other checklist items, and provided "guidance" with respect to some. BellSouth discusses these briefly here.

Under the heading of "Checklist Items of Limited Dispute," the FCC presented the arguments of the various parties regarding certain checklist items. The FCC offered no substantive discussion of these items, and suggested that Ameritech work with the few parties raising these issues to resolve them. Ameritech Order at Para. 116. The Checklist items involved were: nondiscriminatory access to poles, ducts, conduits, and rights of way (item (iii)), nondiscriminatory access to directory assistance and operator call completion services (item (vii)), white pages directory listings (item (viii)), nondiscriminatory access to telephone numbers (item (ix)), nondiscriminatory access to databases and associated signaling (item (x)), local dialing parity (xii), and reciprocal compensation (item (xiii)). Ameritech Order at Para. 116. The discussion of these Checklist items provides no insight for this Commission.

The FCC also presented additional concerns it had with certain of Ameritech's offerings. Ameritech Order at Paras. 280-343. This "guidance" was not part of the

adjudicatory decision, and does not constitute a binding rulemaking. The main point of these paragraphs is the FCC's attempt to negate the Eight Circuit's Iowa Utilities Board decision. Thus, the FCC asserts that it can determine pricing of unbundled network elements under Section 271, even though it has no jurisdiction over such pricing. Ameritech Order at Paras. 281-297. The FCC also asserts that BOCs must provide combinations of network elements to ALECs. This also conflicts with the Eighth Circuit's holding that unbundled network elements are just that, unbundled, and that a BOC's responsibility under the Act is to provide network elements in a manner that allows ALECs to recombine them. BellSouth suggests that the FCC's assertions in these areas can safely be ignored because they conflict with the Act and the Eighth Circuit's ruling.

VI. Conclusion

This Commission's responsibility is to evaluate whether BellSouth has met its Checklist obligations. The Commission has substantial real world experience from its arbitration hearings and this proceeding, and the advantage of substantial fact discovery, on which to base its evaluation. The FCC's Ameritech Order reasserts the general interpretation that the Checklist's nondiscrimination requirement requires BellSouth to provide ALEC access to its OSSs in "substantially the same time and manner" as it enjoys, and generally to provision network elements in a manner that allows "an efficient competitor a meaningful opportunity to compete." BellSouth believes these are reasonable interpretations of the Checklist's requirements. However, this Commission is not bound to follow the FCC's factual determinations set out in its Ameritech Order. BellSouth submits that the application of the Checklist to a factual record is not a province in which the FCC has any advantage over this Commission. In fact, this Commission is closer to the real facts and the competitive market in Florida than the FCC, and has had more real world experience applying the substantive elements of the Checklist. This Commission is confronted with an entirely different factual record and a different competitive environment. It must make its own decisions based on the factual record before it.