BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996. (Hearing)	DOCKET NO. 960786A-TL OPINION NO. PSC-02-1304-FOF-TL ISSUED: September 25, 2002

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CONSULTATIVE OPINION

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List of Acronyms

ASCENT	Association of Communication Enterprises
ADSL	Asymmetric Digital Subscriber Line
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Carrier
ALI	Automatic Line Identification
ANI	Automatic Number Identification
ANSI	American National Standards Institute
ASR	Access Service Request
BDFB	Battery Distribution Fuse Board
BFR	Bona Fide Request
BFFO	Bona Fide Firm Order
BOC	Bell Operating Company
C.F.R.	Code of Federal Regulations
CABS	Carrier Access Billing System
CCA	Collocation Conversion Application
CCM	Circuit Capacity Management
CCP	Change Control Process
CDF	Conventional Distribution Frame
CEV	Controlled Environmental Vault
CFA	Connecting Facility Assignment
CLEC	Competitive Local Exchange Carrier
CLP	Competing Local Provider
CNAM	Calling Name Database
CO	Central Office
CORBA	Common Object Request Broker Architecture
CPG	Circuit Provisioning Group
CRIS	Customer Records Information System
CSA	Contract Service Arrangement
CSOTS	CLEC Service Order Tracking System
CSR	Customer Service Record

DA	Directory Assistance
DAAS	Directory Assistance Access Service
DACC	Directory Assistance Call Completion
DADAS	Direct Access to Directory Assistance Service
DADS	Directory Assistance Database Service
DC	Direct Current
DID	Direct Inward Dial
DLC	Digital Loop Carrier
DLEC	Data Local Exchange Carrier
DMS	Data Management System
DOE	Direct Order Entry
DSL	Digital Subscriber Line
DSLAM	Digital Subscriber Line Access Multiplexer
EICCP	Electronic Interface Change Control Process
EODUF	Enhanced Optional Daily Usage File
EXACT	Exchange Access Control
FCC	Federal Communications Commission
FGC	Feature Group C
FGD	Feature Group D
FID	Field Identifier
FWG	Field Work Group
FX	Foreign Exchange
GTF	General Trunk Forecast
GTT	Global Title Translation
GUI	Graphical User Interface
HVAC	Heating Ventilation and Air Conditioning
ICS	Interconnections Services
ILEC	Incumbent Local Exchange Carrier
IPC	Interconnection Purchase Center
ISP	Internet Service Provider
IURC	Indiana Utility Regulatory Commission
IXC	Interexchange Carrier
LAN	Local Area Network

LCC	Line Class Code
LCCAM	Line Class Code Assignment Module
LCSC	Local Carrier Service Center
LEC	Local Exchange Carrier
LENS	Local Exchange Navigation System
LEO	Local Exchange Ordering System
LERG	Local Exchange Routing Guide
LESOG	Local Exchange Service Order Generator
LIDB	Line Information Database
LISC	Local Interconnection Switching Center
LNP	Local Number Portability
LPIC	Local Presubscribed Interexchange Carrier
LSOG	Local Service Ordering Guidelines
LSR	Local Service Request
MOS	Modified Operator Signaling
NEBS	Network Equipment and Building Specifications
NGDLC	Next Generation Digital Loop Carrier
NISC	Network Infrastructure Support Center
NPA	Numbering Plan Area
NPAC	Number Portability Administration Center
NRC	Non-Recurring Charge
NTF	No Trouble Found
NXX	Central Office Code/Prefix
OBF	Ordering and Billing Forum
OCn	Optical Carrier (n = level)
OCN	Operating Company Name
ODUF	Optional Daily Usage File
OLNS	Originating Line Number Screening
OS/DA	Operator Service/Directory Assistance
OS	Operator Service
OSS	Operational Support Systems
PBX	Private Branch Exchange
PC	Personal Computer

PIC	Presubscribed Interexchange Carrier
PIU	Percent Interstate Usage
PLU	Percent Local Usage
POI	Point of Interconnection
PON	Purchase Order Number
POP	Point of Presence
POT	Point of Termination
POTS	Plain Old Telephone Service
RAO	Revenue Accounting Office
RCF	Remote Call Forwarding
RNS	Regional Negotiation System
ROS	Regional Ordering System
RT	Remote Terminal
SCP	Service Control Point
SGAT	Statement of Generally Available Terms and Conditions
SOCS	Service Order Communications Systems
SOER	Service Order Edit Routine
SRC	Selective Routing Codes
STP	Signal Transfer Point
SWC	Serving Wire Center
TAFI	Trouble Analysis and Facilitation Interface
TAG	Telecommunications Access Gateway
TCIF	Telecommunications Industry Forum
TOPS	Traffic Operator Position Systems
UCL-ND	Unbundled Copper Loop Non Designed
UNE	Unbundled Network Element
UNE-P	Unbundled Network Element-Platform
USOC	Universal Service Order Code
WMC	Work Management Center

I. CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions applicable to the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC must consult with the Attorney General and the appropriate state commission before making a determination regarding a BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B). With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

On June 28, 1996, this docket was opened to begin to fulfill our consultative role on the eventual application of BellSouth Telecommunications, Inc. for authority to provide in-region interLATA service.

On June 12, 1997, Order No. PSC-97-0703-PCO-TL, Second Order Establishing Procedure, was issued. That Order established the hearing schedule in the case and required BellSouth to submit specific documentation in support of its Petition, which was scheduled to be filed on July 7, 1997. On July 2, 1997, Order No. PSC-97-0792-PCO-TL, Order Modifying Procedural Schedule, was issued. That Order set out additional issues to be addressed.

After hearing, having considered the record, by Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we rendered our findings on whether BellSouth had met the requirements of Section 271(c). Specifically, we found that BellSouth was not eligible to proceed under Track B at that time, because it had received qualifying requests for interconnection that if implemented would meet the requirements of Section 271(c)(1)(A), also known as Track A.

The evaluation of the record on whether BellSouth met the requirements of Section 271(c)(1)(A) indicated that while there was a competitive alternative in the business market, there was not sufficient evidence to determine whether there was a competitive alternative in the residential market. Thus, based on the evidence

in the record, this Commission found that BellSouth had not met all of the requirements of Section 271(c)(1)(A). We found that BellSouth had met checklist items 3,4,8,9,10,11,12,13, and the majority of checklist item 7. BellSouth had not met the requirements of checklist items 1,2,5,6, and 14. Since BellSouth had met the requirements of several checklist items in this proceeding, we indicated that BellSouth may not be required to fully relitigate those issues in a future proceeding. However, we did require that when BellSouth refiled its 271 case, it must provide all documentation that it intends to file with the FCC in support of its application to this Commission as well. Finally, we decided that BellSouth's SGAT should not be approved at that time.

On March 6, 2001, BellSouth filed a Motion to Request Scheduling Conference. Due to the conflicting positions of the parties as to the relevant scope of the hearing, the prehearing officer conducted a conference and rendered a decision on the relevant issues for the hearing, by Order No. PSC-01-1025-TL, issued April 25, 2001. A request for reconsideration of the order was heard by the full Commission on May 15, 2001, and denied. As a result, all operational support system (OSS) aspects have been addressed through the third-party test in Docket No. 960786B-TL.

We conducted an administrative hearing in Docket No. 960786A-TL, on October 10-11, 2001, and October 17-18, 2001.

Subsequent to the hearing, Covad Communications, FCCA, and NewSouth Communications filed their position as the Joint ALECs, and are referenced herein as "Joint ALECs." On November 8, e.spire filed a letter concurring with the position of the Joint ALECs. U.S. LEC of Florida, NuVox Communications, XO Florida, and Time Warner Telecom filed their position as the Competitive Coalition, and are referenced herein as "Competitive Coalition."

At the outset, we acknowledge that since the hearing, decisions have been issued by the United States Supreme Court, the FCC, and this Commission that address several critical concerns put forth by the ALECs as being key to fostering local competition. The developments are discussed in the context of the related issues of this Opinion and, where applicable, through the companion Opinion in Docket No. 960786B-TL. These developments, together

with other current proceedings of this Commission, appear to address the critical concerns raised by the ALECs.

Furthermore, it should also be noted that Sprint, FCTA, and Z-Tel did not file a post-hearing statement or brief, and therefore, in accordance with Order No. PSC-01-1887-PHO-TL, issued September 21, 2001, Sprint, FCTA, and Z-Tel have waived their positions on all issues in this proceeding.

II. THE NATURE OF THE COMMISSION'S CONSULTATIVE ROLE

A. Parties' Arguments

1. BELLSOUTH

BellSouth notes that Section 271(d)(1)(B) states that "[b]efore making any determination under this subsection, the Commission [FCC] 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)." BellSouth also emphasizes that in past 271 application decisions, the FCC has noted that it consults with the state commission to determine whether the RBOC has the required state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), or that it has satisfied the competitive checklist. *Citing* Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, 15 FCC Rcd 18354, 18360-61 (2000)(SWBT-TX Order). BellSouth also points out that the FCC has indicated that it will give great weight to the recommendations of state commissions that are based on an extensive record. *Citing* Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut, 16 FCC Rcd 14147, ¶ 2(Verizon-CT Order).

According to BellSouth, the FCC has defined four ways by which a state commission can contribute to the process:

> (1) full and open participation by all interested parties; (2) extensive independent third party testing of Bell Atlantic's operations support systems (OSS) offering; (3) development of clearly defined performance measures and standards; and (4) adoption of performance assurance measures that create a strong financial incentive for post-entry compliance with the section 271 checklist by Bell Atlantic.

Citing Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953, 3958 (1999) (BA-NY Order). BellSouth contends that this Commission has more than met this standard for review of its application, and as such, our assessment of BellSouth's application will be "convincing evidence" of BellSouth's compliance to which the FCC should give "substantial weight."

BellSouth further explains, however, that we should only consider whether BellSouth has met its statutory obligations under Section 271 of the Act. In fact, BellSouth contends, the FCC has repeatedly stated that the states should confine their assessment to the statutory requirements. *Citing* Verizon-CT Order at ¶ 50 (indicating that Verizon's collocation rate for its interstate access service was not relevant to a checklist item.) BellSouth maintains that if it is judged by anything beyond the established obligations, it would be faced with a "bar" that is perpetually in flux, which would make the goals of the Act unattainable.

BellSouth further emphasizes that Congress established the 271 obligations as the bar by which BellSouth's 271 application should be judged. While BellSouth concedes that this Commission can make policy decisions that go beyond the requirements of the Act, it maintains that those decisions are not part of the 271 determination. BellSouth notes that FCCA's witness Gillan seemed to concede this point at hearing when he stated that we could approve BellSouth's application if it is found that BellSouth has

satisfied "the national minimums, but then also conclude that in addition to those, BellSouth must do XYZ, and on."

For the above reasons, BellSouth asks that we base our determination strictly upon the requirements of Section 271 of the Act and consider any additional issues in other proceedings.

2. ACCESS

Access contends that the FCC has indicated that the state commission's review of an RBOC's 271 application is much more than a "sterile, mechanical review of checklist items." Access notes that in its Ameritech decision, the FCC explained that state commissions have unique knowledge and experience with the local market that should enable them to "develop a comprehensive, factual record regarding the opening of the BOCs local networks to competition." *Citing* In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd 20543 (Aug. 19, 1997)) (Ameritech Order).

Access further explains that our assessment must not only address the minimum requirements as stated by the FCC, but should also include any additional, checklist-related requirements that we deem appropriate to impose. Access notes that the FCC itself has acknowledged a state commission's ability to impose additional requirements beyond those outlined in FCC rules by its acknowledgment of state's ability to add UNEs to the national list. *Citing* Local Competition Third Report and Order, CC Docket 96-98, 15 FCC Rcd. 3696, 3767 (1999).

In addition, Access argues that we not only have the ability, but the obligation, to foster fair local competition under state law. Part of that obligation, argues Access, is to prevent anticompetitive behavior. Access argues that other states have also considered the state of competition in their state and as a result, have imposed additional requirements on the RBOC or have pressured the RBOC into relenting on "self-serving interpretations" and reconsidering certain policies. Thus, Access argues that this Commission should not regard our role as purely a ministerial application of FCC standards, but should, instead, apply our own

interpretation of the checklist requirements in determining whether BellSouth has sufficiently opened its markets to competition.

3. AT&T

AT&T contends that the FCC has been very clear that the state commissions are more than just its field offices. In support, AT&T notes the FCC's decision in its First Local Competition Order, wherein the FCC stated that

> . . . the Commission conclude[s] that the states and the FCC can craft a partnership that is built on mutual commitment to local telephone competition throughout the country, and that under this partnership, the FCC establishes uniform national rules for some issues, that states, and in some instances the FCC, administer these rules, and the states adopt additional rules that are critical to promoting local telephone competition.

11 FCC Rcd 15,499 at ¶ 24 (August 8, 1996). AT&T notes that FCCA witness Gillan explained that the FCC's requirements are, in fact, minimum standards upon which states may build. AT&T also emphasizes that witness Gillan further explained that the minimum standards have not really encouraged much competition and that only when states impose their own, additional requirements does competition begin to develop.

AT&T also argues that the FCC has acknowledged the importance of the state commissions' role and their unique ability to "develop innovative solutions" to address state-specific concerns and to encourage competition in their state. As such, the FCC has viewed its relationship with the state commissions as an enduring partnership with a common goal. AT&T maintains that as such, we can, and should, evaluate BellSouth's application and require additional, pro-competitive alternatives as necessary to foster local competition in Florida.

4. COMPETITIVE COALITION

The Competitive Coalition (Coalition) contends that the state commissions play an essential role in the 271 process. They argue that the FCC gives substantial weight to the state commission's determination of whether the RBOC has shown that its local markets are "irreversibly open." To do so, the Competitive Coalition argues that this Commission must ensure that all issues relevant to the competitive checklist are fully addressed and resolved. On this point, the Coalition emphasizes that we cannot make an actual determination on BellSouth's compliance, or lack thereof, until Track B is completed.

The Competitive Coalition also argues that we must require the following in order for local competition to ever occur in Florida: 1) access to all combinations; 2) revised, cost-based UNE prices; 3) parity between BellSouth's OSS and its own systems; and 4) termination of "win-back" activity. On the last item, the Coalition notes that the Louisiana Commission recently placed restrictions on BellSouth's "win-back" activities in its decision on BellSouth's application for that state, in In re: Consideration of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region, Docket No. U-22252 (Sept. 18, 2001)[1].

Based on the foregoing, the Competitive Coalition believes that we play an integral role in evaluating BellSouth's 271 application, and in conducting our review, we should require all those things necessary to further competition in Florida.

5. JOINT ALECs (J-ALECs)

The J-ALECs argue that, in accordance with Section 271(d)(2)(B), the state commissions play a very important role in

[1]In Docket No. 020119-TP, Order No. PSC-02-0875-PAA-TP, issued June 28, 2002, this Commission declined to impose a waiting period, whereby BellSouth would be precluded from initiating any "win-back" activities to regain a customer. We, however, acknowledged that BellSouth has established a region wide, 10-day waiting period after the conversion to an ALEC is complete.

the 271 process. Like Access, they contend that the FCC's Ameritech decision clearly demonstrates the FCC's respect and reliance upon the state commission's evaluation of the status of competition in their respective states. They further note that the FCC has recently stated that determination of whether an RBOC has met the §271 Competitive Checklist is "a contextual decision based on the totality of circumstances. . . ." *Citing* In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd. 3953, ¶ 60 (December 22, 1999)). Based on this statement, the J-ALECs contend that this Commission is obligated to inform the FCC of whether BellSouth has met the checklist requirements, and what additional requirements we believe are necessary to ensure that local markets are open to new entrants.

The J-ALECs further emphasize that we should bear in mind that the FCC's rules and its various 271 Orders represent the minimum requirements, and that the state commissions can impose additional requirements in order to further the pro-competitive goals of the Act. They contend that we must also consider that we are obligated by Florida Statutes to open up the local Florida markets to competition. Thus, they contend that we should evaluate the evidence and "determine if the goals of the legislation are being met--are there broad alternatives to local service from the incumbent for Florida's end users" under both the federal and state legislative schemes.

The J-ALECs contend that we must take action on the points identified by witness Gillan in order to truly encourage effective competition in Florida, and must act swiftly. They also believe that we must take action to: 1) require BellSouth to continue to offer its xDSL service to customers that choose an alternative carrier for their voice service; 2) offer splitters on all UNE-P lines; 3) eliminate charges for ODUF and ADUF files; and 4) permit resale of advanced services. The J-ALECs assert that this Commission should impose these additional obligations in order to ensure that true competition can begin in Florida.

6. KMC

KMC argues that the 271 application process is designed to ensure that the agency with the most knowledge of the facts pertinent to the RBOC's application advises the FCC on the RBOC's compliance before the FCC renders its decision. KMC emphasizes that the FCC has indicated that it will give the state commission's evaluation "substantial weight," essentially placing the evaluations of the state commissions and the Department of Justice on equal footing.

KMC also contends that we can, and should, augment the FCC's 271 minimum standards where necessary to ensure the development of full competition in Florida. KMC notes that in New York, the state commission negotiated a "pre-filing" statement that indicated what actions Bell Atlantic would take to encourage competition, while in Texas, the state commission, competitive carriers and SBC negotiated a generic "T2A" interconnection agreement. Only when measures necessary to ensure competition in Florida are in place should we endorse BellSouth's application, argues the company. Furthermore, contends KMC, this Commission must address all anticompetitive conduct, whether part of the 271 checklist or not.

7. WORLDCOM

WorldCom argues that we should take a "broad view" of our role in the 271 process. WorldCom explains that in prior 271 application proceedings, the FCC has provided guidance on the minimum standards that an RBOC must meet in order to achieve 271 certification. These "evolving, and increasingly detailed" standards are susceptible to further change as new competitive issues arise, according to WorldCom. As such, in order to totally fulfill its consultative role, we should consider the current "minimum standards" of the FCC and advise them as to whether or not they have been met by BellSouth. We should further advise the FCC as to whether additional steps should be taken in order to further competition, based on state law and the state of competition in Florida.

In addition, according to WorldCom, we should require BellSouth to implement those things that the Commission finds necessary to further competition and should explicitly condition

its recommendation on BellSouth's 271 application upon the completion of those additional requirements. WorldCom notes that the weight to be given these additional recommendations will be decided by the FCC, but they will likely be given some weight in view of the FCC's acknowledgment of the state commission's role in opening markets to competition. WorldCom notes that in its recent Pennsylvania 271 Order, the FCC stated:

> As the [Federal Communications] Commission has recognized, state proceedings demonstrating a commitment to advancing the pro-competitive purposes of the Act serve a vitally important role in the section 271 process.

In the Matter of Application of Verizon Pennsylvania, Inc., FCC Order 01-269 at ¶ 3.

WorldCom further argues that contrary to BellSouth's apparent understanding, this Commission is not a "field office" of the FCC. Therefore, WorldCom argues that we can, and should, impose additional pro-competitive requirements upon BellSouth in order to open Florida's markets to competition. If we find that any of the recommended actions do not fall under a checklist item, WorldCom urges us to take the appropriate action pursuant to our state authority to promote competition. Among other things, WorldCom believes that we should require: 1)UNE prices set at TELRIC-based rates; 2) functional OSS at parity with BellSouth's own retail systems; 3) provision of UNE combinations at TELRIC-based rates; 4) non-discriminatory interconnection; and 5) reciprocal compensation at applicable rates for all non-ISP bound local traffic.

B. Opinion

Based upon the briefs submitted, it is clear that all the parties agree that this Commission's function in the 271 process is an important one. The only matters of dispute seem to be whether and to what extent we can look beyond the FCC's stated standards for 271 approval in rendering our recommendation, and whether we can impose additional requirements upon BellSouth in this proceeding.

At the outset, we note that the Act has clearly stated that the FCC must consult with both the Attorney General and the appropriate state commission before rendering a decision on any RBOC's application for in-region, interLATA authority. 47 U.S.C. § 271(d)(2). The Act states that the Attorney General can base its evaluation of the RBOC's application upon any standard that it considers appropriate, and that the FCC must give the Attorney General's evaluation "substantial weight." Id. The Act does not, however, clearly define what weight is to be given to the state commission's evaluation, and yet it does indicate that the state commission should focus its attention on compliance "with the requirements of subsection (c) [the 271 in-region requirements and checklist]." 47 U.S.C. § 271(d)(2)(B). The Act's lack of specificity as to the weight to be given to the state commission's recommendation has been construed by the FCC as follows:

> Because the Act does not prescribe any standard for consideration of a state commission's verification under section 271(d)(2)(B), the [FCC] has discretion in each section 271 proceeding to determine the amount of weight to accord the state commission's verification.

In the Matter of Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania (Verizon-PA Order), FCC Order 01-269, CC Docket No. 01-138, Appendix C, ¶ 2 (Sept. 19, 2001). Nevertheless, the FCC has also stated that

> We believe that the state commissions' knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition. The state commission's development of such a record in advance of a BOC's application is all the more important in light of the strict, 90-day deadline for [FCC] review of section 271 applications. Most state commissions,

> recognizing the importance of their role in the section 271 process, have initiated proceedings to develop a comprehensive record on these issues. Others, however, have not yet initiated such proceedings, or have undertaken only a cursory review of BOC compliance with section 271. We note that the Act does not prescribe any standard for [FCC] consideration of a state commission's verification under section 271(d)(2)(B). The [FCC], therefore, has discretion in each section 271 proceeding to determine what deference the [FCC] should accord to the state commission's verification in light of the nature and extent of state proceedings to develop a complete record concerning the applicant's compliance with section 271 and the status of local competition. We will consider carefully state determinations of fact that are supported by a detailed and extensive record, and believe the development of such a record to be of great importance to our review of section 271 applications. We emphasize, however, that it is our role to determine whether the factual record supports a conclusion that particular requirements of section 271 have been met.

Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended (Ameritech Order), 12 FCC Rcd 20543, 20559-20560 (Aug. 19, 1997). See also In Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd at 3962, ¶ 20 (Dec. 21, 1999)(in this instance, the state commission's recommendation was given "substantial weight" in view of the thorough record developed).

Furthermore, the FCC has stated that it looks to the statutory standards of Section 271 of the Act in rendering its decisions and that it does so on a case-by-case basis "consider[ing] the totality of the circumstances, including the origin and quality of the

information in the record, to determine whether the nondiscrimination requirements of the Act are met." Verizon-PA Order, Appendix C at ¶ 6. Since the FCC relies to a great extent upon the state commission to develop the record, it is clear that the state commission's role is a defining aspect of the process.

The limitations on the state commission's consultative role are, however, somewhat less clearly defined. For instance, in the Ameritech Order, the FCC asked state commissions to provide information regarding the level of competition in their state as part of the state commission's recommendation on an RBOC's application, even though such information "is not germane to the competitive checklist." Ameritech Order at ¶ 34. However, in that same Order and only a few short paragraphs later, the FCC emphasized that ". . . Congress limited the consultative role of state commissions to verification of BOC compliance with section 271(c). . . ." Ameritech Order at ¶ 37. Seemingly, these two statements are somewhat at odds. It appears, however, to indicate that the state commission can offer any information it deems appropriate, but the FCC will give that additional information whatever weight it finds appropriate based upon the circumstances of the particular application.

Based on the language in Section 271(d)(2)(B) of the Act and the various FCC decisions cited herein, it appears that our primary role is to make factual findings on whether BellSouth has complied with Section 271(c) of the Act and based upon those findings, render a recommendation to the FCC. In developing our recommendation, we have, therefore, considered standards set by the FCC in prior 271 decisions. It does not, however, appear that we are constrained by these prior FCC 271 decisions. In fact, the FCC has stated that

> . . . the statute requires the Commission [FCC] to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the Commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the

> record, including state-specific factors identified by commenting parties, the states, the Department of Justice.

Verizon-CT Order, Appendix D, ¶ 13. Thus, if we believe that the record demonstrates circumstances in Florida that necessitate the application of the Act's requirements in a manner different than previously stated by the FCC when it has addressed applications for 271 authority in other states, we may make findings herein that differ from those prior FCC decisions.

As for the applicability of state law, the Act does not contemplate that the state commission would render its recommendation to the FCC based upon anything other than the federal law. Nevertheless, we can find nothing that would actually prohibit this Commission from making additional recommendations to the FCC that take into account state requirements that are not inconsistent with the Act, but may be beyond the specific requirements set forth in Section 271. If we were to include recommendations founded upon requirements beyond those set forth in Section 271(c), it appears that the FCC would simply give those additional recommendations whatever weight it may deem appropriate. However, we find that it may be appropriate to render such additional recommendations outside the context of the Order resulting from this Track A proceeding, perhaps as comments to the recommendation, because the issues as defined and addressed in this proceeding contemplate only the federal requirements.

In addition, this is not the appropriate forum for establishing rates or for taking other substantive action. This proceeding is designed to allow us to formulate our recommendation to the FCC regarding whether or not BellSouth has met the requirements of Section 271 of the Act. The issues established for this proceeding were designed to facilitate the development of the record in that regard. As such, there is insufficient evidence in the record to support the establishment of any rates. Furthermore, because this proceeding is designed to allow us to fulfill our consultative role as contemplated by Section 271 (d)(2)(B) and has only been noticed as such, it is arguable whether or not sufficient notice has been provided to allow us to take substantive action, such as rate-setting, in this proceeding. This would not, however, prohibit us from recommending to the FCC that we believe additional

action needs to be taken at the state level for competition to truly develop, or from "conditioning" our recommendation upon the outcome of other or additional state proceedings to address any competitive concerns the Commission may have. As noted above, the FCC would likely give these recommendations or "conditions" whatever weight they find appropriate.

C. Conclusion

Based on the foregoing, our role is to advise the FCC as to whether BellSouth has met the Section 271 requirements set forth in the federal Telecommunications Act of 1996. In doing so, we shall make findings regarding BellSouth's compliance with the FCC's minimum standards for checklist compliance, but may also recommend to the FCC any additional steps that we believe should be taken by BellSouth in order to fully comply with the Act's requirements, as well as to ensure that Florida consumers will enjoy the benefits of competition envisioned by the Telecommunications Act. Because our role in this process, as contemplated by the Act, is consultative, substantive action will not be taken in this proceeding.

III. COMPLIANCE WITH SECTION 271(C)(1)(A) OF THE TELECOMMUNICATIONS ACT OF 1996

BellSouth plans to file its Florida 271 Application with the FCC under Section 271(c)(1)(A), which is commonly termed "Track A." Section 271(c)(1)(A) states the following:

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

telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier. For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et. seq.) shall not be considered to be telephone exchange services.

A. Parties' Arguments

BellSouth witness Cox believes that her company has complied with the requirements of Section 271(c)(1)(A) on the basis of several market statistics, including that the company has entered into more than 500 agreements with certificated carriers in Florida as of May 2001, and has completed more than 1600 collocations as of March 2001. In addition, witness Cox states that BellSouth's estimates of ALEC market share (9.4-10.8%) are comparable to or greater than estimates reported by other Bell Operating Companies (BOCs) at the time they made their successful 271 applications. These estimates from other states are as follows: 8.1-8.4% (Texas, January 2000), 9.0-9.5% (Kansas, August 2000), and 5.5-6.3% (Oklahoma, August 2000). The FCC estimates that as of December 31, 2000, ALECs had an 8% market share in Florida. BellSouth presents numerous other statistics in support of its position that the local market in BellSouth's Florida service area is "irreversibly open to competition."

In witness Cox's surrebuttal testimony, she clarifies that there is no specific market share test to be satisfied, but merely a requirement to "demonstrate that facilities-based competition exists in Florida." In terms of facilities-based competition (including UNEs), BellSouth calculates that ALECs serve 526,218 lines (128,629 residential lines and 397,589 business lines) under one estimation method, and 643,441 lines (128,627 residential lines and 514,814 business lines) based on another estimation method. Under these two methods, the estimates of total ALEC served lines (including resale)are 714,535 and 831,761, respectively.

In order to provide an incentive to ALECs to compete more aggressively in local markets, BellSouth witness Cox believes that BellSouth must be allowed to enter the interLATA long distance

market. She points to experiences in New York and Texas as support for her position that local competition will increase markedly if BellSouth is given interLATA relief. In order to foster competition in all segments of the telecommunications market, in keeping with the goal of the Act, witness Cox believes that BellSouth should be given interLATA authority.

Testifying on behalf of the Florida Competitive Carriers Association (FCCA), witness Gillan takes the position that BellSouth's estimates of the level of local competition are exaggerated. He believes that local competition is languishing; he contends that resold lines are declining, and that UNE-based competition constitutes at most 2% market share.

According to witness Gillan, resale competition is "declining rapidly, and at a rate far faster than gains in either UNE-P or loops individually." He states that in the first quarter of 2001 alone, the number of resold lines in Florida decreased by approximately 30%. On this basis, witness Gillan opines that this entry strategy "is not only not irreversible, it is in full reverse already." He goes on to discuss the unattractive economics, the inability to offer innovative services, and the inability to integrate local and long distance using resale.

While witness Gillan believes that UNE-based entry has the most promise, he believes that this form of competition is only beginning to make headway. He states that "UNE-based entry has achieved roughly a 1.5% market penetration in Florida after more than five years of competition, once *all* of the appropriate BellSouth lines are included in the analysis." Witness Gillan believes that BellSouth's market share calculations are inflated based on the flawed premise of comparing the ALECs' total lines to BellSouth's switched access lines, rather than to BellSouth's total lines. In explaining why UNE-based entry has not developed at a faster pace, witness Gillan attributes the problem to high UNE rates, delays in providing existing unbundled network element combinations, and BellSouth's unwillingness to provide new UNE combinations.

In addition, witness Gillan believes that BellSouth's estimates of facilities-based activity should be adjusted to remove the unique traffic characteristics of ISP customers, since this

indicates "limited competition for a select customer segment." He observes that ISPs were entering the market at the same time as ALECs, which does not address how ALECs are faring in winning a share of BellSouth's established customer base. Witness Gillan develops a facilities-based share (which excludes UNEs) using originating minutes measured over interconnection trunks and makes certain adjustments in an attempt to eliminate the effect of ISP customers. As a result, witness Gillan concludes that the "maximum level of facilities-based competition (adjusted for activity that is likely to be ISP related) is approximately 2%."

Witness Gillan summarizes the ALEC market share from all entry methods as being in the range of 3.7 to 5.5%. These composite figures are based on "(1) adjusting for the unique traffic pattern of certain ALEC customers, (2) updating the resale and UNE data based on Mr. Milner's testimony, and (3) including all of BellSouth's lines in the analysis."[2] Concerning the third adjustment, he believes that the FCC Local Competition Report of May 2001 (data as of December 31, 2000) suffers from the same problem (i.e., inappropriately comparing ALEC voice grade equivalents to ILEC switched access lines). Placing all lines on a voice grade equivalent basis yields an ALEC market share estimate of approximately 6.5%. While witness Gillan alleges that BellSouth's and the FCC's estimates of ALEC market share are overstated, he does acknowledge that the FCC has not instituted a market share test for Track A.

FDN's witness Gallagher believes that BellSouth's estimates of ALEC market share are "stale and getting staler." He supports this conclusion by stating that the rate of ALEC failures exceed the rate of ALEC births. According to witness Gallagher, a random 2% survey of telephone numbers in BellSouth's Magnolia central office suggests that ALECs serve 7.2% of that market, which he believes is not indicative of the level of competition, which would be expected in the downtown Orlando market. Notwithstanding his contention that BellSouth has overstated the extent of facilities-based local

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[2] At the hearing, witness Gillan deleted his underlying estimates of ALEC facilities-based lines (which exclude lines served by UNEs) that he developed based on interconnection trunk data. If his estimate of 148,902 ALEC facilities-based lines (developed using ALEC originating minutes and assumed average minutes per line) is used instead, this equates to an ALEC market share for all entry methods of 5.0%.

competition, the witness, during cross-examination, did accept, subject to check, that in the seven states that have received 271 approval, the number of facilities-based ALECs ranged from one to seven.

In his surrebuttal testimony, BellSouth witness Taylor stresses that the FCC "has *not* established a litmus test (in terms of market share or anything else) for that threshold level of local competition." In cross-examination, he reiterated that "there's no rule in the Act or in the FCC's orders that say[s] how much competition has to take place."

Witness Taylor points to testimony by FCCA witness Gillan as evidence that many of the ALECs' difficulties are not of BellSouth's making. Witness Gillan references "early (and presumptive) announcements by ALECs that have either experienced financial difficulty or deployed technologies that fell well short of expectations." While acknowledging that BellSouth could impede competitive entry, witness Taylor does not believe that FCCA witness Gillan and FDN witness Gallagher have demonstrated "any clear connection between BellSouth's market conduct and the performance and economic fortunes of its new local exchange rivals in Florida."

As further explanation, witness Taylor observes that removing entry barriers does not ensure successful ALEC entry and operation. Any purported failures with local competition may be the result of other factors, which include the following:

1. Financial difficulties, particularly tight capital or credit markets;
2. Technologies which are not cost-effective, or market strategies which are unappealing to customers;
3. Inefficient retail market prices (i.e., implicit or explicit subsidies); and
4. Strategic reasons for interLATA carriers to delay local entry.

Even if FDN witness Gallagher's analysis of the Orlando market is correct, witness Taylor states that does not establish cause and effect.

In response to concerns that local competition may not be sustainable, witness Taylor makes several points. First, he observes that the major competitors are not "start-up" ALECs, but rather "diversified telecommunications service providers." Second, he points to growth in ALEC access lines and substantial sunk investment by ALECs. Third, he references information that as of late 2000, the ALEC failure rate due to bankruptcy was 4%. He contends this is in deep contrast to conservative estimates that approximately 50% of all start-up businesses fail by the fifth year. Fourth, witness Taylor notes that if individual ALECs exit the market, the remaining competitors are likely to purchase their assets and/or take over their customer bases. The net result should be stronger competition among the remaining firms.

Due to a desire to protect their market position, witness Taylor believes that long distance carriers that desire to enter the local market may wait, and in so doing, delay entry by BellSouth into the interLATA market. He points to FCC and other sources which confirm that ALEC entry and participation have increased dramatically where the BOC has been granted interLATA authority. Witness Taylor attributes this result to "strategic game-playing by long distance carriers who are typically the most well-resourced and durable ALECs to enter local markets."

Witness Taylor cites numerous FCC statistics which demonstrate how quickly ALEC competitive activity increased in New York and Texas, the first two states where BOCs received interLATA authority. In New York, ALEC market share increased from 9% to 20% in the first year. In Texas, ALEC market share increased from 4% at the end of 1999 to 12% at the end of 2000, which was six months after 271 approval. In addition, witness Taylor references a confirming study by Professor J. A. Hausman at the Massachusetts Institute of Technology, which uses control states to help isolate the effect of long distance entry by BOCs in New York and Texas. The control states were Pennsylvania and California, for New York and Texas, respectively. Each control state was selected on the basis of being similar to the subject state in terms of LATAs, BOC ownership structure, and geography, and differing mainly by whether the BOC had received interLATA authority. ALEC market share increased from 3.5% to 17.2% in New York (compared to a 1.1 percentage point gain in Pennsylvania over the same period), and 8%

to 15.1% in Texas (compared to a .9 percentage point gain in California).

Witnesses for BellSouth dispute FCCA witness Gillan's assertion that the number of resold lines is declining rapidly. After eliminating an overstatement caused by incorrectly including the counts for UNE-Ps and making adjustments for ISDN lines, BellSouth contends that there is no significant downward trend. The adjusted resold line counts are 202,780 for December 2000, 188,320 for February 2001, and 200,938 for March 2001. As of June 2001, there are more than 212,000 resold lines. Witnesses Cox and Taylor both point toward migration from resale to UNE-P as the reason for the lackluster growth. Both witnesses allege that this migration or transition is to be expected. Witness Taylor explains that resale was designed to allow entrants to compete without having to deploy a ubiquitous network at the outset. In addition, witness Taylor states that the irreversibility standard for competition used by the Department of Justice does not require evidence of all modes of local competition, since market forces should determine the form of entry.

BellSouth witnesses Cox and Taylor also contest FCCA's and FDN's ALEC market share estimates. Witness Cox states that witness Gillan ignores the E911 Listings that ALECs themselves report, since these listings directly refute his reworked estimate of ALEC facilities-based lines, which exclude UNE loops. While witness Gillan estimates that there are, at most, 233,211 ALEC facilities-based lines as of February 2001, witness Cox states that subtracting the number of UNE loops from the number of ALEC E911 listings demonstrates that there are at least 363,567 ALEC facilities-based lines. Over the period February to June 2001, witness Cox states that ALEC 911 listings also grew rapidly (45% compound annual growth rate for residential listings and 66% for business listings). She also disputes witness Gillan's trunk adjustment to eliminate the effect of ISP customers since this results in "an originating trunk count that is approximately 25% of actual originating trunks." In addition, witness Cox observes that witness Gillan does not offer any independent estimates of ALEC market share, but instead only reworks BellSouth's estimates. She also states that FDN witness Gallagher's Magnolia central office study is "non-scientific or not statistically valid."

In summary, witness Cox states that BellSouth has identified "45 unaffiliated facilities-based ALECs that conservatively, serve an aggregate of at least 128,000 residence and 397,000 business lines in BellSouth's service area in Florida." BellSouth witness Taylor observes that even the FCC's estimate of ALEC market share (8%) is considerably higher than witness Gillan's estimates. Moreover, he asserts that the FCC's estimate of ALEC market share in Florida (8%) is not flawed as witness Gillan alleges, since the instructions "make it clear *several times* that the information sought pertains to voice grade equivalent lines."

While the ALEC market share estimates are in dispute, BellSouth witness Taylor makes the point that removing entry barriers is a necessary, but not necessarily sufficient, condition for successful entry. In addition, witness Taylor states that there is no specific level of ALEC market share which is contemplated. Moreover, there are distinctions in how one would evaluate a market in which each firm starts on an equal footing, as compared to a market in which one firm starts with 100 percent market share. In the first instance, concentration is cause for concern. In the second instance, however, only increasing market share should prompt regulatory attention.

Witness Taylor also goes to great lengths in describing how a high market share may not necessarily imply market power. He cites BellSouth's voluntary and self-effectuating enforcement mechanism as providing some level of protection for wholesale service quality. Further, he states that entry and exit conditions are much better predictors of market power. According to the theory of contestable markets, a competitive fringe of firms can enter and exit with ease and can effectively discipline the pricing practices of the dominant incumbent firm, according to the witness.

Witness Taylor also references AT&T's position before the FCC in the so-called "Non-Dominance" proceeding. Witness Taylor notes that AT&T contended that the incumbent IXC's market power in long distance would be constrained if entry barriers were low, and recommended that to the extent market concentration should be considered, it should be evaluated in the context of capacity. In the cited documents, witness Taylor references AT&T's position that competitors' excess capacity constrained AT&T's ability to restrict output and that market share estimates failed to reflect the

extraordinary customer churn. According to AT&T, a firm's ability to retain market share, while increasing prices above competitive levels, was competitively significant. Witness Taylor adds that AT&T further alleged that if other firms' supply was very responsive to price changes, an individual firm with a high market share could not possess significant market power.

While still maintaining the premise that market share is not a good indicator of market power, witness Taylor does note that some market share analyses are more useful than others. He believes that line-based estimates are likely to overstate concentration, since competitors tend to focus first on large, high-volume customers. Measuring market share in terms of capacity may be the most instructive, according to witness Taylor, since capacity translates into an ability to serve. He notes that ALECs tend to have relatively more fiber deployed in their networks, as compared to ILECs; thus, line and capacity-based estimates of ALEC market share are quite likely to diverge.

B. Opinion

The plain wording of this issue and Section 271(c)(1)(A) implies that the level of residential and business facilities-based competition is not dispositive; rather, its mere existence is sufficient to answer this issue in the affirmative. BellSouth witnesses Cox and Taylor and FCCA witness Gillan all agree that the FCC has not instituted a specific market share test for Track A. In the Georgia/Louisiana 271 proceeding, the FCC in fact stated that "[a]ctual market share is irrelevant to our Track A analysis." See FCC Order No. 02-147 at ¶15. There is no dispute that there is some level of residential and business facilities-based competition.

While we do not believe that the resolution of this issue should turn on market share, the ALEC witnesses do express concern on a practical level about the sustainability of local competition, which deserves some discussion. FCCA witness Gillan believes that local competition is languishing, and contends that resale competition is declining rapidly, at a far faster rate than UNE-based competition is growing. FDN witness Gallagher states that the rate of ALEC failures exceeds the rate of ALEC births. Witnesses Gillan and Gallagher believe that BellSouth has

overstated the level of local competition, and the situation is deteriorating.

FCCA witness Gillan also expresses concern that one-on-one arbitrations are too resource-intensive and extremely inefficient. He believes that the mega-arbitration process employed by New York and Texas is more practical. We acknowledge that similar issues have been arbitrated in multiple dockets, and note that where a trend is identified, a generic docket is typically established. Regardless of the existence of a generic proceeding, however, we believe that an ALEC or BellSouth may always request an arbitration pursuant to Section 252(b)(1).

We note that BellSouth disputes that the number of resold lines is declining rapidly. Witness Cox provides revised estimates of resold line counts which indicate no discernable trend. In addition, witnesses Cox and Taylor believe that migration from resale to UNE-P is to be expected. According to witness Taylor, the irreversibility standard for competition used by the Department of Justice does not require evidence of all forms of local competition, since market forces should determine the nature of the competitive entry.

BellSouth witness Taylor makes several arguments which, when taken together, suggest that local competition is sustainable. As described earlier, he believes that removing entry barriers does not ensure competition, since ALECs may encounter financial, technological, and marketing problems, or may choose to delay entry for strategic reasons. However, he points to major competitors who are expanding into local markets, and will have more incentive to do so once BellSouth has interLATA authority, as well as substantial sunk investments made by ALECs. While acknowledging the turnover in the ALEC ranks, he believes that the remaining firms will be stronger competitors.

Although BellSouth's market conduct could impede local competition, our permanent performance measures and self-effectuating remedies adopted in Docket No. 000121-TP will provide an adequate vehicle for curbing undesirable conduct. In addition, the theory of contestable markets advanced by witness Taylor is applicable in this case. Entry and exit conditions/incentives should help ensure that the local market does not become more

concentrated. Increasing concentration in a former monopoly market would be cause for concern since this might imply significant market power.

C. Conclusion

Upon consideration, we are of the opinion that BellSouth has met the requirements of Section 271(c)(1)(A) of the Telecommunications Act of 1996. Since there is no dispute that BellSouth has entered into agreements under Section 252 with numerous providers, and that there is some level of residential and business facilities-based competition, by definition, BellSouth has satisfied this requirement.

IV. COMPLIANCE WITH SECTIONS 251(C)(2) AND 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(i)

Section 271(c)(2)(B)(i) contains the first checklist item, which addresses the provision of facilities-based interconnection. This section requires that interconnection must be provided or generally offered in accordance with Sections 251(c)(2) and 252(d)(1) of the Act. Section 251(c)(2) specifies what constitutes the provision of facilities-based interconnection, i.e., the transmission and routing of telephone exchange service and exchange access between the ALEC's network and that of the RBOC. Three additional criteria must also be met under this provision:

1) The RBOC must provide interconnection at any technically feasible point within its network.

2) The quality of the interconnection must be at least equal to that which the RBOC provides itself, an affiliate, a subsidiary, or any other party to which it provides interconnection.

3) Interconnection must be provided at rates, terms and conditions that are "just, reasonable, and non-discriminatory," as specified in the carrier agreements as well as in Sections 251 and 252 of the Act.

Section 252(d)(1) of the Act consists of the pricing standards for interconnection and UNEs. It requires that the state commission determine just and reasonable rates for interconnection and for UNEs, and that the rates be based on cost and be nondiscriminatory. The rates may also include a reasonable profit.

In our 1997 Order, Order No. PSC-97-1459-FOF-TL, issued on November 19, 1997, we determined that BellSouth did not demonstrate that it was providing interconnection in compliance with Section 271(c)(2)(B)(i) of the Telecommunications Act of 1996. Specifically, BellSouth failed to provision collocation in a timely manner; demonstrate parity in network blockage; provide local tandem interconnection; provide sufficient two-way trunking; and provide meet point billing (MPB) data. See Order at pp.61-66. BellSouth witness Cox claims that BellSouth has taken the following actions that resolve our previous concerns:

> 1) . . . BellSouth has implemented approximately 1,500 ALEC requests for physical collocation.
>
> 2) . . . BellSouth has made dramatic improvements in planning for trunk requirements, as well as improving the number of network blockages.
>
> 3) . . . BellSouth has developed a PLU factor for local tandem interconnection and has implemented the ability to use such factor. The PLU terms and conditions are contained in BellSouth's agreements, as well as the SGAT Additionally, BellSouth does not require a BFR in order to obtain local tandem interconnection.
>
> 4) BellSouth provisions interconnection trunks for ALECs in a manner that is equal in quality to the way in which BellSouth provisions trunks for its own services. BellSouth offers ALECs the ability to route local/ intraLATA toll traffic and transit traffic over separate trunk groups or over a single trunk group.
>
> 5) BellSouth provides transit trunks for traffic between the ALEC and an Independent Company, Interexchange Carrier ("IXC"), or another ALEC. Transit trunk groups are generally two-way but may be built as one-way.

6) BellSouth provides MPB data to each ALEC pursuant to the terms and conditions contained in the agreement between BellSouth and the ALEC.

Additionally, in our 1997 Order, we expressed concern with BellSouth's language contained in its statement of generally available terms and conditions (SGAT) regarding multi-jurisdictional trunks and the definition of local traffic. We found that BellSouth's provision stating that "carriers may not combine local and toll traffic on a two-way trunk" and "mixing traffic is allowed using PLU factors" was contradictory. We also determined that BellSouth's SGAT language that "no company shall represent Exchange Access Traffic as Local Interconnection traffic," requires BellSouth to "provide ALECs a complete listing of the BellSouth NPA-NXXs that make up each local service area, and in a usable format." Order No. PSC-97-1459-FOF-TL at p.66. BellSouth believes that new language in the SGAT, coupled with the Internet posting of its NPA-NXXs that make up each local service area should remedy the Commission's concerns.

The parties raised arguments within the context of this issue, which at best marginally pertain to BellSouth's compliance with checklist item 1. We do not, however, find this is the appropriate docket to establish new issues, but instead, this docket is simply to allow us develop our recommendation on whether BellSouth is in compliance with the existing obligations of the Act, the FCC, and this Commission. Below, we address the parties' arguments by category.

1. Parties' Arguments

1. Implementation Of Physical Collocation Requests

BellSouth witness Milner testifies that BellSouth provides physical collocation to ALECs on a first-come, first-served basis on terms and conditions that are just, reasonable and nondiscriminatory. He asserts that when space is available, BellSouth provides physical collocation in central offices, serving wire centers, and remote terminals. Witness Milner testifies that BellSouth offers caged, cageless, shared, and adjacent physical collocation. He states that "as of March 31, 2001, BellSouth had

completed 1,498 physical collocation arrangements with 37 in progress, for over 50 different ALECs, of which 845 are cageless physical collocation arrangements."

AT&T witness Turner testifies that BellSouth does not provide collocation in a just, reasonable, and nondiscriminatory manner. He states that "BellSouth has the ability to unilaterally modify critical terms and conditions related to collocation without approval by this Commission or negotiation with collocators." Witness Turner asserts that BellSouth provides a description of rates, terms and conditions in its Collocation Handbook; however, only BellSouth has the unilateral ability to change its handbook without Commission approval or ALEC input. He contends that ALECs often must rely on the handbook and BellSouth's tariff, because the handbook tends to offer more detail than interconnection agreements. Moreover, witness Turner contends that the Collocation Handbook and tariff tend to reflect more current rulings of the FCC and state commissions.

Witness Turner testifies:

> One of the best examples is BellSouth's insistence on where the Point of Termination ("POT") frame is placed relative to the collocation cage. It is AT&T's preference to place the POT frame inside its own collocation cage. However, because AT&T's interconnection agreement language is silent on the specifics of this situation, BellSouth places the frame outside of the cage approximately 50 feet from the collocation arrangements.[2]

Consequently, witness Turner asserts that AT&T has experienced situations where disagreeing with BellSouth over the placement of a POT bay has led to BellSouth halting collocation construction.

[2]In earlier collocation arrangements, BellSouth was more willing to allow AT&T to place the POT frame within its collocation cage.

BellSouth witness Gray asserts that BellSouth's Collocation Handbook is not a legally binding document. He refers to language in the handbook:

> [i]f a collocator orders collocation service pursuant to BellSouth's Statement of Generally Available Terms and Conditions (SGAT), the terms and conditions provided **[t]herein** become a legally binding agreement. However, to the extent that the [A]LEC enters into a separate agreement with BellSouth for physical collocation, the terms and conditions of that agreement will apply. The terms and conditions of BellSouth Virtual Collocation offering are described in BellSouth['s] FCC Tariff #1, [S]ection 20 or BellSouth's Florida Access Tariff (E-20). (Emphasis added)

Witness Gray clarifies that the term "herein" was a typographical error, which should have read "therein." He believes that the typographical error may be the cause of the misunderstandings expressed by AT&T witness Turner. Witness Gray affirms that:

> BellSouth will not change any existing collocation arrangements or procedures for processing requests under any existing collocation contracts during the life of such contracts unless the FCC, or a state commission, issues new rules regarding collocation in response to the D.C. Circuit Court's remand or unless the FCC determines that BellSouth's adherence to these prior agreements is discriminatory.

BellSouth witness Gray testifies that an ALEC orders physical collocation in accordance with either its Interconnection Agreement or the Florida Access Tariff. In addition, BellSouth offers virtual collocation pursuant to our MFS/AT&T/MCI Arbitration Order, Order No. PSC-98-0604-FOF-TP, issued April 29, 1998, or the Florida Access Services Tariff. Witness Gray avers that ALECs will be allowed to order physical or virtual collocation from the Florida SGAT when it is approved by this Commission.

BellSouth witness Gray contends that BellSouth's Standard Interconnection Agreement always is the most current document available to ALECs. He adds that the Collocation Handbook may or

may not be in complete agreement with BellSouth's Standard Interconnection Agreement depending on when the handbook was last updated. BellSouth Witness Gray points out that the Notice section of Version 9.2 of BellSouth's Collocation Handbook states the following:

> This handbook is updated with version 9.2 effective November 1, 2000 in order to make the following changes to the Central Office Physical Collocation Contract: Inclusion of PSC rules from all states in order to consolidate all states into one contract. Deletion of a separate Florida Central Office Physical Collocation contract. This update also makes the following corrections to the Remote Site Collocation Contract: Inclusion of PSC rules from all states in order to consolidate all states into one contract: addition of a rate element chart per state.

Responding to AT&T's example of BellSouth changing its position on POT Bays, BellSouth witness Gray contends that prior to the FCC's Advanced Services Order, FCC Order No. 99-48, released March 31, 1999, BellSouth generally required POT bays; however, ¶42 of the *Advanced Services Order* states:

> Incumbent LECs may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent's network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without a concomitant benefit to incumbents.

He asserts that in the *Generic Collocation Order*, Order No. PSC-00-0941-FOF-TP, issued May 11, 2000, we concluded that the ALEC's collocation site is the appropriate demarcation point. BellSouth witness Gray testifies that we also determined:

> Although the FCC prohibits ILECs from requiring POT bays or other intermediate points of interconnection, ALECs are not prohibited from choosing to use them. Therefore, ILECs and ALECs may negotiate other demarcation points up to the CDF. However, if terms cannot be reached between

> the carriers, the ALEC's collocation site shall be the default demarcation point.

Order No. PSC-00-0941-FOF-TP at pp. 50-51.

2. Provisioning Collocation Power

AT&T witness Turner believes that "BellSouth's recovery of "extraneous expenses" is neither consistent with TELRIC cost principles nor consistent with FCC rules." He explains that in version 8 of BellSouth's Collocation Handbook, BellSouth had language obligating all benefitting ALECs to share in the cost of the upgrade based upon space requested. However, he points out that version 9.2 of the handbook excluded this language. Witness Turner testifies that the most common "extraneous expense" is BellSouth's recovery of direct current (DC) power augments. He contends that BellSouth charges ALECs a nonrecurring charge to recover the costs of the augment, and a recurring charge to recover the costs of BellSouth's initial investment in the DC power plant. He believes that BellSouth is double recovering these costs, which is "plainly inconsistent with TELRIC and is not permitted according to Section 252(d)(2) of the Act." Witness Turner adds that SWBT is prohibited from charging collocators for DC power augments.

BellSouth witness Gray contends that collocators should be required to share in the costs of renovations or upgrades. He refers to ¶51 of the Advanced Services Order, which states:

> . . . incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation . . . In order to ensure that the first entrant into an incumbent's premises does not bear the entire cost of site preparation, the incumbent must develop a system of partitioning the cost by comparing, for example, the amount of conditioned space actually occupied by the new entrant with the overall space conditioning expenses.

FCC Order No. 99-48 at ¶51. Witness Gray asserts:

> In the state of Florida, BellSouth assesses space preparation fees on both a nonrecurring basis for Firm Order Processing and a monthly recurring basis for Central Office Modifications, assessed per arrangement, per square foot, and Common Systems Modifications, assessed per arrangement per square foot for cageless collocation and per cage for caged collocation. These charges recover the costs associated with preparing the collocation space, which includes the survey, engineering of the collocation space, and the design and modification costs for network, building and support systems. In addition to the space preparation fees, BellSouth also charges the ALECs in Florida a monthly recurring Floor Space fee, assessed per arrangement, per square foot, which recovers the expenses associated with lighting, HVAC, and other allocated expenses related to the maintenance of the Premises.

He maintains that the ALEC's Interconnection Agreement dictates the rates and charges that BellSouth may charge an ALEC. Moreover, he believes that BellSouth's space preparation rate structure is consistent with Total Element Long Run Incremental Cost (TELRIC) principles, which are based on forward-looking long-run incremental cost.

Further, BellSouth witness Gray testifies that AT&T's allegation of BellSouth's double recovery for its DC power cost is simply a billing dispute recently brought to BellSouth's attention. He points out that on August 9, 2001, the parties met and determined that BellSouth has both "over-billed" and "under-billed" AT&T in specific central office locations where augments were required. He claims that "BellSouth has assigned its AT&T Account Team" to investigate the dispute, and if it determines that a refund is due to AT&T, then "BellSouth will comply with its business and contractual obligations to issue a refund to AT&T." However, witness Gray asserts that this is a billing dispute, which will be addressed according to normal dispute resolution procedures. Witness Gray contends that "this issue should have no bearing upon this proceeding," since it is not a Section 271 issue.

We note here that NewSouth witness Fury adopted the direct testimony of NewSouth witness Beasley. Thus, herein, we refer to

witness Beasley's testimony as witness Fury's testimony from this point. NewSouth witness Fury also believes that BellSouth does not comply with FCC pricing rules for the recovery of power costs. He testifies that in order to avoid paying the additional cost of separate power feeds, NewSouth employs its own Battery Distribution Fuse Board (BDFB). NewSouth determined that for future growth it requires approximately 100-120 amps of fused-capacity. Witness Fury explains that BellSouth offers fused increments of 10, 15, 30, 45, 60, and 225 amps. Thus, he asserts that "BellSouth charges NewSouth for an average of 140 amps of power that it does not use." Witness Fury maintains that NewSouth has offered to pay labor and material costs for BellSouth to install a fuse that meets NewSouth's needs; however, BellSouth refuses. Witness Fury points out that Southwestern Bell Telephone Company (SWBT/SBC) offers power in increments of 20, 30, 50, 100, and 200 amps. He asserts that a 100 amp offering would meet NewSouth's needs.

NewSouth witness Fury asserts that the FCC addressed power provisioning practices in the FCC's Verizon Massachusetts 271 Order, FCC Order No. 01-130, issued on April 12, 2001. However, he admits that the FCC found that the collocation power pricing disputes did not prevent Verizon from satisfying Checklist item 1. However, he speculates that Verizon's compliance was based on Verizon's amendment to its tariff for collocation power charges. Witness Fury believes that since BellSouth has not modified its power charge, BellSouth is not in compliance with competitive Checklist item (i).

BellSouth witness Gray contends that providing power requires AC-to-DC rectifiers, and batteries to provide back-up DC power in the event of power loss. He testifies that power boards are located with the rectifiers and batteries, which is generally located some distance from the equipment area. He adds that "two-hour firewalls are required by building codes for many metropolitan areas, due to the fact that batteries are also located in the power rooms." Because of voltage drop inherent in DC power distribution, he asserts that the size of power cabling increases significantly with distance. Therefore, witness Gray believes that it is uneconomical to use power boards as a distribution point for each bay of equipment in the central office. Moreover, BellSouth provides power to ALECs' BDFBs in the same manner in which it provides power to itself.

BellSouth witness Gray asserts that there are three options for ordering power into a collocation space. First, he testifies that BellSouth offers ALECs standard sized fuse protection ranging from 10-60 amps via BellSouth's BDFBs to each piece of equipment in the ALEC's collocation space, which is the most common arrangement.

Second, BellSouth witness Gray testifies that an ALEC may install its own BDFBs and order power from the main power board. He asserts that a standard 225 amp feed is required to connect the ALEC's BDFB with BellSouth's power board, which the ALEC is responsible for installing. Witness Gray maintains that BellSouth developed its 225 amp standard in 1993 based on a "Telecordia/BellCore study on arcing in central offices resulting from the Hinsdale incident," a central office where a fire occurred.

> The study found that 1) arcing may occur in central offices, usually due to poor workmanship in H-tap and other connectors, and 2) while no protection device will operate 100% of the time due to the physical nature of a DC arc, 225-amp protection devices experience a significantly higher chance of operating during an arc than 400-amp or larger devices.

Therefore, he adds that BellSouth's 225 amp standard was developed three years prior to collocation being required by the Telecommunications Act of 1996. Moreover, he claims that the 225-amp standard was implemented on a going forward basis; thus the ALEC has "enjoyed interval improvements derived from standardization."

Third, BellSouth witness Gray testifies that an ALEC could install its own BDFB feed connected to BellSouth's BDFB, thus enabling the ALEC to connect its equipment to its own BDFB. Considering that DC power circuits should be engineered for 1.5 times the anticipated drain, BellSouth's "recurring power rate includes a .67 multiplier." He contends that this multiplier presumes that an ALEC would not normally use the full capacity. However, he asserts that NewSouth did not properly engineer its power circuits, and NewSouth ordered too much power capacity. Therefore, witness Gray believes that BellSouth is not responsible for NewSouth's excess power capacity. BellSouth witness Gray

claims that BellSouth is working on providing a 100-amp feed, which is the only feed that SBC provides that differs from BellSouth.

Additionally, BellSouth witness Gray asserts that BellSouth provisions power in a manner consistent with this Commission's findings in our decision in Order No. PSC-01-0824-FOF-TP, WorldCom/BellSouth Arbitration Order, issued March 30, 2001, which reads:

> We believe that the per ampere rate for the provision of DC Power to WorldCom's collocation space should apply to fused amp capacity for two reasons. First, it appears that WorldCom witness Messina agrees that BellSouth's power plant must be capable of accommodating 150 percent of the requested amount of power. However, it appears that witness Messina contends that the fuse feeding WorldCom's collocation space should be sized at WorldCom's requested amperage, but the infrastructure behind that space should be capable of carrying 150 percent of the requested amperage. We find that if BellSouth must construct its overall power plant to accommodate 150 percent of the aggregate amperage requested by collocators, then it should be compensated for this level of capacity. Furthermore, both parties believe that it is generally accepted power engineering practice to fuse amp capacity in excess of the amperage needed.
>
> Second, we agree with BellSouth witness Milner that metering WorldCom's actual usage would be costly and time-consuming. While specific numbers were not provided, we suspect that the costs of metering could exceed the difference in costs of applying the rate to fused capacity versus amperes used. Therefore, **we find that the per ampere rate for the provision of DC power to WorldCom's collocation space shall apply to fused amp capacity.** (Emphasis added)

Therefore, he maintains that billing by fused amps is appropriate as determined by this Commission. He testifies that metering collocation space would be similar to metering alternating current (AC) outlets within a residence.

3. Shared Collocation

AT&T witness Turner testifies that "BellSouth fails to provide for shared collocation in a form that is consistent with that required by the FCC's Advanced Services Order[3]." He contends that the FCC rules require BellSouth to prorate the charge for site preparation across the percentage of total space used by that carrier. Witness Turner asserts that several ILECs have already amended their tariff language to reflect the shared or "common" collocation, as it is sometimes referred. Witness Turner claims that BellSouth's language requiring a host-guest ALEC relationship is equivalent to "Shared (Subleased) Caged Collocation." He identifies Section E.20.2.3(C) of BellSouth's Access Service Tariff, effective November 14, 2000, that requires the "host" ALEC to notify BellSouth of any "guest" ALEC who occupies space within the "host" collocation arrangement. He believes that BellSouth's requirement for a host-guest relationship is inconsistent with both the FCC's decisions and this Commission's orders, since BellSouth's tariff deems the "host" ALEC as responsible for the payment of all other "guest" ALECs. In support, witness Turner cites our Generic Collocation Order:

> . . . we acknowledge that FCC Order 99-48 clearly states that the ILEC must permit each ALEC to order UNEs to and provision service from the shared collocation space, regardless of who the original collocator is and state our disagreement with BellSouth witness Hendrix's assertion that the host ALEC should be the responsible party to submit applications for initial and additional equipment placements of its guest because the ILEC may not impose unnecessary requirements on how or what the ALECs might need for their own network infrastructure according to the FCC's Order.

Order No. PSC-00-0941-FOF-TP at pp. 38-39.

BellSouth witness Gray believes that BellSouth is not obligated to offer common collocation simply because other ILECs

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0. In The Matter Of Wireline Services Offering Advanced Telecommunications Capability, CC Docket, No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48 (rel. Mar. 31, 1999) ("Advanced Services Order").

provide it. He asserts that there is no FCC mandate, nor order from this Commission, to provide common collocation. Witness Gray refers to the Generic Collocation Order, which states:

> ALECs shall not be required to designate a host ALEC and shall be able to order directly from the ILEC any addition to its network. Instead, each ALEC shall be allowed to submit its own requests to the ILEC for equipment placement, unbundled network elements and other services, regardless of which ALEC was the original collocator.

Order No. PSC-00-0941-FOF-TP at p.38. Witness Gray contends that pursuant to this Commission's requirements, "BellSouth permits the host ALEC and each of the guest ALECs to place an order directly with BellSouth for equipment placement, UNEs, interconnection and other services in accordance with rates, terms and conditions. . . ." Thus, the sharing arrangement would be between the ALECs, not with BellSouth. BellSouth witness Gray clarifies that the "host" ALEC is not responsible for the activities of the "guest" ALEC once the cage is in place, and if BellSouth's tariff language is inconsistent or unclear, BellSouth will correct it.

4. Remote Terminal Collocation

BellSouth witness Gray maintains that BellSouth provides remote terminal (RT) collocation in a manner consistent with FCC rules. BellSouth witness Milner testifies that a remote terminal may serve from 96 to 2000 end users depending on the vintage. Witness Milner asserts that RTs contain line cards, which serve one-to-four end users depending on the vintage and manufacturer.

BellSouth witness Milner testifies that a splitter line card typically is a self-contained unit, which has a splitter on the card. He explains that the splitter divides the information from the end user into voice that traverses one transmission facility, and into data that traverses a separate facility. Witness Milner claims that it is not technically feasible to reserve card slots for ALECs because of network reliability and security concerns. He asserts that the Local Competition Order found that network reliability and security should be considered when determining technical feasibility. Consequently, he believes that allowing

ALECs to insert and remove line cards inhibits BellSouth's ability to secure its facilities and maintain network reliability. Witness Milner admits that he is unaware of any other technical feasibility concerns with ALEC line cards; however, he believes that requiring BellSouth to unbundle splitter line cards would be equivalent to requiring BellSouth to unbundle its packet network, which BellSouth has no obligation to do unless the four conditions set forth by the FCC are met.

BellSouth witness Milner provides an analogy that he believes illustrates the concept of RT collocation. In his analogy, he asserts that a remote terminal would be similar to a large metal box with shelves, which house personal computers (PCS). He explains that BellSouth does not object to an ALEC installing its own PC in a vacant shelf (physical collocation), nor does BellSouth object to an ALEC PC installed and maintained by BellSouth (virtual collocation). If there are no vacant shelves, BellSouth will increase the size of the box or add a new box to increase the number of shelves. However, witness Milner contends that BellSouth objects to an ALEC being allowed to open-up BellSouth's PC to install and remove cards or components within the PC. Consequently, he believes that requiring BellSouth to allow ALECs to install and remove line cards in remote terminals would go beyond the requirement of the Act, and contends that "it's not collocation." Also, witness Milner argues that BellSouth's customers may be adversely affected by such joint operation and ownership of equipment.

Nevertheless, BellSouth witness Milner testifies that an ALEC with collocation in BellSouth's RT has its own key, which provides the ALEC with 24-hour access. He concedes that an ALEC with collocation could "willfully disrupt" service to some of BellSouth's customers, but contends that should not happen since an ALEC should not operate BellSouth's equipment. He states:

> I suppose once you are inside that cabinet, if they had bad intent they could do that. I certainly hope they won't, and the preponderance will be that they won't disrupt BellSouth's equipment intentionally.

Witness Milner adds that a situation where BellSouth's equipment is at the top, and an ALEC's equipment is at the bottom is appropriate, but not joint operation of equipment.

Further, BellSouth witness Gray asserts that if ALEC line cards are intermingled with BellSouth's, there is a good chance that a technician may unintentionally pull the wrong card. In contrast, witness Gray testifies that ALECs are responsible for installing their own DSLAM within a RT via BellSouth certified vendors. Witness Gray admits that there is no physical way to segregate equipment within most remote terminals. He asserts that it may be feasible in a controlled environmental vault (CEV); however, he believes that typically it is impractical.

BellSouth witness Gray testifies that as of October 12, 2001, BellSouth has not received an application for RT collocation in any state. Therefore, he contends that an ALEC cannot substantiate a claim that there is a lack of space available at a remote terminal. The witness asserts that if "BellSouth is unable to accommodate an ALEC's request for RT collocation at a particular remote terminal where BellSouth has installed a DSLAM," then BellSouth would unbundle its packet switched network at that particular terminal. He affirms that subsequently BellSouth would seek a collocation waiver from this Commission for the particular terminal.

BellSouth witness Gray asserts that RT collocation should not be confused with a duplication of BellSouth's "last mile distribution network." He testifies that the "last mile distribution network" consists of the distribution sub-loop from the RT to the end user's demarcation point, which RT collocation provides. He cites ¶262 of the FCC's UNE Remand Order, FCC Order No. FCC 99-238, issued November 5, 1999:

> Requesting carriers require collocation because they have not yet duplicated the incumbent LEC's loop plant to provide "last mile" connectivity to end users. Obtaining unbundled loops and connecting these loops to collocated equipment is therefore the only reasonable and economically rational manner by which requesting carriers can provide connectivity to their end users.

Witnesses Turner and Gillan both testify that ALECs should be allowed to collocate splitter line cards in remote terminals. AT&T witness Turner contends that an integrated splitter/DSLAM card does not perform a "packet-switching" function, but performs a transport function. He believes that the "DSLAM is an integral part of the unbundled loop and is essential to deliver the voice portion of the loop back to the central office voice switch, and the data portion back to the central office data switch which is a packet switch." Witness Turner testifies that BellSouth's NGDLCs are capable of supporting integrated splitter cards, which provide ALECs a simple way to serve end users with both voice and data.

AT&T witness Turner also claims that due to a lack of space within a RT, RT collocation is not practical. He maintains that considering space availability in RTs, it would be unusual for BellSouth to make space available to ALECs that want to collocate. Consequently, ALECS have to resort to adjacent collocation; however, he contends that adjacent collocation at remote terminals requires ALECs to build a concrete pad to install a cabinet with ALEC equipment, and cross-connect it to BellSouth's remote terminal. He asserts that rights-of-way and other community issues also play a part in this type of collocation, thus making adjacent collocation at RTs impractical. Moreover, he believes that adjacent collocation at RTs essentially results in overbuilding or duplication of BellSouth's network. He states that "adjacent collocation would force competitors to rebuild the incumbent LECs' network to achieve ubiquity, which is prohibitively expensive and has already been rejected by the FCC."

5. Adjacent Off-site Collocation

AT&T witness Turner asserts that "BellSouth fails to provide for adjacent off-site collocation even though this arrangement is provided by similarly situated ILECs and permitted within the definition of the FCC's Advanced Services Order."

BellSouth witness Gray contends that BellSouth is not obligated to provide adjacent off-site collocation. In support, he cites ¶42 of the FCC's Collocation Reconsideration Order and NPRM, FCC Order No. 00-297, issued August 10, 2000:

> Consistent with the court's opinion, we conclude that the language of section 251(c)(6) does not restrict mandatory physical collocation to places within incumbent LEC structures. Instead, section 251(c)(6) requires physical collocation "at the premises of the local exchange carrier." We find that this term encompasses land owned, leased, or controlled by an incumbent LEC as well as any incumbent LEC network structure on such land.

He adds that in our Generic Collocation proceeding, we found that "adjacent off-site collocation met the FCC's definition of interconnection, but that it failed the definition of collocation."

6. Cross-Connects

AT&T witness Turner urges this Commission to modify our position on cross-connects. He states that "on November 17, 2000, we issued a reconsideration of some of its decisions relating to collocation – reconsiderations that reversed some positions that were important to collocators." However, he contends that in the FCC's Collocation Remand Order, FCC Order No. 01-204, issued on August 8, 2001, "the FCC has made it clear that incumbents must make collocator-to-collocator cross-connects available to ALECs." Therefore, he believes that we should require BellSouth to allow ALEC-to-ALEC cross-connects, which was our position prior to the FCC's cross-connect rules being vacated by the DC Circuit Court.

BellSouth witness Gray points out that the Order was released on August 8, 2001. He contends that "BellSouth is reviewing this Order to determine what modifications will need to be made to its current policies and procedures to comply with the requirements mandated by the FCC regarding co-carrier cross-connects." At the hearing, BellSouth witness Gray agrees that BellSouth has an obligation to provide co-carrier collocation cross-connects, and he maintains that BellSouth has modified its collocation offering to comply with FCC Order 01-204.

7. Collocation Rates

BellSouth witness Cox proposes that this Commission establish interim rates for those elements which do not have previously approved rates. Specifically, BellSouth witness Caldwell identifies collocation as one of the rate elements for which BellSouth filed cost studies. Although BellSouth witness Cox acknowledges that rate setting is not the purpose of this docket, she believes that it is appropriate for us to set rates in this docket. However, she conceded at hearing that interim rates are acceptable to determine 271 compliance, even though BellSouth would like to present a full finding by this Commission that it has cost-based rates for all UNEs to the FCC.

According to WorldCom witness Darnell, he does not believe any rates should be set in this docket. He asserts "I believe a 271 review is for a review, not for establishment of new things." There was extremely limited testimony regarding establishment of rates.

8. Collocation Provisioning Interval

BellSouth witness Milner asserts that we established provisioning intervals for physical collocation in Docket Nos. 981834-TP and 990321-TP. He testifies that BellSouth provisions physical collocation space within 90 calendar days of "BellSouth's receipt of the ALEC's complete, accurate and error-free Bona Fide Firm Order, or as agreed by the parties." Witness Gray maintains that BellSouth modifies collocation arrangements within 45 calendar days from the receipt of a complete, accurate and error-free Bona Fide Firm Order (BFFO), or as agreed to by the parties.

BellSouth witness Milner asserts that this Commission established provisioning intervals for virtual collocation in Docket Nos. 981834-TP and 990321-TP. He testifies that BellSouth provisions virtual collocation space within 60 calendar days of "BellSouth's receipt of the ALEC's complete, accurate and error-free BFFO." Witness Milner testifies that BellSouth's collocation intervals are also available in BellSouth's SGAT, collocation tariff, and certain interconnection agreements.

No ALEC filed testimony rebutting BellSouth's collocation provisioning interval.

9. Local Tandem Interconnection

BellSouth witness Milner asserts that BellSouth offers local interconnection at any technically feasible point in its network on rates, terms, and conditions that are just, reasonable and nondiscriminatory. He contends that consistent with FCC rules, BellSouth provides interconnection at the "line-side of the local end office switch; trunk-side of the local end office switch; trunk interconnection points for local end office and tandem switches; central office cross-connect points; out-of-band signal transfer points; and the points of access to unbundled elements." Witness Milner asserts that BellSouth offers interconnection via physical collocation, virtual collocation, assembly point arrangements, fiber optic meet arrangements, third party facilities, and the Bona Fide Request (BFR) process for other means that are technically feasible. Moreover, he claims that ALECs may choose to interconnect at a single technically feasible point in each LATA.

BellSouth witness Milner testifies that BellSouth designs, provisions, maintains, and repairs interconnection trunks in a nondiscriminatory manner. He maintains that ALECs may choose to route local/intraLATA toll and transit traffic over a single or separate trunk groups. Witness Milner testifies that as of March 31, 2001, BellSouth had provisioned 132,850 interconnection trunks with ALECs in Florida, which includes 64,132 two-way trunks to 52 ALECs. He asserts that ALECs may request interconnection trunks by submitting an Access Service Request (ASR) to BellSouth's Interconnection Purchase Center (IPC), which has been established since the second quarter of 1998. The witness explains that IPC screens the ASR for accuracy, establishes billing through Carrier Access Billing Systems (CABS), and routes it through the Exchange Access Control and Tracking (EXACT) system where it is processed through BellSouth's Circuit Capacity Management (CCM), Circuit Provisioning Group (CPG), Network Infrastructure Support Center (NISC), Local Interconnection Switching Center (LISC), Work Management Center (WMC), and lastly BellSouth Field Work Groups (FWGs) for testing and turn-up of the trunks. Witness Milner maintains that with the exception of the previously mentioned

billing through CABS, BellSouth basically uses the same process internally when it augments trunks to the ALEC network.

No ALEC filed testimony rebutting BellSouth's provisioning of Local Tandem Interconnection trunks.

10. Percent Local Usage

According to WorldCom witness Argenbright, the most efficient way to segregate traffic over trunks is as follows:

> A separate trunk group for local traffic, non-equal access intraLATA interexchange (toll) traffic, and local transit traffic to other LECs.
>
> A separate trunk group for equal access interLATA or intraLATA interexchange traffic that transits the ILEC network.
>
> Separate trunks connecting the ALEC's switch to each 911/E911 tandem.
>
> A separate trunk group connecting the ALEC's switch to BellSouth's operator service center.
>
> A separate trunk group connecting the ALEC's switch to the BellSouth directory assistance center if the ALEC is purchasing BellSouth's unbundled directory assistance service.

He contends that BellSouth disagrees with WorldCom's position to commingle local, intraLATA toll, and transit traffic. Witness Argenbright maintains that there are no technical feasibility issues that preclude BellSouth from commingling traffic. He asserts that BellSouth employs "supergroup" trunks, which accommodate commingled traffic in the manner described by WorldCom. Moreover, he believes that it is more efficient to transport local, intraLATA toll, and transit traffic on a single trunk group.

WorldCom witness Argenbright testifies that in our WorldCom/BellSouth Arbitration *Order*, we permitted BellSouth to separate transit traffic from local and intraLATA toll. However,

he asserts that when "BellSouth has super group trunks available that are capable of carrying local, intraLATA toll and transit traffic on the same trunk group, it is unjust and unreasonable for BellSouth to insist on using a less efficient form of interconnection that fragments such traffic." He adds that BellSouth is not in compliance with checklist item (i) until it agrees to commingle traffic in the manner sought by WorldCom.

BellSouth witness Milner testifies that BellSouth offers ALECs the "supergroup" trunk option that allows for the aggregated exchange of local, intraLATA toll, and transit traffic, which includes transit traffic includes local, intraLATA toll, and interLATA toll traffic, over a single trunk group.

BellSouth witness Gray asserts that BellSouth bills the ALECs for usage and other charges on two-way trunks using the appropriate percent local usage (PLU) factor. He explains that BellSouth currently uses a manual method where the full charge is billed to the ALEC and a subsequent credit is applied representing BellSouth's percent usage of the trunk. Witness Gray asserts that currently the number of accounts does not warrant the costs of mechanizing the process.

11. Meet Point Billing Data

BellSouth witness Milner testifies that a "fiber meet" is an interconnection arrangement whereby the parties physically interconnect their networks via an optical fiber interface. He points out that the facilities are jointly engineered and operated by BellSouth and the ALEC.

BellSouth witness Scollard testifies that meet point billing is when two local exchange companies provide joint telecommunication facilities to a third party. He offers an example:

> [S]uppose an ALEC and an interexchange company are both interconnected with BellSouth's access tandem in Miami. If a customer of the IXC places a call to an end user of the ALEC then BellSouth and the ALEC have jointly provided terminating access to the IXC.

Witness Scollard explains that BellSouth provides tandem switching and maybe some portion of interoffice transport, while the ALEC provides end office switching and some portion of the transport. Witness Scollard testifies that meet point billing is the basis used to bill the IXC for each portion the local carrier provides. He asserts that BellSouth sends the ALEC a call detail record through the ALEC's Revenue Accounting Office (RAO), which acts as a collection agent from industry participants. Witness Scollard claims that BellSouth provides over 134 million meet point billing usage records using the guidelines set forth by the Ordering and Billing Forum (OBF), and he believes BellSouth is in compliance with 271.

No ALEC filed testimony rebutting BellSouth's provisioning of meet point billing data.

12. Point of Interconnection

WorldCom witness Argenbright testifies:

> While BellSouth has been ordered to permit interconnection at a single point of interconnection ("POI") in each LATA, BellSouth still seeks to impose on ALECs the financial responsibility for transporting traffic that originates from other BellSouth local calling areas within the LATA to the POI.

WorldCom witness Argenbright asserts that the POI is critical to interconnection, and the POI represents the point where the ALEC's financial responsibility begins and the ILEC's responsibility ends and vice versa. He cites ¶172 of the FCC's Local Competition Order, FCC Order No. 96-325, issued August 8, 1996:

> The interconnection obligation of section 251(c)(2)...allows competing carriers to choose the most efficient points at which to *exchange traffic* with incumbent LECs, thereby lowering the competing carrier's costs of, among other things, transport and termination of traffic. (Emphasis added)

He asserts that ¶220 of this order gives the ALEC the right to choose the POI. Moreover, he points out that the FCC affirmed this position in ¶77 of the Texas 271 Order, FCC Order No. 00-238, issued June 30, 2000, which reads:

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.

WorldCom witness Argenbright asserts that the issue of financial responsibility is addressed in both the FCC rules and in several FCC orders. He maintains that FCC Rule 51.703(b) provides that a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network." Witness Argenbright testifies that in ¶235 of the *Kansas/Oklahoma 271 Order*, FCC Order No. 01-29, issued January 22, 2001, the FCC concluded that allowing ALECs to interconnect at a single point in a LATA does not "change an incumbent LEC's reciprocal compensation obligation under our current rules." The AT&T witness contends that "not only may an ALEC establish a single POI in each LATA, it may do so without being required to build, lease, or otherwise pay for facilities on BellSouth's side of the POI."

Further, WorldCom witness Argenbright testifies that the FCC's TSR Wireless Order, FCC Order No. 00-194, issued June 21, 2000, establishes the framework by which carriers recover costs for exchanging traffic. He cites ¶34 of the TSR Wireless Order, which reads:

> The Local Competition Order requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation. In essence, the originating carrier holds itself out as being capable of transmitting a telephone call to any end-user, and is responsible for paying the cost of delivering the call to the network of the co-carrier who will then terminate the call. Under the Commission's regulations, the cost of

> the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. The originating carrier recovers the costs of these facilities through the rates it charges its own customers for making calls. This regime represents "rules of the road" under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company.

Witness Argenbright contends that the FCC's Intercarrier Compensation NPRM, CC Docket No. 01-92, issued April 27, 2001, does not relieve BellSouth of its financial responsibility. He asserts that "[w]hile the FCC seeks comments on whether the single POI per LATA rule and the current division of financial responsibility should continue to apply under a future bill-and-keep regime, the FCC actually reaffirms BellSouth's obligation, under current rules, to deliver traffic to the POI at its own cost."

WorldCom witness Argenbright testifies that in the WorldCom/ BellSouth Arbitration Order, we determined that the ALEC has the right to designate the POI; however, we concluded that the record was inadequate to resolve the issue of financial responsibility. He asserts that according to page 82 of our order, the issue of financial responsibility is to be addressed in the generic docket on reciprocal compensation. Witness Argenbright contends that clearly "under federal law," BellSouth has the financial obligation to deliver traffic originated on its network to the ALEC's POI. He maintains that regardless of our findings in the generic docket, BellSouth does not satisfy checklist item (i), because BellSouth does not deliver traffic to an ALEC's POI in the LATA at BellSouth's expense.

WorldCom witness Argenbright asserts that WorldCom should be allowed to deliver switched access traffic directly to BellSouth's end offices over local interconnection trunks. He contends that WorldCom is precluded from competing with BellSouth in providing terminating access service to interexchange carriers (IXCs). Witness Argenbright testifies that:

> . . . an IXC could route its terminating traffic to a WorldCom tandem switch, from which WorldCom could terminate the call directly (if the called party were a WorldCom local customer) or could deliver the call to BellSouth's end office switch for termination (if the called party were a BellSouth local customer). In the case of a call to a BellSouth customer, BellSouth would be entitled to bill the IXC for the end office switching component of access charges, and WorldCom would be entitled to bill the IXC for the tandem switching and transport components.

WorldCom witness Argenbright asserts that BellSouth claims it will not have the necessary billing information if calls are terminated in this manner; however, he contends that an ALEC can provide the information to BellSouth in the standard EMI format, which is the manner BellSouth provides it to ALECs. He believes that an ALEC willing to provide EMI records on a reciprocal basis should be allowed to provide the tandem function.

WorldCom witness Argenbright testifies that in our WorldCom BellSouth Arbitration Order, we required WorldCom to deliver all terminating switched access traffic to BellSouth's access tandem citing concerns over BellSouth's ability to properly bill. However, he believes that where BellSouth is technically capable of accepting access traffic at its end office, and an ALEC is capable of providing BellSouth with industry standard EMI records necessary to bill the IXC, Section 251(c)(2)(D) requires BellSouth to allow IXC traffic to be delivered to its end offices over local interconnection trunks. Moreover, witness Argenbright contends that if BellSouth is not required to terminate such traffic at its end offices, BellSouth will "retain a monopoly over the provision of terminating switched access service."

BellSouth witness Cox believes that BellSouth's distinction between a physical POI and a point where financial responsibility begins is similar to Verizon's position in Pennsylvania. She asserts that the FCC did not find Verizon's position as a reason for noncompliance, but the FCC clarified that the only clear obligation was that Verizon allows ALECs to choose a single point of interconnection.

13. Network Blockage

NewSouth witness Fury testifies that BellSouth does not provision interconnection trunks from its network to NewSouth's network in a timely manner. He claims that BellSouth's untimely provisioning has resulted in an excessive number of blocked calls from BellSouth's end users to NewSouth's end users, which limits NewSouth's ability to provide service to new customers.

NewSouth witness Fury asserts that in ¶76 and ¶77 of the FCC's Louisiana II 271 Order, FCC Order No. 98-271, issued October 13, 1998, the FCC concluded that BellSouth must show:

> its interconnection facilities meet the "same technical service standards" that are used for "interoffice trunks within the incumbent's LEC network."

He contends that the FCC found that discrepancies in trunk group blockage serve as an indication that an ILEC is failing to provide interconnection to an ALEC that is "equal in quality." Moreover, witness Fury asserts that the FCC decided that the installation interval for interconnection service and two-way trunks serves as an indication of whether an ILEC provides trunking at parity.

NewSouth witness Fury maintains that the Interconnection Agreement between NewSouth and BellSouth provides:

> for separate one-way trunks for the exchange of local traffic. Under the terms of the Agreement, BellSouth is responsible for ordering and provisioning trunks to deliver the local traffic originating from its customers to NewSouth's customers, and vice-versa. Both companies agree that these facilities, or trunk groups, are to be maintained at an industry standard grade of service based on the Erlang B traffic model.

He asserts that both companies agree that trunks should be maintained in a manner consistent with the Erlang B traffic model, and accordingly, NewSouth monitors its trunk groups daily to maintain the grade of service outlined in the parties' agreement. However, witness Fury believes that BellSouth does not adequately respond to trunking needs on its side of the network, also referred

to as reciprocal trunks. He testifies that NewSouth provides BellSouth forecasts regularly. Nonetheless, NewSouth continues to initiate nearly all augmentation requests for trunks to accommodate BellSouth-originated traffic. Witness Fury expounds:

> For example, in Macon, Georgia, NewSouth's forecasts clearly showed that a total of 72 trunks would be needed in the Second Quarter of 2001, 48 more than were then being provided to NewSouth. BellSouth did not act upon this forecast, but instead waited until NewSouth requested an augmentation of BellSouth's trunk group on April 18, 2001. BellSouth responded almost three weeks later on May 8,2001, and informed NewSouth that the trunks would not be augmented until June 5, 2001.

He adds that there have been four occasions since January 1, 2001, that BellSouth has not augmented reciprocal trunks upon request, although the requests were consistent with NewSouth's forecast. He contends that, "While Mr. Milner's discussion may sound good on paper, it is not put into practice in NewSouth's experience."

NewSouth witness Fury admits that avoiding trunk blockage is a cooperative effort between BellSouth and NewSouth. Consequently, NewSouth has attempted to address trunk provisioning between the parties. However, he contends that BellSouth has not been cooperative with NewSouth. He believes that BellSouth simply does not apply enough weight to the forecast provided by NewSouth. Consequently, witness Fury contends that "BellSouth's delays have caused irreparable harm to NewSouth, forcing NewSouth to delay bringing new customers on-line and negatively impacting both NewSouth's finances and its perceived quality and reliability among consumers."

NewSouth witness Fury admits that factors other than those under BellSouth's control may cause delays in trunk augmentation, and hypothetically, BellSouth could be blamed for the delays. Moreover, he concedes that NewSouth failed to notify BellSouth of a new customer that doubled traffic volumes on a Baton Rouge trunk group from BellSouth to NewSouth. He also concedes that BellSouth initiated actions in an expeditious manner to resolve the capacity problems on that trunk group. NewSouth witness Fury asserts that although there was a failure on NewSouth's behalf to augment trunks

in a timely manner in Baton Rouge, there are many instances were BellSouth has not actively participated in monitoring its trunk capacity, which has required NewSouth to notify BellSouth that calls from BellSouth's network may experience blocking. Witness Fury adds that although his testimony reflects problems with BellSouth in other states, "BellSouth's Capacity Managers in Florida are no more proactive about augmenting reciprocal trunks [than] Bell managers in any other state."

Responding to BellSouth's assertion that BellSouth augmented the Macon trunk group consistent with industry standards, NewSouth witness Fury contends that the parties' agreement differs from the industry standard. He asserts that according to the parties' Interconnection Agreement, 85 percent occupancy should trigger an augmentation of trunks. Therefore, witness Fury contends, BellSouth has refused to augment the trunks per the parties' agreement.

BellSouth witness Milner testifies that BellSouth incorporates a forecasts for all trunks in a manner that is consistent with the industry standard. He asserts that BellSouth employs an overall two percent blocking standard during the time-consistent average busy hour. He points out that the two percent consists of one percent blocking from the end office to the local tandem, and one percent blocking from the local tandem to the end office. When an intermediary switch is served, witness Milner asserts that 1.5 percent is the standard, which consists of .5 percent blocking on the common transport trunk group from the end office to the tandem, and one percent blocking from the tandem to the end office. Witness Milner claims that BellSouth requests bi-annual forecasts from all ALECs interconnected with BellSouth that cover periods from January through June and July through December. Accordingly, he maintains that ALECs' forecasts are incorporated into BellSouth's General Trunk Forecast (GTF).

BellSouth witness Milner asserts that both BellSouth and ALECs are jointly responsible for forecasting, monitoring, and servicing two-way trunks; however, for one-way trunks, the party originating traffic on those trunks is responsible for these activities. He maintains that trunks should be engineered as "described in BellCore document SR-TAP-000191, Trunk Traffic Engineering Concepts

and Applications or as otherwise mutually agreed to by the parties."

BellSouth witness Milner states that:

> The object is to put the right number in the right place at the right time such that you don't block calls, but at the same time you don't have excess investment that you can't recover the costs of.

BellSouth witness Milner contends that NewSouth's argument that BellSouth is not provisioning trunks properly is based on NewSouth's misconception regarding non-binding forecasts. He asserts that the non-binding trunk forecast process is designed to allow for pre-order coordination and negotiation for the provisioning of new and augmented trunk groups. Witness Milner maintains that the "planned trunk servicing is the establishment of new trunk groups or changes to existing trunk groups, by increasing or decreasing the quantity of trunks in service." He points out that factors influencing trunk servicing are planned network infrastructure changes, enhancements, and expansion; and changed trunk requirements due to traffic increases and decreases, because of end user line growth, end user per line calling stimulation, market share changes, and other similar changes. Witness Milner adds that planned trunk servicing also includes augmentation of interconnection trunks between BellSouth and ALECs; however, an anticipated need for augmentation does not automatically trigger a trunk augmentation.

On the other hand, BellSouth witness Milner testifies that demand trunk servicing is the implementation of trunk augmentations to maintain quality. He asserts that demand trunk servicing requires monitoring of trunks on a near real-time basis, and an analysis of trunk performance relative to a normal engineering period, which typically is 20 days excluding Saturdays and Sundays, or 30 days including weekends. Witness Milner believes that trunks should be augmented due to consistent need over an interval, not based on a non-recurring traffic spike.

In contrast to NewSouth's testimony, BellSouth witness Milner contends that the parties' Interconnection Agreement does not require that interconnection trunks should be maintained using the

Erlang B traffic model. He testifies that the Erlang B model initiates negotiation between the parties for the installation of augmented facilities. The witness explains:

> Erlang B is a single-hour traffic load trunking theory. The Erlang B model is biased in grade-of-service applications when average traffic loads are used and this bias can affect the more precise requirement of grade-of-service trunk sizing.

He maintains that BellSouth uses the Neal-Wilkinson call blocking probability theory instead of the Erlang B, because it considers the "day-to-day variations" inherent in traffic.

Responding to NewSouth's testimony of traffic blockage in Macon, BellSouth witness Milner contends that NewSouth had information about an increase in traffic, which it did not share with BellSouth until after the trunk experienced blocking. He testifies:

> If NewSouth had communicated, before the fact, its need for increased capacity in the context of the actual traffic demand that was to be placed on the network, BellSouth could have implemented a more orderly response.

Witness Milner asserts that BellSouth augmented the trunk group after the need became clear. Similarly, he contends that NewSouth failed to notify BellSouth in Baton Rouge, which caused service problems on that trunk group. Witness Milner maintains that these blocking incidents do not support NewSouth's claim that BellSouth has "caused irreparable harm to NewSouth." Additionally, he testifies that BellSouth has managed trunks to NewSouth so well in Florida that "there has been no blocking on any trunk group since, at least, June 2000."

Under cross examination, BellSouth witness Milner affirms that BellSouth's common transport trunk groups (CTTGs) carry both access and local traffic, and are part of BellSouth's historic network, which existed prior to the Act. He explains that BellSouth's CTTG connect BellSouth's end offices to its access tandem, while BellSouth's local network trunks interconnect BellSouth's end offices to its end offices and local tandems. Witness Milner also

explains that BellSouth-administered ALEC trunks typically carry BellSouth-originated traffic to ALECs, and he affirms that BellSouth is responsible for additions and augmentations to those trunks. Witness Milner testifies that the difference between ALEC-administered and BellSouth-administered trunks is the party responsible for the augmentations, because only the originating party can precisely determine how many calls are being blocked. Thus, he agrees with NewSouth witness Fury that the originating party generally has more information to make decisions about augmentations.

BellSouth witness Milner concedes that BellSouth-administered trunk groups to ALECs experienced a blocking rate of over three percent on 5 of the 114 trunk groups in North Florida, while 1 of the 500 trunk groups in BellSouth's local network, and 2 of the 377 trunk groups in BellSouth's CTTG network blocked at over three and two percent respectively. Moreover, BellSouth-administered trunk groups to ALECs blocked at over three percent on 5 of the 111 trunk groups in South Florida, while none of 291 trunk groups in BellSouth's local network, and none of 191 trunk groups in BellSouth's CTTG network, blocked at over two percent.

Witness Milner argues that BellSouth's Trunk Group Performance Aggregate Summary Report more accurately reflects the experience enjoyed by BellSouth's end users and ALEC end users. He testifies that BellSouth's Trunk Performance Group Data, Exhibit 36, does not indicate blocking that is caused by ALECs, nor does it consider the size of the trunk group. Witness Milner hypothesizes that there are two trunk groups, where one trunk group has one trunk and the other has 1000 trunks. Assume that the single trunk group blocks at 50 percent, while the other trunk group does not block. He contends that the larger trunk group is capable of handling more traffic, so it would be less likely to block. He asserts that BellSouth's aggregate report considers these factors by dividing the aggregate of all blocked calls by the aggregate of all calls attempted. Further, BellSouth witness Milner contends that an ALEC may increase its traffic load without notifying BellSouth, or may not be willing or capable of accommodating a trunk augmentation. He believes that exhibit 41 incorporates these considerations. However, BellSouth witness Milner admits that an aggregated report makes it possible to mask specific instances or problems, and in

its aggregated report, BellSouth determines which of the parties caused the blocking.

B. Opinion

1. Implementation of Physical Collocation Requests

We considered AT&T's concern that BellSouth has the unilateral ability to modify collocation terms and conditions in its Collocation Handbook. However, we believe the record reflects that BellSouth is obligated to adhere to the terms and conditions in an ALEC's interconnection agreement. The AT&T witness offers an example of how BellSouth modified its position on the location of POT bays, but we note that BellSouth modified its position to be consistent with the FCC's Advanced Services Order. Moreover, BellSouth modified its position in compliance with the decision of the Commission in the Generic Collocation Order. It is noteworthy that AT&T witness Turner agrees that when AT&T collocates a POT bay within its collocation space, AT&T would have to allow BellSouth "unfettered access" to its collocation space. However, AT&T's witness was unsure if AT&T would consent to such access. Therefore, we are persuaded that BellSouth's Collocation Handbook is not particularly relevant to the terms and conditions under which BellSouth offers collocation. Moreover, the evidence of record does not indicate that BellSouth has changed its terms and conditions for collocation without a basis from the FCC or this Commission.

2. Provisioning Collocation Power

AT&T witness Turner claims that BellSouth charges ALECs for "extraneous expenses," double recovering for power augments. The parties met on August 9, 2001, to address AT&T's concerns. Consequently, BellSouth's witness asserts that AT&T was both "under-billed" and "over-billed" at particular locations. On this point, we agree with BellSouth that this issue is a billing dispute, which should be addressed in dispute resolution. This is not the appropriate forum for determining whether BellSouth charged an ALEC properly on each billing occasion at every location. This proceeding is designed to allow us to formulate our recommendation to the FCC regarding whether or not BellSouth has met the requirements of Section 271 of the Act.

We also considered NewSouth's testimony regarding BellSouth power increments. NewSouth's witness Fury contends that BellSouth's power offerings are not consistent with FCC pricing rules, since BellSouth does not offer a 100-120 amp power feed. On the other hand, BellSouth contends that it offers fused increments of 10, 20, 30, 40, 50, 60, and 225 amps. BellSouth witness Gray claims that BellSouth's 225 amp offering is fed from its main power board, and was developed as a standard before the collocation requirement of the Act. Although we acknowledge that BellSouth's 225 amp feed was developed before the Act, it seems that BellSouth's power increments lack middle ground with respect to an ALEC providing its own BDFB. We acknowledge BellSouth witness Gray's assertion that AT&T has the option to connect its BDFB to BellSouth's BDFB; however, we do not believe that a BDFB-to-BDFB feed is an efficient way to distribute power. In this type of arrangement, the ALEC's power cost would include usage of BellSouth's BDFB. Moreover, BellSouth witness Milner testifies that power circuits should be engineered to 150 percent of the anticipated load; thus, we observe that an ALEC's BDFB fed by BellSouth's BDFB fused at 60 amps should yield approximately 40 amps to the ALEC. SBC offers a 100 amp increment, which seems to be more conducive to an ALEC distributing power within its collocation space. Nevertheless, we find that increments of power have little to do with FCC pricing rules.

BellSouth's testimony regarding the Hinsdale incident has also been considered, but is not persuasive. BellSouth's 225 amp offering is required from BellSouth's main power board. According to the Telecordia/BellCore study, we observe that "225-amp protection devices experience a significantly higher chance of operating during an arc than 400-amp or **larger** devices." (Emphasis added) While BellSouth's position seems to be appropriate for an ALEC seeking a fuse larger than 225 amps, we do not believe that Telecordia's findings preclude BellSouth from employing a smaller fuse from its main power board.

We agree with BellSouth that it is "uneconomical to use the power board as the distribution point to each bay of central office equipment," because the voltage drop requirements would demand an excessively gauged cable to offset the voltage loss over the cable length. Nonetheless, we find that there should be an intermediate offering, so that ALECs may provide their own BDFB in a cost

efficient manner, rather than requiring feeds for each piece of equipment to BellSouth's BDFB.

Although BellSouth witness Gray contends that NewSouth did not properly "engineer its power circuits to match its true power requirement," according to NewSouth's power growth plans, its choices were minimal. However, the issue of BellSouth's power increment has not been brought before this Commission until this proceeding, and BellSouth testifies that it is working to provide a 100-amp feed. Therefore, we find that BellSouth's power increments are in compliance with the existing orders of the FCC and this Commission.

3. Shared Collocation

It appears to us that the dispute between the parties is resolved. Apparently, BellSouth's tariff language implies that the "host" ALEC is responsible for guaranteeing the payment or all "guest" ALECs. However, BellSouth clarifies that the "host" ALEC is not responsible for the activities of the "guest" ALEC.

> BellSouth permits the host ALEC and each of the guest ALECs to place an order directly with BellSouth for equipment placement, UNEs, interconnection and other services in accordance with rates, terms and conditions. . .

Thus, BellSouth has agreed to modify its tariff language where it may be inconsistent or unclear with its position.

4. RT Collocation

Here, we address RT collocation only as it pertains to technical feasibility. Later in this Opinion, we address RTs as they relate to loops, specifically line sharing.

We have considered AT&T's testimony that due to lack of space in remote terminals, RT collocation is not practical, and the next option would be adjacent RT collocation. However, we note BellSouth witness Milner's testimony that BellSouth will make space available for ALEC DSLAMs at its RTs regardless of whether BellSouth has to increase the size of the terminal or build an

adjacent terminal. Further, BellSouth witness Gray contends that as of August 20, 2001, BellSouth had not received any applications for RT collocation. Therefore, we believe that AT&T's argument is without merit.

Next, we have considered the witnesses' assertions that an ALEC should be allowed to collocate splitter line cards in remote terminals. BellSouth bases its argument against collocation of splitter line cards on technical feasibility. While BellSouth argues that there are network security issues that make this type of collocation technically infeasible, the record is not completely clear on this point. We note ¶192 of the FCC's Local Competition Order, which reads:

> We also conclude, however, that legitimate threats to network reliability and security must be considered in evaluating the technical feasibility of interconnection or access to incumbent LEC networks. Negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its own network. . . .

FCC Order No. 96-325 at ¶192.

BellSouth's witnesses testify that if an ALEC removes the wrong line card, one-to-four BellSouth end users could be adversely affected. Moreover, an ALEC that removes a common card could "take the entire system down." However, we are not persuaded that collocation of splitter line cards is technically infeasible. First, BellSouth witness Milner admits that an ALEC collocated at a RT has a key, which provides 24 hour access. Thus, an ALEC with bad intentions could "willfully disrupt" BellSouth's service, although he believes that is unlikely. Second, witness Gray testifies that it is impractical if not impossible to completely segregate equipment within a remote terminal. "In a remote terminal everything is very tightly installed so no, there's no physical way to build a cage or anything," according to witness Gray.

BellSouth witness Gray further asserts that the ALEC is responsible for installing its own DSLAM; however, an ALEC is required to use a BellSouth-certified vendor. While BellSouth's

security concerns may be legitimate, we believe that once access to the terminal is granted, network security concerns are almost moot. A BellSouth-certified vendor employed by an ALEC to perform work in BellSouth's RT would typically do identical work for BellSouth, and thus, would perform work in a manner consistent with BellSouth's policies. Therefore, it seems a system could be developed to distinguish carrier line cards.

Again, it is unclear as to whether or not the collocation of ALEC splitter line cards is technically feasible. Although we believe that collocation of splitter line cards may be technically feasible, neither the FCC nor this Commission has ruled on this issue. Therefore, BellSouth is in compliance with current requirements of the FCC and this Commission.

5. Adjacent Off-site Collocation

AT&T witness Turner asserts that "BellSouth fails to provide for adjacent off-site collocation even though this arrangement is provided by similarly situated ILECs and permitted within the definition of the FCC's Advanced Services Order." We note that AT&T's witness uses the word "permitted," not "required." We agree with BellSouth that it is not required by the FCC or this Commission to permit adjacent off-site collocation. We refer to our *Generic Collocation Order*:

> Upon consideration, we agree with Sprint witness Hunsucker's assertion that "adjacent off-site collocation," as defined by the Texas Commission, meets the FCC's definition of interconnection, and not collocation. We are persuaded by the evidence that ILECs shall only [be] obligated to interconnect with an ALEC's facility located beyond the contiguous property of an ILEC's "premises" for the purposes of transmission and mutual exchange of traffic. Property separated by an alley or public passage way will still be considered contiguous property.

Order No. PSC-00-0941-FOF-TP at p.24. We agree with BellSouth that adjacent off-site collocation fails to meet the FCC's definition of collocation.

6. Cross-Connects

We acknowledge AT&T's request that we require BellSouth to allow cross-connects. In accordance with the FCC's Collocation Remand Order, FCC Order No. 01-204, issued August 8, 2001, we believe that ILECs are required to provision cross-connects between collocators. Cross-connects should be provided as set forth in ¶62 and ¶79:

> We agree with Sprint, Qwest, Focal, and the Joint Commenters that we may order incumbent LECs to provide cross-connects to collocators pursuant to section 201. We find that we have such authority under both sections 201(a) and 201(b). We conclude that the Commission has authority pursuant to section 201 to require incumbent LECs to provision cross-connects for carriers collocated at the incumbent's premises, and we exercise this authority to require such cross-connects upon reasonable request. Unlike the situation with competitive LEC-owned and provisioned cross-connects, we conclude that an incumbent LEC's provisioning of cross-connects between two separate collocation arrangements does not constitute physical collocation. In the instance of incumbent-provisioned cross-connects, because the competitive LEC does not own or provision the cross-connects, there is no collocator-owned equipment being placed or collocator activity occurring outside of the immediate collocation space. In other words, the cabling being used to facilitate the cross-connect is owned, controlled, and provisioned by the incumbent LEC.

FCC Order No. 01-204 at ¶62.

> Similar to our reasoning under section 201, we find, as a second, alternative ground, that incumbent LEC-provisioned cross-connects between two collocators, and the attendant obligations to make dark fiber available as a cross-connect and to use the most efficient arrangement available, are also supported by section 251 of the Act. Incumbent LEC-provisioned cross-connects are properly viewed as part of the terms and conditions of the requesting carrier's collocation in

> much the same way as the incumbent LEC provisions cables that provide electrical power to collocators. Once equipment is eligible for collocation, the incumbent LEC must install and maintain power cables, among other facilities and equipment, to enable the collocator to operate the collocated equipment. The power cables are not "collocated" merely because the incumbent LEC installs and maintains these cables in areas outside the requesting carrier's immediate collocation space. Instead, the incumbent provides the power cables as part of its obligation to provide for interconnection and collocation "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." As with power cables, an incumbent installs and maintains cross-connect cables - or refuses to install and maintain them - as part of the terms and conditions under which the incumbent provides collocation. Indeed, the Commission has long considered cross-connects to be part of the terms and conditions under which LECs provide interconnection. The exercise of our authority under section 251(c)(6) is also quite limited in scope and should not be read as implying that a requesting carrier is entitled to obtain services from the incumbent superior to those the incumbent provides itself, its affiliates, subsidiaries, or other parties. On the contrary, our action reflects our overriding concern that an incumbent LEC would be acting in an unreasonable and discriminatory manner if it refused to provide cross-connects between collocators.

FCC Order No. 01-204 at ¶79. BellSouth witness Gray asserts that BellSouth has modified its collocation language accordingly.

7. Collocation Rates

This is not the appropriate forum for establishing rates. As stated before, this proceeding is designed to allow us to formulate our recommendation to the FCC regarding whether or not BellSouth has met the requirements of Section 271 of the Act. The issues established for this proceeding were designed to facilitate the development of the record in that regard. As such, there is insufficient evidence in the record to support the establishment of

any rates. Furthermore, because this proceeding is designed to allow us to fulfill our consultative role as contemplated by Section 271 (d)(2)(B) and has only been noticed as such, it is arguable whether or not sufficient notice has been provided to allow us to take such a substantive action as rate-setting in this proceeding.

8. Collocation Provisioning Interval

The record reflects that BellSouth's collocation intervals are in compliance with the intervals set forth by the FCC and this Commission. Since no ALEC rebutted BellSouth's testimony, we conclude that BellSouth adheres to its intervals.

9. Local Tandem Interconnection

No ALEC rebutted BellSouth's testimony that it provides local tandem interconnection as set forth by the FCC and this Commission. The only testimony was provided by WorldCom witness Argenbright, who contends that WorldCom should also be allowed to act as a tandem provider. However, we find that WorldCom's testimony is beyond the scope of this issue, and does not rebut BellSouth's testimony that it provides local tandem interconnection in a manner consistent with Sections 271 and 251 of the Act.

10. Percent Local Usage

We observe that BellSouth's testimony that it provides PLU billing as set forth by the FCC and this Commission was not rebutted on this point; however, WorldCom witness Argenbright asserts that BellSouth should allow WorldCom to commingle local, intraLATA toll, and transit traffic on a single trunk group. BellSouth agrees that it will provide the "supergroup" trunk option to ALECs, which allows traffic to be commingled in the manner requested by WorldCom.

11. Meet Point Billing Data

Similarly, no ALEC rebutted BellSouth's testimony that it provides meet-point billing data as required by the FCC and this Commission.

11. Point Of Interconnection

WorldCom provides testimony that it should be allowed to deliver switched access traffic directly to BellSouth's end offices over local interconnection trunks, which BellSouth does not rebut. However, WorldCom's testimony is beyond the scope of this issue. Moreover, in the WorldCom/BellSouth Arbitration Order, this Commission concluded:

> We firmly believe that BellSouth's ability to bill subtending companies in an accurate manner is in doubt if the local and switched access traffic were delivered on the same trunk group. In this case, we find that BellSouth's established process of routing access traffic on access trunks should be continued. Therefore, we find that WorldCom shall not be permitted to commingle local and access traffic on a single trunk and route access traffic directly to BellSouth end offices. WorldCom shall route its access traffic to BellSouth access tandem switches via access trunks.

Order No. PSC-01-0824-FOF-TP at pp. 97-98.

Next, it appears that all parties agree that the ALEC has the right to choose the POI; however, BellSouth believes that WorldCom should have the financial responsibility of transporting BellSouth-originated local traffic outside of the BellSouth local calling area, while WorldCom believes the responsibility is BellSouth's.

WorldCom witness Argenbright asserts that there are several FCC rules and orders supporting his position. He testifies that ¶235 of the Kansas/Oklahoma 271 Order requires an ILEC to pay for the transport at issue. We note ¶235 of the Kansas/Oklahoma 271 Order recites as follows:

> Finally, we caution SWBT from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection.[1] In our *SWBT Texas Order*, we

[1] *See* SWBT Reply at 86-87.

> cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection.[2] We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. [3] For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.[4] These rules also require that an incumbent LEC compensate the other carrier for transport[5] and termination[6] for local traffic that originates on the network facilities of such other carrier.[7]

It appears to us that WorldCom's argument is valid; however, BellSouth points out that its position is consistent with Verizon's position in its 271 application in Pennsylvania, which the FCC determined was not a reason for non-compliance. We note that ¶100 of the FCC's Verizon Pennsylvania 271 Order, FCC 01-269, issued September 19, 2001, states:

> Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that Verizon's policies do not represent a violation of our existing rules. Verizon states that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it

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[2] *See SWBT Texas Order*, 15 FCC Rcd 18390, para. 78 n. 174.

[3] *See* 47 C.F.R. §§ 51.701 *et seq.*

[4] 47 C.F.R. § 51.703(b); *see also TSR Wireless, LLC et al. v. U.S. West*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, FCC No. 00-194 (rel. June 21, 2000), *pet. for review docketed sub nom.*, Qwest v. FCC, No. 00-1376 (D.C. Cir. Aug. 17, 2000).

[5] 47 C.F.R. § 51.701(c).

[6] 47 C.F.R. § 51.701(d).

[7] 47 C.F.R. § 51.701(e).

> permits carriers to physically interconnect at a single point of interconnection (POI). Verizon acknowledges that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities. The issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM. We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single physical point of interconnection per LATA. Because the issue is open in our Intercarrier Compensation NPRM, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.

FCC Order No. 01-269 at ¶100. Since BellSouth allows ALECs to choose the POI, BellSouth is in compliance with the requirements of the FCC and this Commission.

13. Network Blockage

NewSouth provides a significant amount of testimony that reflects its experience with BellSouth in other states, and consequently BellSouth provides rebuttal to that testimony. However, the details of such testimony are beyond the scope of our consideration of BellSouth's performance in Florida, and thus, are not addressed. Therefore, we have only given a general overview of the testimony, regarding out-of-state experiences.

BellSouth witness Milner states that in Florida, "there has been no blocking on any trunk group since, at least, June 2000." NewSouth does not provide testimony that it has experienced problems in Florida although BellSouth provides interconnection trunks to NewSouth in Florida. Therefore, we conclude that BellSouth provides trunking to NewSouth in Florida, pursuant to Section 271(c)(2)(B)(i) of the Act.

However, we are concerned that BellSouth's Trunk Group reports seem to demonstrate that trunks administered by BellSouth to ALECs experience a higher rate of blockage than BellSouth's local network

trunks. We note that Hearing Exhibit 35 illustrates trunk group blockage in BellSouth's region for August 2001. Under cross examination at hearing, BellSouth witness Milner conceded that BellSouth administered trunk groups to ALECs:

- Blocked at over three percent on 5 of the 114 trunk groups in North Florida, while 1 of the 500 trunk groups in BellSouth's local network, and 2 of the 377 trunk groups in BellSouth's CTTG network blocked at over three and two percent respectively.

- Blocked at over three percent on 5 of the 111 trunk groups in South Florida, while none of the 291 trunk groups in BellSouth's local network, and none of the 191 trunk groups in BellSouth's CTTG network blocked at over two percent.

Moreover, witness Milner conceded that Hearing Exhibit 36 demonstrates that BellSouth-administered trunks to ALECs consistently blocked above three percent at a higher percentage than BellSouth's trunks to itself.

Although BellSouth witness Milner contends that Exhibits 35 and 36 are misleading because they fail to consider the size of the trunk groups, the data provided indicates a consistently higher rate of blocking on BellSouth-administered trunk groups to ALECs. We acknowledge that a smaller trunk group would typically experience blockage more often than a larger trunk group. We also acknowledge BellSouth's assertion that neither of these reports considers ALEC contributions to traffic blockage, and NewSouth's concessions that an ALEC may cause blockage. Specifically, witness Fury admitted to NewSouth's failure to notify BellSouth of a new customer that doubled its traffic volumes. Therefore, we shall not make a determination based exclusively on BellSouth's Trunk Performance Group Data.

We considered BellSouth witness Milner's testimony that BellSouth's Trunk Group Performance Aggregate Summary Report, Exhibit 41, more accurately reflects the experience of BellSouth's end users and ALECs' end users. We believe that this matter is a performance issue which has been dealt with in the non-hearing track in Docket No. 960786B-TP.

C. Conclusion

Other than those aspects related to OSS matters, which are not dealt with in this phase of our proceeding, but instead are being considered in the non-hearing track in Docket No. 960786B-TL, we are of the opinion that BellSouth provides interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(i) and applicable rules promulgated by the FCC.

V. COMPLIANCE WITH SECTIONS 251(C)(3) AND 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(ii)

Section 271(c)(2)(B)(ii) of the Act requires a Bell operating company seeking entry into interLATA services markets to provide "nondiscriminatory access to network elements in accord with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) of the Act defines "unbundled access" as:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Section 252(d)(1) requires that determinations of the "just and reasonable" rates for network elements (A) shall be "(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit."

In its Third Report and Order, FCC Order No. 99-238 at pp.11-13, the FCC determined that specific UNEs must be unbundled. Those elements are as follows:

> Loops. Incumbent local exchange carriers (LECs) must offer unbundled access to loops, including high-capacity lines, xDSL-capable loops, dark fiber, and inside wire owned by the incumbent LEC.
>
> Subloops. Incumbent LECs must offer unbundled access to subloops, or portions of the loop, at any accessible point. Such points include, for example, a pole or pedestal, the network interface device, the minimum point of entry to the customer premises, and the feeder distribution interface located in, for example, a utility room, a remote terminal, or a controlled environment vault. Order No. 99-238 establishes a rebuttable presumption that incumbent LECs must offer unbundled access to subloops at any accessible terminal in their outside loop plant.
>
> To the extent there is not currently a single point of interconnection that can be accessed by a requesting carrier, the FCC encourages parties to cooperate in any reconfiguration of the network necessary to create one. If parties are unable to negotiate a reconfigured single point of interconnection at multi-unit premises, the FCC requires the incumbent to construct a single point of interconnection that will be fully accessible and suitable for use by multiple carriers.
>
> Network Interface Device (NID). Incumbent LECs must offer unbundled access to NIDs. The NID includes any potential means of interconnection with customer premises inside wiring at the point where the carrier's local loop facilities end, such as at a cross

connect device used to connect the loop to customer-controlled inside wiring. This includes all features, functions, and capabilities of the facilities used to connect the loop to premises wiring, regardless of the specific mechanical design.

Circuit Switching. Incumbent LECs must offer unbundled access to local circuit switching, except for local circuit switching used to serve end users with four or more lines in access density zone 1 in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link throughout zone 1. (An enhanced extended link (EEL) consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The EEL allows new entrants to serve customers without having to collocate in every central office in the incumbent's territory.) Local circuit switching includes the basic function of connecting lines and trunks on the line-side and port-side of the switch. The definition of the local switching element encompasses all of the features, functionalities, and capabilities of the switch.

Packet Switching. Incumbent LECs must offer unbundled access to packet switching only in limited circumstances in which the incumbent has placed digital loop carrier systems in the feeder section of the loop or has its Digital Subscriber Line Access Multiplexer (DSLAM) in a remote terminal. The incumbent will be relieved of this obligation, however, if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal on the same terms and conditions that apply to its own DSLAM. Packet switching is defined as

the function of routing individual data message units based on address or other routing information contained in the data units, including the necessary electronics (*e.g.*, DSLAMs).

Interoffice Transmission Facilities. Incumbent LECs must offer unbundled access to dedicated interoffice transmission facilities, or transport, including dark fiber. Dedicated interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by the incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. State commissions are free to establish reasonable limits governing access to dark fiber if incumbent LECs can show that they need to maintain fiber reserves. Incumbent LECs must also offer unbundled access to shared transport where unbundled local circuit switching is provided. Shared transport is defined as transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the incumbent LEC's network.

Signaling and Call-Related Databases. Incumbent LECs must offer unbundled access to signaling links and signaling transfer points (STPs) in conjunction with unbundled switching, and on a stand-alone basis. The signaling network element includes, but is not limited to, signaling links and STPs. Incumbent LECs must also offer unbundled access to call-related databases, including, but not limited to, the Line Information

> database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, Advanced Intelligent Network (AIN) databases, and the AIN platform and architecture. The incumbent LEC is not required to unbundle access to certain AIN software that qualify for proprietary treatment.
>
> High frequency portion of the loop. In its Third Report and Order in Docket No. 98-147 (FCC Order No. 99-355), the FCC concluded that it had the authority to require ILECs to provide unbundled access to the high-frequency portion of the loop.

The FCC also ordered ILECs to unbundle operational support systems (OSS); however, issues relating to OSS are being considered in Track B of this proceeding.

In Order No. PSC-97-1459-FOF-TL, we found BellSouth failed to meet the requirements for this checklist item because it did not fulfill its duty to provide nondiscriminatory access to UNEs to any requesting carrier.

A. Parties' Arguments

The ALEC participants in this proceeding allege BellSouth still fails to establish its compliance with the requirements for this checklist item. The ALEC arguments and BellSouth's responses are summarized below.

According to the ALECs, BellSouth fails to offer access to all UNE combinations it ordinarily provides to itself. BellSouth argues that it provides access to UNE combinations in compliance with the FCC's rules and orders and the orders of this Commission.

The ALECs also argue that BellSouth's prices for UNEs are not cost-based and therefore are not compliant with the requirements for this checklist item. BellSouth responds that its rates are compliant with the total element long run incremental cost (TELRIC)

principles established by the FCC and approved by this Commission.

The ALECs further contend that BellSouth's cost studies are improperly based on a multiple network design. BellSouth contends this issue is an attempt to relitigate issues decided by us in our generic pricing docket (Docket No. 990649A-TP). The ALECs, specifically WorldCom, contend that BellSouth's cost models fail to comply with rules that require the use of the most efficient technologies available. BellSouth responds that this issue is another attempt to relitigate issues decided by the Commission in the generic pricing docket (Docket No. 990649A-TP).

WorldCom contends that the BellSouth cost model's demand projections ignore economies of scale and scope. BellSouth replies that its updated cost study in Docket No. 990649A-TP includes a reduction in rates for certain elements based on changes in demand. WorldCom further maintains that BellSouth's cost studies must implement a "bottoms-up" approach before the rates derived from these studies can be TELRIC compliant. BellSouth alleges its rates are TELRIC compliant.

WorldCom argues that BellSouth's use of improperly set inflation factors cause investment to be double counted. WorldCom asserts that BellSouth's cost models overstate drop lengths, which cause loop costs to be overstated. BellSouth argues this is also an effort to relitigate issues decided by this Commission in Docket No. 990649A-TP.

WorldCom also argues that BellSouth's UNE rates reflect improperly allocated shared costs. WorldCom contends that BellSouth's daily usage file (DUF) charges violate TELRIC principles. BellSouth argues this is an effort to relitigate issues decided by this Commission in Docket No. 990649A-TP and that the ALEC arguments fail to demonstrate these rates are not in compliance with FCC pricing rules.

1. Access to UNE Combinations

AT&T witness Guepe contends BellSouth is "stifling development of competition by failing to provide nondiscriminatory access to UNE combinations." Specifically, witness Guepe alleges, "BellSouth will not provide to an ALEC a particular UNE combination for a

specific customer at UNE cost-based TELRIC prices, unless the specific elements that comprise that combination for that customer: (1) are physically combined at the time requested by the ALEC (whether or not those elements have ever been combined anywhere in BellSouth's network, including for that customer); *and* (2) are being used by BellSouth to provide service to that specific customer."

BellSouth further aggravates the situation by adding "glue charges," according to witness Guepe, which he testifies are "additional, non-TELRIC, non-cost based charges BellSouth adds to the Commission-approved network element rates for loop/switch port and loop/transport combinations that, essentially, result in BellSouth charging whatever it wants for these UNE combinations."

FCCA witness Gillan asserts that in order to bring competition to conventional markets,

> All of BellSouth's games on new combinations must end, that BellSouth has to supply entrants existing combinations and any combination that it ordinarily combines for itself, whether or not it's already put together, and that they must do so on a cost-based rate.

BellSouth witness Cox testifies that we have found that it is not the duty of BellSouth to perform the functions necessary to combine unbundled network elements. Witness Cox makes specific reference to arbitrations between BellSouth and Intermedia, WorldCom, and AT&T, in which this Commission determined 47 C.F.R. §51.315(b) only obligates BellSouth to make available at TELRIC rates those combinations requested by an ALEC that are, in fact, already combined and physically connected in the network at the time the requesting carrier places an order. Witness Cox also argues that we have concluded that BellSouth is entitled to compensation when it physically combines UNEs requested by an ALEC.

Witness Cox testifies the decisions of this Commission are consistent with those of the FCC on the issue of UNE combinations. She testifies, "In the FCC's UNE Remand Order, Third Report and Order, Docket No. 96-98, the FCC reaffirmed that ILECs presently have no obligation to combine network elements when those elements are not currently combined in the ILEC's network." The critical

language to consider, witness Cox testifies, is that which states "[t]o the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form." FCC Order No. 96-238 at ¶480. (Emphasis by the witness. Witness Cox notes that the FCC, in its Bell Atlantic New York Order, FCC Order No. 99-404 at ¶231, supports her contention that BellSouth is required to combine only those elements currently combined, part of which reads:

> Based on the evidence in the record, we conclude Bell Atlantic demonstrates that it provides to competitors combinations of network elements that are *already preassembled in their network*, as well as nondiscriminatory access to unbundled network elements , in a manner that allows competing carriers to combine those elements themselves.

Witness Cox also cites the FCC's Texas 271 Order, FCC Order No. 00-238 at ¶216, the relevant portion of which states, ". . .that SWBT provides access to preexisting combinations of network elements. . .", and the FCC's Kansas/Oklahoma 271 Order, FCC Order No. 01-29 at ¶172, which states in part, ". . . SWBT has a legal obligation. . .to provide access to preassembled combinations of network elements. . . ."

In its brief, ACCESS argues that Florida finds itself "in a minority" of BellSouth states that have not required BellSouth to combine for ALECs elements that are ordinarily combined in its network, as opposed to only those that are currently combined. ACCESS's brief cites Georgia, Louisiana, Tennessee, Kentucky, and South Carolina as states that have required BellSouth to combine elements.

During cross-examination, BellSouth witness Milner was asked whether it would be more efficient for BellSouth to have one policy throughout its region regarding UNE combinations, to which he responded:

> Well, because -- and, again, I was not necessarily part of those decisions, but I would imagine because of -- by looking at the entire business proposition of what

> revenues we would receive in one context but not in another, we balanced those and said, yes, it is less efficient perhaps from an operational standpoint to have two different processes in two different states, but there is differences in revenue that countervail that. So I would imagine that their decision included all factors and not only operational efficiency.

2. Unbundled Packet Switching via Remote Terminals

Witness Gillan believes that this Commission should require BellSouth to offer a broadband UNE from the remote terminal to its end offices. He contends that due to the large economies of scale and scope, it is more efficient for BellSouth to make available the technology that it has deployed in RTs as opposed to ALECs undertaking collocation in 12,000 RTs.

3. Compliance with TELRIC Principles

WorldCom witness Darnell asserts that BellSouth is not in compliance with this checklist item because the rates included in BellSouth's filing are rates that it proposed in Docket No. 990649-TP, not rates approved by this Commission. As a consequence, witness Darnell testifies, "as of today, BellSouth is not offering UNEs at the rates approved by the Commission." BellSouth will only have TELRIC-compliant rates, witness Darnell testifies, when this Commission enters a final order approving the rates from Docket No. 990649A-TP.

BellSouth witness Cox contends the rates established by us in Docket No. 990649-TP will be incorporated into BellSouth's statement of generally available terms (SGAT) price list, and from that, "Upon request, BellSouth will negotiate amendments to incorporate these rates into existing [interconnection] agreements."

4. Single Network Design

Even if we approve BellSouth's proposed rates, witness Darnell testifies, those rates will not be truly cost-based until, among other issues, ". . .the Commission orders BellSouth to recalculate all UNE prices using a single network design which properly

reflects economies of scale and scope as requested by the Motion for Reconsideration and Clarification filed in that docket by WorldCom, AT&T, Covad and Z-Tel. . ."

Witness Darnell testifies BellSouth submitted three distinct loop cost scenarios in Docket No. 990649-TP: one scenario determined the cost of stand-alone loops; one scenario used the cost of voice-grade loops combined with a switch port; and one scenario presumed copper-only loops to derive the cost of copper-based xDSL loops. Witness Darnell believes FCC Rule 51.505(b) requires the use of a single, unified network design. According to the witness, BellSouth's use of the three-scenario approach to establishing costs violates FCC Rule 51.505(b) for three reasons: Because it fails to use the lowest cost network configuration; does not use the most efficient technology currently available; and because it does not take into account efficiencies incumbent LECs achieve by using one network design to meet all demand for network elements.

During cross examination, witness Darnell responded to questions about his criticisms of BellSouth's UNE rates by acknowledging that MCI/WorldCom did have the opportunity to participate in our most recent UNE docket and did appeal our decision.

In rebuttal testimony, however, BellSouth witness Caldwell contends the use of multiple scenarios is consistent with TELRIC pricing principles because in each scenario, BellSouth considers the "total quantity of facilities," in order to fulfill the FCC's directive that a reasonable projection of the sum of the total number of units is considered. Witness Caldwell also testifies BellSouth cannot anticipate where ALEC customers will locate or what type of loop they will purchase, and, lacking such information, would not realize any greater accuracy by relying on a one-scenario model. Witness Caldwell testified at hearing, "In each scenario I have picked the currently available technology, the least cost method of serving those type customers, and I fully believe that I have recognized every cost efficiency that could be recognized in a least cost network in my scenarios for costing these individual loops."

5. Most Efficient Technology

Witness Darnell asserts that BellSouth's UNE rates are not TELRIC compliant because the use of the three scenarios denies competitors the ability to enjoy prices based on the most efficient technology available. Witness Darnell explains:

> The mix of IDLC, UDLC and copper loops in the resulting single network thus would be optimized to meet the demand for the various types of facilities, and that network would include the efficiencies resulting from economies of scale and scope. Instead, BellSouth modeled three separate networks, assuming alternatively that every customer location would require service via IDLC loops (Combo), that every customer location would require service via UDLC (BST 2000), and that every customer location would require service via copper loops (Copper Only.)

In response, BellSouth witness Cox asserts, "Mr. Darnell did not introduce new evidence on any of these issues. In fact, this Commission has already heard testimony on each of these issues, issued an order, considered requests for reconsideration, and ruled."

FCCA witness Gillan testifies the rates yielded by BellSouth's model and its use of multiple scenarios are so high that BellSouth would not be able to profit if it were forced to lease UNEs at BellSouth's own rates. Witness Gillan testifies that an analysis he produced shows BellSouth would have operated at a deficit in the year 2000, instead of showing net income of $1.8 billion. Similarly, witness Darnell argues that Florida's UNE-P rates cannot be TELRIC compliant because they are 21 percent greater than the UNE-P rates in Georgia, where population densities are lower, which witness Darnell believes should lead to lower rates in Florida.

BellSouth witness Cox suggests witness Gillan's analysis is intended to distract attention from the real question in this proceeding. Witness Cox testifies the issue is not whether a competing carrier can profit from an incumbent's UNE rates; the issue is whether the rates are developed in concert with the Act and the FCC's rules. Witness Cox cites the FCC's Verizon

Massachusetts 271 Order, FCC Order No. 01-130 at ¶41, in support of her position. The relevant portion of that paragraph reads:

> In the *SWBT Kansas/Oklahoma Order* the Commission held that this profitability argument is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market. Conducting a profitability analysis would require us to consider the level of a state's retail rates, because such an analysis requires a comparison between the UNE rates and the state's retail rates. Retail rate levels, however, are within the state's jurisdictional authority, not the Commission's.

6. Anticipated Network Demand

Witness Darnell testifies BellSouth's prices cannot be consistent with TELRIC principles because BellSouth did not determine demand for its UNEs. Witness Darnell argues, "FCC Rule 51.511(a) requires that the per unit price for an element must be equal to the TELRIC divided by a reasonable projection of BellSouth and ALEC demand for that element. Since BellSouth makes no attempt to estimate demand for certain loops, it is impossible for the costing methodology used by BellSouth to comply with this rule."

Witness Darnell believes that in developing UNE prices, BellSouth "determines the cost of UNEs by assuming all customers will want that service using many different types of loops." He further testifies, "Under BellSouth's multiple-scenario costing approach, the sum of the parts times the actual demand do not equal the total cost BellSouth will incur." BellSouth witness Caldwell responds that the use of multiple scenarios does include "reasonable projections" for demand but that BellSouth, "cannot anticipate the ultimate use for any particular loop. A loop delivering voice grade service today can potentially be used to provide digital service tomorrow."

7. Implementation of a "Bottoms-Up" Approach

Witness Darnell believes BellSouth's UNE rates are not TELRIC compliant because of the loading factors that BellSouth used in its determination of materials investment. These loading factors, witness Darnell believes, "account for approximately one-half of BellSouth's loop rate. Given the vast importance of these loading factors, BellSouth UNEs cannot be considered to be cost-based and compliant with Checklist item 2 at least until the 120-day proceeding is completed." Witness Darnell's reference is to BellSouth's 120-day filing in Docket No. 990649A-TP.

BellSouth witness Caldwell rejects witness Darnell's assertion that the use of in-plant factors are prohibited by the FCC's TELRIC methodology. She explains, "These factors are applied against 'least-cost, forward-looking' investments. Therefore, the costs resulting from the use of in-plants are, by default, 'least-cost, forward-looking' and thus, comport with the FCC's TELRIC principles." Witness Caldwell also points out that the use of a "bottoms-up" method may not necessarily produce a more accurate reflection of cost. Witness Caldwell testifies that a number of the inputs needed to populate BellSouth's cost model would be based on the opinions of subject matter experts, not on actual data.

As an example, BellSouth witness Caldwell cites the per-foot cost of providing cable: "Specifically, BellSouth can determine that it costs $X to bury one foot of cable based on actual data. BellSouth does not, however, have actual data to forecast how often sod must be cut and restored or how often cable must be bored under driveways or how these probabilities would differ between an urban and rural location. These inputs would need to be obtained from subject matter experts."

8. Improperly Set Inflation Factors

Witness Darnell testifies that our decision on reconsideration of our order in Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP, reinstated inflation factors previously disallowed from BellSouth's UNE rate development. The effect of that decision, witness Darnell testifies, was to increase the UNE-P loop cost by 8.5 percent. This sets the UNE-P loop rate in Florida higher than the UNE-P loop rate in Georgia by 21 percent, witness Darnell testifies. Both the

Georgia and Florida rates exceed the limits of what TELRIC pricing would allow, witness Darnell asserts, but, "The BellSouth Florida UNE-P loop rate just exceeds TELRIC by a larger amount than the BellSouth Georgia UNE-P loop rate." Witness Darnell was asked at hearing if there is a UNE-P loop rate set in any BellSouth state that he would consider TELRIC compliant, to which he responded, "Not at the current time, no."

9. Drop Length Recalculations

Witness Darnell argues that in order for BellSouth's UNE rates to be consistent with TELRIC principles, drop lengths must be recalculated to assume routing from the corner of lots. This is necessary, witness Darnell testifies, because FCC Rule 51.505(b)(1) requires the use of the "lowest cost network configuration." The use of angular drop placement produces shorter drop distances, which leads to a lower cost configuration than the rectilinear drop placement method used by BellSouth in its cost model, according to witness Darnell.

In response, BellSouth witness Caldwell cites this Commission's Order in Docket No. 990649A-TP, Order No. PSC-01-1181-FOF-TP at page 158, where we found, "Absent any clear understanding of why a distribution terminal should be in a lot corner, we find BellSouth's approach, which employs angled routing but implicitly assumes that some terminals are not in lot corners, is reasonable."

10. Shared Cost Allocation

Witness Darnell alleges BellSouth's UNE rates cannot be considered compliant with TELRIC principles until changes are made to BellSouth's method of allocating shared costs. Witness Darnell explains:

> In using the BellSouth loop cost model (BSTLM) to calculate costs for specific UNEs, it is necessary to allocate shared investments (such as digital loop carrier common equipment and fiber feeder cable) to individual services. In the UNE cost docket, the Commission approved BellSouth's method of allocating shared investments in loop plant based on DS0 equivalents (i.e.

the number of voice channel equivalents represented by a particular service.)

Using this method, witness Darnell testifies, a 2-wire high-capacity T-1 service is allocated 24 times as much shared cost as a 2-wire voice grade loop. Witness Darnell believes the "per pair" methodology, which allocates shared costs based on the number of copper pair equivalents used to provide service, avoids the "anti-competitive impact" of placing high levels of shared costs on high-capacity services whose demand is fairly inelastic. He contends that BellSouth's shared cost allocation violates the intent of the FCC, expressed in FCC Order No. 96-325, the FCC's First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 at ¶696. In that portion of the paragraph quoted by witness Darnell, the FCC found, "We concluded that forward-looking common costs shall be allocated among elements and services in a reasonable manner, consistent with the pro-competitive goals of the 1996 Act."

Witness Darnell concludes that when this portion of FCC Order 96-325 is applied to the allocation of shared costs, which he asserts are by definition not causally related to a single service or facility, the requirements of the FCC's language mandate shared costs to be allocated in a way that minimizes adverse impacts on competition.

BellSouth witness Caldwell disputes witness Darnell's testimony on this point. Assigning investment of items such as DLC common equipment and fiber facilities on the basis of DS0s is the "most reasonable" approach because in most instances, equipment is actually sized on the basis of DS0s. Witness Darnell's method would understate equipment requirements and would result in understated costs, witness Caldwell argues.

11. Daily Usage File Charges

Witness Gillan believes that BellSouth's daily usage file charges should be eliminated. Witness Darnell shares his objection on the basis that BellSouth uses embedded systems costs and embedded expense-to-investment ratios to establish shared and common cost factors. As such, witness Darnell contends, the daily

usage file rates would be arrived at in a manner inconsistent with TELRIC principles.

2. Opinion

With the exception of UNE combinations, which has been addressed by the Supreme Court, we find that the ALEC's arguments have been fully addressed through our proceedings in Docket No. 990649A-TP.

1. Access to UNE Combinations/"Glue Charges"

AT&T witness Guepe argues BellSouth fails this checklist item because BellSouth does not provide nondiscriminatory access to UNE combinations. Specifically, witness Guepe testifies, BellSouth will only combine those elements that are currently combined at the time they are requested by the ALEC or if they are being used in combination by BellSouth to provide service to that specific customer. Witness Guepe also challenges the use of a "glue charge" by BellSouth for combining unbundled network elements for an ALEC.

After our hearing in this matter, we note that the Supreme Court in Verizon Communications, Inc. v. Federal Communications Commission, 2002 U.S. Lexis 3559; 122 S.Ct. 1646 (May 13, 2002), reinstated FCC Rules 47 C.F.R. §51.315(c)-(f) dealing with UNE combinations which were previously vacated by the Eighth Circuit. Rule 47 U.S.C. § 51.315 (c) requires an incumbent LEC to "perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined" in the incumbent's own network. According to the Verizon decision, an ILEC is obligated to combine UNEs on behalf of an ALEC for a reasonable cost-based fee, unless: 1) an ALEC can combine the elements itself; 2) combining the UNEs would impede BellSouth's own ability to retain responsibility for the management, control, and performance of its own network; or 3) that combining UNEs would place other competing carriers at a competitive disadvantage. Verizon, 122 S.Ct. at 1684-1687.

While we recognize that BellSouth's obligations regarding UNE combinations have changed, we believe this should not negatively affect its 271 application. The FCC, in its SBC Communications

Kansas/Oklahoma decision[8] stated, "Congress designed section 271 proceedings as highly specialized 90-day proceedings for examining the performance of a particular carrier in a particular state at a particular time." (emphasis added) For the purposes of evaluating 271 compliance, we therefore believe it is appropriate to examine whether an ILEC's actions were consistent with the prevailing law at the time of our hearing. BellSouth's refusal to combine UNEs prior to the Verizon decision is consistent with the Eighth Circuit's decision in Iowa Util. Bd. v. FCC, 219 F. 3d 744 (8th Cir. 2000) and all the previous arbitrations[9] by this Commission that have addressed UNE combinations. While the record in this case is closed, and there is no evidence whether BellSouth has complied with the Verizon decision, our opinion is based on the status of the law at the time of our hearing, and not on the subsequent change in the law. Therefore, BellSouth's prior decision not to combine UNEs on behalf of ALECs will not result in an unfavorable opinion from us regarding compliance with checklist item 2. However, we will monitor BellSouth's compliance with the Supreme Court's Verizon decision as part of our post-271 approval performance assurance plan.

2. Unbundled Packet Switching via Remote Terminals

The FCC, in its 1999 UNE Remand Order[10], declined to require unbundling of packet switching functionality except in limited circumstances. The limited circumstance in which ILECs are required to unbundle packet switching are outlined by 47 C.F.R. § 51.319 and essentially revolve around an ALEC being unable to install its own equipment to provide packet switching at remote

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[8]Joint Application By SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communication Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Report and Order FCC 01-29 (released January 22, 2001)

[9]See e.g. Order Nos. PSC-01-1402-FOF-TP, PSC-01-0824-FOF-TP, and PSC-01-1095-FOF-TP.

[10]Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Third Report and Order, Order No. FCC 99-238 (1999), *remanded on other grounds*, United States Telecom Assen v. FCC, 290 F. 3d 415 (D.C. Cir., May 24, 2002)

terminals where an ILEC has installed equipment to provide itself with packet switching capability. While the FCC chose not to require unbundling of packet switching, we note that FCC Rule 51.317(b) allows a state commission to unbundle additional network elements not already unbundled by the FCC if the state commission "determines that lack of access to an element impairs a requesting carrier's ability to provide service . . . ." This Commission has addressed this issue, and in the FDN/BellSouth arbitration[11], decided not to require unbundling of packet switching at remote terminals except when FCC Rule 51.317(b) applies. We stated FDN could not prove it would be impaired without such access because the cost for FDN to install packet switching equipment was similar to what an ILEC faced, and declining to require unbundling packet switching would encourage more ubiquitous broadband deployment. The arguments urging this Commission to unbundle packet switching at remote terminals found in witness Gillan's testimony have already been addressed by this Commission. Witness Gillan did not produce any new arguments on why packet switching in remote terminals should be unbundled; therefore, we see no reason to arrive at a different conclusion in this docket. Furthermore, even if this Commission were to reverse our stance on unbundling packet switching in remote terminals, we believe a 271 proceeding is not the appropriate forum for addressing the unbundling of additional UNEs.

3. Multiple Scenarios; Most Efficient Technology; Anticipated Network Demand

Though addressed separately by the ALECs, the three issues addressed in this section arise from BellSouth's use of three scenarios to arrive at UNE rates. ALEC witness Darnell argues the use of multiple scenarios yields UNE prices that are not TELRIC compliant because the use of multiple scenarios results in rates set without the benefit of the most efficient network technology. He further testifies that the three-scenario approach assumes all customers will want a given service using different types of loops, which inflates UNE rates.

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[11]In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996, Docket No. 010098-TP, Order No. PSC-02-0765-FOF-TP, issued June 5, 2002.

In our order in Docket No. 990649-TP, Order No. PSC-01-1181-FOF-TP at page 154, (hereinafter referred to as "UNE Order"), we found that, "In principle, it appears to us that a single unified network design is most appropriate. However, we believe this goal is not attainable based on this record." Later, at page 155, we found, "Accordingly, at this time we find that the record supports that the BST2000 is an appropriate basis for determining the costs of stand-alone UNE loop offerings, while the Combos run is appropriate only for certain integrated loop/port combinations."

In our Order on Reconsideration in Docket No. 990649A-TP, Order No. PSC-01-2051-FOF-TP at page 24, (hereinafter referred to as "Reconsideration Order"), we found, "Furthermore, it is not clear that the use of three scenarios necessarily conflicts with Rule 51.505(b)(1). It does not appear to us that the rule requires unified scenarios, as long as the cost modeling is based upon the lowest cost configuration and takes into account the provision of other elements." Furthermore, the FCC in its Georgia/Louisiana 271 Order[12], affirmed the Louisiana Commission's use of multiple scenarios to derive UNE rates for BellSouth. Georgia/Louisiana 271 Order at ¶ 42. According to the FCC, the evidence before the Louisiana Commission indicated that the use of only one scenario would lead to under recovery of BellSouth's costs. Referring to the use of multiple scenarios for UNE loops, the FCC specifically stated, ". . . we have never held that an appropriate application of TELRIC precludes such an approach." Id.

It appears that the issues raised by witness Darnell in this context have been addressed in previous orders of this Commission. Like the Louisiana Commission, we find the use of multiple scenarios most accurately reflects appropriate UNE rates for BellSouth, and in the absence of new or different record evidence to the contrary, we see no reason to arrive at a different conclusion.

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[12] In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, FCC 02-147, issued May 15, 2002.

4. Implementation of a "Bottoms-Up" Approach

Witness Darnell asserts BellSouth's UNE rates are not TELRIC-compliant because of the use of loading factors to determine material investment. Witness Darnell argues these loading factors make up as much as half of BellSouth's loop rate. Because we ordered BellSouth to refile its cost model, in part to determine the magnitude of any discrepancies between a "bottoms-up" approach and a loading factor approach, witness Darnell contends, BellSouth's UNE rates cannot be considered consistent with TELRIC principles.

BellSouth witness Caldwell testifies the use of loadings does not automatically render BellSouth's rates non-compliant with TELRIC principles and that a "bottoms-up" approach does not necessarily provide more accurate costs.

In our UNE Order at page 284, we acknowledged being troubled by BellSouth's use of linear in-plant factors and concurred with ALEC participants in Docket 990649A-TP that these factors distort costs between rural and urban environments. We, therefore, ordered BellSouth to refile its cost model explicitly modeling all cable and associated supporting structures engineering and installation placements. Given that we have addressed this issue in Docket No. 990649A-TP with updated cost models that are not part of the record of this proceeding, we do not believe this proceeding is the appropriate forum for resolution of this issue.

5. Improperly Set Inflation Factors

Witness Darnell asserts that the reinstatement of inflation factors by us at our October 2, 2001, Agenda Conference caused, "the magnitude of BellSouth's non-compliance with Section 271 checklist (ii) to increase." By reinstating inflation factors, witness Darnell maintains that we increased the rates BellSouth charges for UNEs.

In its brief, however, BellSouth contends this is an issue that has been addressed in Docket No. 990649A-TP and should not be relitigated in this proceeding.

The only record evidence in this proceeding regarding inflation rates was testimony by witness Darnell; however, the record on which witness Darnell bases his argument is not part of this proceeding. This issue, which has been addressed in Docket No. 990649-TP, has been resolved by us, and witness Darnell provides no evidence or testimony not previously considered.

6. Drop Length Recalculation

Witness Darnell believes that for BellSouth's UNE rates to be consistent with TELRIC principles, drop lengths must be recalculated to assume routing from the corner of lots. This is necessary, witness Darnell testifies, because FCC Rule 51.505(b)(1) requires the use of the "lowest cost network configuration." The use of angular drop placement produces shorter drop distances, which leads to a lower cost configuration than the rectilinear drop placement method used by BellSouth in its cost model, according to witness Darnell.

BellSouth witness Caldwell responds by citing this Commission's UNE Order at page 128, in which we found BellSouth's method of calculating drop lengths "reasonable."

As is evident from witness Caldwell's response, we have ruled previously on this dispute in Docket No. 990649-TP. Nothing in the record to warrant a reexamination of this issue.

7. Shared Cost Allocation

Witness Darnell argues that our decision to approve BellSouth's allocation of shared costs in Docket No. 990649A-TP conflicts with FCC Order No. 96-325 at ¶696, regarding the use of forward-looking common costs. BellSouth witness Caldwell responds BellSouth's method of allocating shared costs is the "most reasonable" approach.

In our UNE Order at page 157, we found BellSouth's method of allocating shared costs on the basis of DS0 equivalents "reasonable." In our Reconsideration Order at page 27, we found the movants failed to identify any mistake of fact or law that would lead to a change in our original decision. We have already decided this issue and nothing presented in the record of this

proceeding supports a change of the previous decision, nor is this the appropriate forum to do so.

8. Daily Usage File Charges

Witness Darnell argues that BellSouth's proposed rates for daily usage files are too high and that BellSouth is trying to "shoehorn a UNE cost case into this 271 compliance review." We note that in Docket No. 990649A-TP, we have decided to significantly reduce BellSouth's rate for daily usage files. We have concluded that BellSouth's DUF cost model must be amended to remove costs for software development which have previously been amortized and to increase the DUF usage projections so they are based on BellSouth's actual increases rather than the one fourth rate that BellSouth proposed thereby lowering the cost per DUF file. Ultimately, we believe our approved rate is TELRIC compliant.

C. Conclusion

Upon review, the most concise summary of the ALECs' testimony in this checklist item is in the surrebuttal testimony of BellSouth witness Cox:

> Despite the explicit purpose of this proceeding, AT&T's and WorldCom's witnesses have largely presented issues that have been addressed in arbitration or generic proceedings before the FPSC and other state commissions in BellSouth's region. In fact, in most cases, the FPSC has already issued its decision in these arbitrations as to the appropriate resolution of these issues. Yet, in this proceeding, AT&T and WorldCom seek to relitigate many of these same issues by now arguing that the FPSC must revise its rulings on issues such that the FPSC rules consistent with AT&T and WorldCom's position or must deny BellSouth's 271 application.

In fact, every issue but one that the ALEC witnesses have raised in the context of this checklist item has been determined by us in previous dockets. The only two exceptions being revisions to daily usage file rates, which we recently addressed in BellSouth's 120-day filing in Docket No. 990649A-TP, and revisions to UNE

combination rates to comply with previously vacated FCC rules reinstated by the Supreme Court post-hearing in Verizon Communications, Inc. v. Federal Communications Commission, 2002 U.S. Lexis 3559; 122 S.Ct. 1646 (May 13, 2002).

For us to recommend that BellSouth not pass this checklist item would require a finding that BellSouth earlier erred in relying on the Eighth Circuit's Court of Appeals decision in Iowa Util Bd., and three separate arbitrations by this Commission to determine the meaning of "currently combines," and the application of "glue charges" until such precedent was later reversed by the Supreme Court; that we erred in accepting BellSouth's methodology for setting UNE rates in the generic pricing docket (albeit with various modifications); and that we erred in rejecting the ALECS' Motions for Reconsideration in the generic pricing docket.

The presence of two recurring themes in the FCC's 271 orders on this checklist item: (1) The purpose of a Section 271 proceeding is not to conduct a review of a state's UNE pricing determinations; and (2) an ALEC's ability to profit from an ILEC's UNE rates is not a relevant consideration in a Section 271 review.

As to the first point, in its Verizon Massachusetts Order, FCC Order No. 01-130 at ¶20, the FCC found, "The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if 'basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.'" The footnotes to this paragraph reference identical findings in the FCC's Bell Atlantic New York Order, FCC Order No. 99-404 at ¶244, and Southwestern Bell Kansas/Oklahoma Order, FCC Order No. 01-29 at ¶59.

On the second point, the FCC's Kansas/Oklahoma Order, FCC Order No. 01-29 at ¶65, makes clear, ". . . incumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin. In order to comply with checklist item 2 of section 271, incumbent LECs must provide UNEs at rates and terms that are just, reasonable, and nondiscriminatory, and allow the incumbent LEC to recover a

reasonable profit." Subsequently, at ¶92 of the same order, the FCC also found, "Parties also assert that the Oklahoma promotional UNE rates are so high that no competitive LEC could afford to use the UNE platform to offer local residential service on a statewide basis. Such an argument is irrelevant. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market place."

These rulings by the FCC render moot virtually all of the ALEC testimony regarding UNE rates for this checklist item. Therefore, based on the foregoing, we are of the opinion that other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are considered in Docket No. 960786B-TL, BellSouth provides nondiscriminatory access to all required unbundled network elements. Further, BellSouth provides access to these elements at TELRIC-based prices as determined by this Commission in Docket No. 990649A-TP.

VI. COMPLIANCE WITH SECTION 271(C)(2)(B)(iii)

Here, we address whether BellSouth currently provides nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by it at just and reasonable rates in accordance with the requirements of applicable rules. In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we found that BellSouth met the requirements of Section 224 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iii).

We note that no party other than BellSouth offered an argument with respect to this issue; ALECs offered no position in their briefs to counter the BellSouth position.

A. Parties' Arguments

BellSouth witness Milner contends that "Section 271(c)(2)(B)(iii) of the Act requires BellSouth to provide nondiscriminatory access to poles, ducts, conduits, and rights of way to ALECs when requested." BellSouth asserts that it has met this checklist item:

> BellSouth provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way to ALECs at terms and conditions that are the same for Florida as those found by the FCC to be compliant in Louisiana. BellSouth's actions and performance are consistent with its previous showing, and nothing material has changed since 1997 that should cause the FPSC to reach a different conclusion than the FCC reached in its 1998 Louisiana II Order or than the FPSC reached in 1997 [in Order PSC-97-1459-FOF-TL].

BellSouth states that it offers nondiscriminatory access to poles, ducts, conduits, and rights-of-way to ALECs through interconnection agreements, its SGAT, and through its Standard License Agreements. Witness Milner states that BellSouth has and will continue to offer such access in a timely fashion. He cites marketplace evidence about BellSouth's Standard License Agreements:

> As of May 17, 2001, ALECs in Florida had executed with BellSouth 51 license agreements and 103 license agreements region-wide, (both state-specific and multi-state) that allow them to attach their facilities to BellSouth's poles and to place their facilities in BellSouth's ducts and conduits. Since July 1997, BellSouth has received 338 requests in Florida for access to poles, ducts, conduits, and rights-of-way from 26 ALECs with no requests being denied. Similarly, ALECs have leased approximately 195,000 feet of conduit space in BellSouth's nine-state region as a result of ALEC requests, of which 31,000 feet are in Florida.

BellSouth's witness Milner asserts, "in short, nothing material has changed since 1997 that would cause the Commission to reach a different conclusion than it reached in the 1997 Order."

B. Opinion

Section 224 of the Act provides general guidance over pole attachments, and topics such as nondiscriminatory access to ducts, conduits, and rights-of-way, while Section 271 is more on-point with respect to this proceeding and this issue. Section 271(c)(2)(B)(iii) of the Act requires:

> **COMPETITIVE CHECKLIST.-** Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:
>
> > (iii) Nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of Section 224.

In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we determined that BellSouth met the requirements of Section 224 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iii). Order No. PSC-97-1459-FOF-TL at p. 100. BellSouth believes "nothing material has changed since 1997 that would cause the Commission to reach a different conclusion," according to witness Milner. We agree with the witness, noting that only BellSouth offered evidence with respect to this issue; the ALEC parties did not rebut BellSouth's position stated herein.

Additionally, BellSouth believes the findings in the 1998 Louisiana II Order, FCC Order No. 98-271, support its assertions. FCC Order No. 98-271 states in relevant part:

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

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

In our prior determination, we also found that BellSouth met the requirements for this checklist item. Order No. PSC-97-1459-FOF-TL at p. 100. We believe the record contains marketplace evidence that also demonstrates BellSouth's compliance with this checklist item. Further, the FCC's recent joint Order for 271 authority in the states of Georgia and Louisiana[13], FCC 02-147, notes at ¶278 that " . . . [w]e conclude that BellSouth demonstrates that it is in compliance . . . in both Georgia and Louisiana." Id. Finally, no ALEC challenged BellSouth's compliance with this checklist item in Florida, Georgia or Louisiana. Therefore, at this time, we are of the opinion that BellSouth is in compliance with this item.

C. Conclusion

Upon consideration, we are of the opinion that BellSouth does currently provide nondiscriminatory access to the poles, ducts, and conduits, and rights-of-way owned or controlled by it at just and reasonable rates in accordance with and pursuant to Section 271(c)(2)(B)(iii) of the Act and applicable rules promulgated by the FCC.

VII. COMPLIANCE WITH SECTION 271(C)(2)(B)(iv)

Section 271(c)(2)(B)(iv), checklist item 4, requires that BellSouth provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. In its Local Competition First Report and Order, FCC Order No. 96-325, the FCC defined loops as "a transmission facility between a distribution frame, or its equivalent, in an incumbent

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[13]In the matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana, CC Docket No. 02-35, Order No. 02-147, issued May 15, 2002.

LEC central office, and the network interface device at the customer premises." FCC order No. 99-238 at ¶166. In its UNE Remand order, the FCC modified this definition to include all features, functions, and capabilities of the transmission facilities, including dark fiber and attached electronics, except those used for the provision of advanced services, such as DSLAMs, owned by the ILEC, between an ILEC's central office and the loop demarcation point at the customer premises.[14] FCC Order No. 99-238 at ¶ 167.

According to BellSouth witnesses Milner and Cox, BellSouth allows ALECs to access unbundled loops at any technically feasible point with access given to all features, functions, and capabilities of the loop. Witness Milner believes that BellSouth provides ALECs access to unbundled local loops in a manner that allows an efficient competitor a meaningful opportunity to compete.

BellSouth makes the following loop types available to ALECs and has provided the following quantities in Florida as of March 31, 2001:

- SL1 voice grade loops - 33,084
- SL2 voice grade loops - 68,270
- 2-wire ISDN digital grade loops - 5,939
- 2-wire ADSL loops - 4,279
- 2-wire HDSL loops - 108
- 4-wire HDSL loops - 2
- 4-wire DS-1 digital grade loops - 2,584
- 56 or 64 Kbps digital grade loops - 0
- UCL (Long or Short) loops - 2,579
- DS3 loops - 0
- UCL-ND loops - 0

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14. The FCC clarified that "In other words, our revised definition retains the definition from the Local Competition First Report and Order, but replaces the phrase "network interface device" with "demarcation point," and makes explicit that dark fiber and loop conditioning are among the "features, functions, and capabilities" of the loop." FCC Order No. 99-238 at footnote 301.

In addition, BellSouth witness Milner provided the following statistics:

- As of March 31, 2001, BellSouth had provisioned 116,845 unbundled loops to over 40 ALECs in Florida.
- Through March 2001, ALECs in Florida made 13 requests for loop conditioning.
- ALECs in Florida have purchased over 500 unbundled sub-loop elements.
- BellSouth has 2 dark fiber arrangements in place in Florida.
- As of April 1, 2001, BellSouth has provisioned 714 line sharing arrangements in Florida.
- In March 2001, ALECs in Florida made 1,409 mechanized Loop Makeup (LMU) Inquiries and from November 2000 through March 2001, ALECs made 234 manual LMU inquiries.

The witness notes that ALECs may request additional loop types through the bona fide request process. Moreover, BellSouth offers local loop transmission of the same quality and same equipment and technical specifications used by BellSouth to service its own customers.

BellSouth witness Cox provided a summary of prior FCC findings regarding this checklist item. These findings are presented below:

> In its Bell Atlantic New York Order, the FCC concluded that in order for a BOC to be found in compliance with this checklist item, it must demonstrate a concrete and specific legal obligation to provide unbundled local loops in accordance with Section 271 requirements.

Order at ¶ 273.

> Additionally, in its SWBT Order-TX, the FCC determined that " the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested." In order to provide such loops, the BOC may have to perform conditioning on the loop for which it can recover its costs.

Order at ¶ 248.

> In its SWBT Order-KS/OK, the FCC reaffirmed its requirement that a BOC must demonstrate a concrete and specific legal obligation to provide unbundled local loops in order to meet the requirements of this checklist item. Additionally, the FCC concluded that a BOC must also demonstrate that it is currently providing local loops in the quantities that competitors demand and at acceptable quality levels.

Order at ¶ 178.

> Finally, in its Verizon Massachusetts Order, the FCC, in evaluating Verizon's overall performance in providing unbundled local loops in Massachusetts, examined Verison's performance "in the aggregate (i.e., by all loop types) as well as its performance for specific loop types (i.e., by voice grade, xDSL-capable, line-shared and DS-1 types)." The FCC further concluded that Verizon provides access to loop make-up information in compliance with the UNE Remand Order, and that Verizon also provides nondiscriminatory access to stand alone xDSL-capable loops and high-capacity loops.

Order at ¶¶ 122, 124. Specifically with regard to BellSouth, the FCC concluded in its Louisiana II Order, FCC Order No. 98-271, that:

> BellSouth had not provided sufficient persuasive evidence (in the form of performance data) that it meets the requirements of this checklist item. (¶189) Specifically, the FCC desired performance data in sufficient detail to demonstrate that BellSouth met the nondiscrimination standard.

Order at ¶ 194.

Witness Cox notes that in Order No. PSC-97-1459-FOF-TL, issued November 19, 1997 (1997 Order), we found that BellSouth met the requirements of checklist item 4. She maintains that since that time BellSouth has continued to provide loops as requested by ALECs. In addition, BellSouth provides ALECs with access to:

- unbundled subloop components,
- loop cross-connects,
- loop concentration and channelization,
- loop make-up information,
- unbundled loop modification, and
- the high frequency portion of the loop.

Furthermore, witness Cox believes BellSouth facilitates line splitting as required by the FCC's Line Sharing Reconsideration Order.[15] Accordingly, she maintains that BellSouth offers through its agreements, and through its SGAT, nondiscriminatory access to unbundled local loops and subloops.

The ALEC participants in this docket do not appear to dispute that BellSouth makes available the requisite types of loops. However, the majority of the ALECs disagree with BellSouth's policies regarding line sharing, and line splitting, and assert their inability to provide voice and data services in an efficient manner is evidence of BellSouth's failure to comply with this item. Furthermore, two of the parties, KMC and the Competitive Coalition, have concerns regarding quality of service issues. We begin by addressing the parties' arguments regarding line sharing and line splitting. However, we note that in United States Telecom Ass'n. v. FCC, 290 F.3d 415 (DC Cir. 2002) the FCC's Line Sharing Order was vacated and remanded back to the FCC. Thereafter, on September 4, 2002, the Court issued a partial stay of its mandate until January 2003. At present, the legal status quo of the line sharing requirement is being maintained until January 2003.

A. Line Sharing

1. Parties' Arguments

Line sharing allows an ALEC to provide high-speed data services to BellSouth's voice customers over the high frequency portion of a copper loop. According to BellSouth witness Williams, the data signal typically is split off from the voice signal by a

[15]In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Order on Remand, CC Docket No. 98-147 (Released January 19, 2001) ("Line-Sharing Reconsideration Order")

splitter and then delivered to a DSLAM[16] located in the ALEC's network at its collocation space.

Witness Williams maintains that BellSouth has developed its line sharing product in conformance with the obligations set forth in the FCC's Line Sharing Order and its Line Sharing Reconsideration Order.[17] In these Orders the FCC created a new UNE that consists of the high frequency portion of the copper loop over which the ILEC provides analog voice service to the end user.

Witness Williams believes BellSouth offers line sharing in accordance with FCC rules. Specifically, he notes that line sharing is available to a single requesting carrier, on loops that carry BellSouth's POTS, so long as the xDSL technology deployed by the requesting carrier does not interfere with the analog voice band transmission. Additionally, to facilitate line sharing, BellSouth will perform unbundled loop modification (i.e., line conditioning) at the request of an ALEC on any loop, regardless of loop length, unless such conditioning would significantly degrade the customer's analog voice service provided by BellSouth.

According to witness Williams, BellSouth has entered into region-wide interconnection agreements with ALECs such as Covad, NewEdge, BlueStar, NorthPoint, and Rhythms for the ordering and provisioning of line sharing. He notes, "These agreements are current and in effect in Florida and several other agreements containing line sharing will soon be signed." The agreements contain interim rates, subject to true-up from the individual state regulatory bodies, including this Commission. As of September 30, 2001, BellSouth had installed splitters in 123 wire centers in Florida and had provisioned line sharing on 1,999 lines in Florida.

The current architecture BellSouth is deploying for line sharing allows ALECs to order splitters in three different increments: full shelf (96 line units); one-fourth of a shelf (24 line units); or an 8-port option. The witness notes that the 8-port option is currently under development. Under the

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[16]The DSLAM converts the data signal into packets for transmission over the ALEC's network, according to witness Williams.

[17]BellSouth developed its line-sharing product through a collaborative process with all interested CLECs, according to witness Williams.

aforementioned options, BellSouth purchases, installs, inventories, leases, and maintains the splitter. BellSouth installs a splitter in its equipment space or in a common area close to the ALEC's collocation area. Additionally, BellSouth provides a bantam jack at the splitter so the ALEC can test the high frequency portion of the loop.

BellSouth witness Williams notes that several ALECs requested the option of providing line sharing via an ALEC-owned splitter located in the ALEC's collocation space. Processes and procedures were developed to enable ALECs to engage in line sharing by means of an ALEC-owned splitter. However, the witness observes that "Despite the initial enthusiasm for a CLEC-owned splitter arrangement, to date no CLEC has installed its own splitter." He notes that BellSouth remains committed to testing its offer of line sharing via an ALEC-owned splitter.

In addition, witness Williams observes that BellSouth "stands ready" to provide line sharing from the RT, if requested.[18] He explains that BellSouth and the ALECs jointly agreed to a schedule for deployment of methods and procedures for the various requirements of the Line Sharing Order. Specifically, he states that the RT collaborative team's goal is:

> to support the development of, with the mutual agreement to, the process and procedures required to jointly implement line-sharing utilizing splitters located in the remote terminal as one of the options to meet the requirements of the FCC line-sharing order.

BellSouth has developed the RT Line Sharing option and has performed initial testing. The witness notes that a number of ALECs are interested in providing RT line sharing and BellSouth is very close to developing an end-to-end test of that service with two interested ALECs.

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[18]In order to provide line sharing from the RT, the ALEC must collocate in the RT and place a DSLAM in its collocation space in the RT. The ALEC may then purchase the high frequency portion of the copper subloop from the RT to the end user customer, according to witness Williams.

According to AT&T witness Turner, BellSouth does not offer full unbundled access to the local loop because it does not offer any feasible means of line sharing where it has deployed fiber-fed Digital Loop Carrier (DLC) at remote terminals.[19] He argues that BellSouth does not provide ALECs, such as AT&T, with equivalent access to loops that use NGDLC[20] technology despite BellSouth's statements to the contrary. He explains that BellSouth uses this technology to provide the "local loop transmission" between the customer's premises and the central office. Witness Turner maintains that as a result, ALECs seeking to provide bundled voice and advanced services in competition with BellSouth are faced with three choices:

> (1) employ traditional copper loops to deliver inferior service quality assuming such loops are available;
>
> (2) engage in cost prohibitive remote terminal collocation in an effort to replicate the loop architecture deployed by BellSouth assuming it is technically feasible; or
>
> (3) forego competition for the customer served by NGDLC loop technology.

Witness Turner argues that all three choices have the same result - BellSouth retains its monopoly control of the market. He believes that BellSouth's restrictions in this area are inconsistent with the requirements of FCC rules and Sections 251 and 271 of the Act.

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[19]FDN witness Gallagher also argues that " . . . FDN is precluded from providing high-speed data service where BellSouth has deployed Digital Loop Carrier (DLC) facilities."

[20] "NGDLC is a telecommunications component that allows carriers to use fiber from the central office out to a remote terminal. At the remote terminal, the NGDLC allows for the fiber to be connected with the copper that continues the loop out to the customer's premises. The "next generation" aspect of NGDLC is that by simply using different plug-in cards, the telecommunications carrier is able to provide voice service only, advanced service only, or combined voice and advanced services. Prior to the deployment of NGDLC, the data service was provided by a separate device known as an xDSL access multiplexer ("DSLAM"). The DSLAM capability now has been integrated onto a card within the NGDLC, permitting easier provisioning of advanced services."

AT&T witness Turner maintains that BellSouth is required to line share with ALECs even when the end-user customer is served by a NGDLC configuration. Specifically, he states that in the Line Sharing Reconsideration Order the FCC clarified that fiber-fed DLC must be unbundled for line sharing to encourage competitors to provide xDSL services. He notes that this requirement "applies to the entire loop where the incumbent has deployed fiber in the loop *(e.g.,* where the loop is served by a remote terminal("RT").[21]"

He continues by noting that the FCC stated that it did not intend to prevent an ILEC from providing an ALEC with access to the fiber portion of a DLC loop for line sharing purposes just because the word "copper" was used in the rule implementing the Line Sharing Order, Rule 51.319(h)(1). Instead, he believes that the FCC required the ILEC to unbundle "the high frequency portion of the local loop even where the incumbent LEC's voice customer is served by DLC facilities." The Line Sharing Reconsideration Order also states that ALECs must have the option of accessing the high frequency portion of the loop at the remote terminal as well as at the central office. Witness Turner explains that the FCC concluded that it would be inconsistent with "the intent of the statutory goals behind sections 706 and 251 of the 1996 Act to allow incumbent LECs to limit a CLEC's ability to provide xDSL services due to increasing deployment of fiber-based networks."

In further support of his contention that BellSouth is not in compliance with the FCC's Line Sharing Reconsideration Order , AT&T witness Turner provides the following example:

> . . . as recently as the May 3, 2001 BST-Line Splitting Collaborative Meeting, one of the critical questions that was discussed was whether BellSouth would consider permitting an ALEC to install integrated splitter/Digital Subscriber Line Access Multiplexer ("DSLAM") cards into DSLAM capable BellSouth remote terminals to facilitate remote site line sharing. BellSouth's response was that it would not consider this option. Instead, BellSouth would only consider permitting ALECs to install discrete splitters at a remote terminal to enable ALEC line

[21]Line Sharing Reconsideration Order at ¶10.

> sharing from a collocation arrangement at the remote terminal.

The witness reiterates his belief that BellSouth is not offering any reasonable implementation of the requirements of the FCC's Line Sharing Reconsideration Order.

Witness Turner notes that it is BellSouth's position that the integrated splitter/DSLAM card performs a packet switching function which, pursuant to the UNE Remand Order, BellSouth does not have an obligation to provide to ALECs. However, he argues that a DSLAM, particularly one with an integrated splitter, is not performing a "packet switching" function, but rather is performing a transport function. The DSLAM is an integral part of the unbundled loop and is essential to deliver the voice portion of the loop back to the central office voice switch, and the data portion of the loop back to the central office data switch which is a packet switch. The DSLAM has the ability to receive a copper loop, split the low frequency voice signal from the high frequency data signal, and then transmit each of these two signals to their appropriate switch types: a circuit switch for the voice signal and a packet switch for the data signal. NGDLC, which was defined earlier, is now being deployed by BellSouth in such a manner that integrated splitter/DSLAM cards can be installed into the NGDLC in such a way that voice and data service combinations can easily be provisioned to end user customers. Thus, witness Turner argues that contrary to BellSouth's conclusions, the integrated splitter/DSLAM card is not performing a packet switching function.

Finally, witness Turner notes that the 1996 Act, the FCC implementing rules, and their governing principles on access to the local loop, boil down to one simple statement:

> CLECs are entitled to access an unbundled loop element that consists of all features, functions, and capabilities that provide transmission functionality between a customer's premises and the central office, regardless of the technologies used to provide, or the services offered over, such facilities.

He believes that this straightforward FCC analysis clearly means that next-generation loop technologies architecture does not alter

an ALEC's right to access the entire loop as an unbundled element at the central office.

BellSouth witness Milner notes that the line card to which AT&T witness Turner refers provides both voice functions and DSLAM functions. He argues that the FCC has defined the DSLAM as part of the packet switched network. Moreover, the BellSouth witness observes that the FCC has declined to impose a duty that BellSouth unbundle its packet switched network except in extremely limited circumstances and those circumstances do not exist in Florida. Therefore, what witness Milner believes AT&T is truly seeking is to impose obligations on BellSouth to unbundle packet switching despite the fact that the FCC and the FPSC have already addressed this situation.[22] Witness Milner goes on to explain that:

> There can be no serious dispute that the FCC rules do not require BellSouth to provide ALECs with the right to specify the type of line cards to be placed in BellSouth's DLC systems. Requiring BellSouth to provide ALECs with the opportunity to utilize dual-purpose line cards would result in BellSouth providing unbundled packet switching, because the line card provides the functionality of a DSLAM.

At hearing, witness Milner was asked if he agreed that " . . . the FCC clarified the requirement to provide - - clarified that the requirement to provide line sharing applied to the entire loop even where the incumbent has deployed fiber in the loop?" The witness replied:

> Yes, it did say that. It was also careful to point out that when it talked about - I forget the exact phrase that it used, but when it talked about the devices that compose the loop, the FCC specifically excluded devices that are used in packet switching networks, this is the digital subscriber line access multiplexer, or DSLAM. So, yes, it said that, but then it said when we talk

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[22] In Docket No. 990691-TP, the FPSC ruled that packet switching capabilities are not UNEs and in Docket No. 991854-TP the FPSC ruled, "BellSouth shall only be required to unbundle its packet switching capabilities under the limited circumstances identified in FCC Rule 51.319(c)(5)."

> about loop devices we are specifically excluding these DSLAMs.

Witness Milner also disagrees with AT&T's belief that BellSouth's position on NGDLC means that BellSouth will only permit ALECs to line share over copper facilities. He notes that AT&T has a number of options by which it may service customers. For example, AT&T could collocate its DSLAM in BellSouth's RT, acquire unbundled loop distribution sub-loop elements, and acquire unbundled dark fiber from BellSouth. Another option would be for AT&T to self-provision its own fiber optic cable, install its DSLAM in its own cabinetry rather than the RT and acquire only the unbundled loop distribution sub-loop element. Witness Milner reiterates that in no way is AT&T precluded from servicing its end user customer regardless of whether or not those customers are served over copper loops. BellSouth witness Williams echos this position. He notes that ALECs are not precluded from offering DSL service where DLC is deployed.

On cross-examination, AT&T witness Turner was asked to clarify his testimony. Specifically, he was questioned on his assertion that BellSouth is in express violation of an FCC requirement by refusing to provide the dual purpose line card, when the FCC has opened up a notice of proposed rulemaking to consider the issue. The witness was specifically asked:

> So it seems unlikely that BellSouth can be in express violation of something the FCC is currently considering, don't you agree?

He responded by stating:

> Well, you have set up something that my testimony does not say. So I would not agree, because I have not said you are in express violation by not providing the line card.

BellSouth witness Milner also addressed this point, and noted that the issues regarding whether or not ILECs have an obligation to provide the dual purpose line card is something the FCC is going to review.

Witness Turner was also questioned regarding his position that remote terminal collocation is not viable and cost prohibitive. The witness agreed that BellSouth had to incur the expense to place equipment to provide DSL from the remote terminal to its end users, and that it is no different from the ALEC having to incur that same cost to serve those same customers. In addition, the witness agreed that BellSouth is not obligated to unbundle packet switching in Florida. Furthermore, he agreed that even if the FCC had decided that these line cards could be placed by ALECs, that would only occur if it was technically feasible. According to BellSouth witness Williams, none of the carrier systems that BellSouth has deployed to date are capable of using combo cards. However, he notes that BellSouth is currently testing combo line cards and that it plans to begin deployment in first quarter 2002. The cards will be available in all newly deployed RTs, as well as the 7 percent of the existing RTs that are served by NGDLC that are purely voice.

AT&T also argues that BellSouth's current line sharing practice to discontinue its high-speed Internet access service to a customer that changes voice service to an ALEC is discriminatory and stifles competition. AT&T witness Turner contends that "a retail customer placed in this untenable position would clearly decide not to change voice carriers."

Both BellSouth witnesses Cox and Williams acknowledge this as a BellSouth policy. Specifically, if BellSouth has an end-user that purchases both voice and data services from BellSouth, then that customer chooses an ALEC for its voice service, the end user will lose the BellSouth-provided data services if the ALEC is serving that customer via UNE-P. Witness Williams notes that BellSouth's data service (ADSL) is an enhanced service, is not regulated, and BellSouth chooses not to offer this non-regulated service on a UNE line. Furthermore, witness Cox notes that in its Line Sharing Reconsideration Order at ¶16, the FCC specifically denied AT&T's request that ILECs be required to continue to provide xDSL services on the same line in the event a customer chooses to obtain its voice service from a competing carrier. Additionally, in the event a customer discontinues its ILEC-provided voice service on a line-shared line, the data ALEC is required to purchase the full stand-alone loop if it wishes to continue providing xDSL service.

2. Opinion

With regard to line sharing, it appears that AT&T has two reasons why it believes BellSouth does not comply with the requirements of Checklist item 4. First, AT&T witness Turner argues that BellSouth does not offer any "feasible means" of line sharing where it has deployed fiber-fed DLCs at RTs. Second, he believes BellSouth's policy of discontinuing high-speed Internet access service to a customer that changes voice service to an ALEC is discriminatory and stifles competition.

We do not, however, find that AT&T witness Turner has presented any persuasive evidence that BellSouth has failed to meet its line sharing obligations under Checklist item 4. Specifically, we do not believe BellSouth is currently obligated to provide AT&T with unbundled access to its DSLAMs. As BellSouth witness Milner stated, it appears that AT&T wants to impose obligations on BellSouth to unbundle packet switching. The FCC and this Commission have made it clear under what circumstances packet switching must be unbundled. The AT&T witness agreed that those circumstances do not currently exist in Florida. Furthermore, unbundling of packet switching is not a requirement of Checklist item 4. Moreover, as noted above, in United States Telecom Ass'n v. FCC, 290 F.3d 415 (DC Cir. 2002), the FCC's Line Sharing Order was vacated and remanded back to the FCC. As previously acknowledged, however, on September 4, 2002, the Court partially stayed its decision regarding line sharing until January 2003.

With regard to the issue of dual-purpose line cards, we are not persuaded by AT&T's arguments. There is not currently a 271 requirement that BellSouth provide ALECs access to line cards in its NGDLCs. This was acknowledged by the AT&T witness when he agreed that the FCC will be looking at this issue and what requirements, if any, should be imposed on the ILECs.

Last, with regard to BellSouth's policy that it will discontinue providing ADSL service when a voice customer switches to an ALEC, there is significant testimony and evidence that BellSouth is not under any FCC obligation to continue providing its high-speed Internet access service when it is no longer the voice provider. This is made clear in ¶397-398 of the FCC's Line Sharing Reconsideration Order. In addition, FCCA witness Gillan

acknowledged that provision of xDSL over ALEC voice loops is not a 271 requirement. However, we note that after the record in this proceeding closed, we concluded, based on state law authority, in the FDN/BellSouth arbitration that BellSouth's policy of disconnecting its FastAccess service when a customer switched its voice service to an ALEC using UNE-P impeded competition in the local exchange market. Therefore, we ordered BellSouth to discontinue this practice[23]. See Order No. PSC-02-0765-FOF-TP.

3. Conclusion

Although at present it is unclear whether BellSouth has a line sharing obligation, based on the hearing record presented here prior to the line sharing order being vacated, BellSouth had met its obligation to provide line sharing.

B. Line Splitting

1. Parties' Arguments

Line splitting is when an ALEC provides voice service and a data ALEC provides data service to the same end user over the same loop and neither of the carriers is the ILEC. According to AT&T witness Turner, BellSouth only offers line splitting in Florida on a discriminatory basis. He noted that BellSouth will make line splitting available for a new customer only if an ALEC provides its own splitter. However, during the hearing it was learned that BellSouth's position had changed. Specifically, according to BellSouth witness Williams:

> While BellSouth remains in its position that it is not obligated to provide splitters in a line splitting arrangement and the FCC has continued to affirm

[23] While our decision on this point was made in the context of an arbitration, and it has been generally considered by us that such decisions are restricted to the particular arbitration docket under consideration and the facts presented therein, in this instance the decision regarding BellSouth's policy on FastAccess went to the legality of that policy under Florida law and our jurisdiction to address it. Petitions for reconsideration of the FDN/BellSouth arbitration are pending. We also note that the FCCA has petitioned us to establish the decision rendered in the FDN/BellSouth arbitration as a generic policy (Filed June 12, 2002, Docket No. 020507-TP).

> BellSouth's position in its Section 271 decisions, BellSouth has revisited owning the splitter in the context of adverse decisions in Louisiana and Georgia on this issue and resolved some of the operational issues associated with providing the splitter. As a result of this analysis, BellSouth will now provide the splitter in line splitting arrangements as an option. BellSouth's decision to provide the splitter in Florida in no way reflects a change in our position with respect to BellSouth's legal obligation.

In its post-hearing brief AT&T notes that because BellSouth maintains its position that it is not legally obligated to provide line splitters, it is reasonable to be skeptical of the long-term viability of this recent policy shift. As such, AT&T believes that we should require BellSouth to fully document and implement this policy before it grants BellSouth interLATA authority.

The issue of provisioning a splitter was addressed previously by this Commission. Specifically, in Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP, issued June 28, 2001, we concluded, in pertinent part:

> We agree with BellSouth witness Ruscilli that FCC Rule 51.315(b) does not apply to the splitter, because the splitter is not an UNE.

Order at p. 154.

. . .

> . . . we note that subsequent to the UNE Remand Order, the FCC specifically addressed whether ILECs are obligated to provide the splitter in a "line splitting" arrangement. The FCC's Texas 271 Order, issued June 30, 2000, reads:
>
> > . . . The Commission has never exercised its legislative rulemaking authority under 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make

> the splitter available. As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity." Order at ¶327.

Order at p. 155.

. . .

Further, we note the FCC's Line Splitting Order reads:

> Thus, as AT&T and WorldCom contend, incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its **own** splitter. FCC Order 01-26 at ¶19. (*emphasis added*)

We conclude that although a splitter may have appeared to be included under the definition of "attached electronics" in the UNE Remand Order, in subsequent orders the FCC clearly rejects arguments that an ILEC should be obligated to provide the splitter, where ALECs engage in "line splitting." Specifically, the FCC rejects AT&T's argument that the splitter should be included as part of the loop as "attached electronics."

Moreover, AT&T witness Turner concedes that FCC Order 01-26 does not require an ILEC to provide the splitter. According to the Order, he admits "that it is still the incumbent's option." We note that AT&T witness Turner also concedes that the splitter is not necessary to provide basic telephone service.

Order at p. 156.

AT&T witness Turner also argues that BellSouth should deploy splitters on a "line at a time" basis, rather than in increments of

8, 24, and 96 ports as BellSouth currently deploys. The witness argues that there is no technical reason why a splitter cannot be provisioned a line at a time. Furthermore, he believes that such an arrangement would prevent the ALEC from having to expend resources for capabilities it may not use and would allow BellSouth to more efficiently utilize the splitters that it deploys. He contends that by providing splitters a line at a time, BellSouth could deploy the splitter as the ALEC obtains the customer rather than providing an ALEC with an entire shelf of splitters that may remain unused.

As previously argued by BellSouth, it maintains that it has no legal obligation to provide splitters for line splitting. As such BellSouth argues that there certainly is no obligation to provide a splitter one line at a time. At hearing, AT&T witness Turner agreed that there was not a specific 271 requirement that BellSouth provide access to splitters one port at a time; however, he maintains that it would be more efficient.

2. Opinion

We find that AT&T's arguments on this issue miss the mark. To begin with, both the FCC and this Commission have made clear statements that BellSouth is not obligated to provide the splitter in a line splitting arrangement[24]. While BellSouth has chosen to change its policy and provide the splitter, we do not believe that it has an obligation to do so to satisfy this checklist item. Therefore, this is not a 271 issue on which we will comment.

With regard to BellSouth providing splitters a line at a time, the AT&T witness acknowledges that this too is not a 271 obligation; therefore, there is no need for us to comment on the matter in the context of determining BellSouth's checklist compliance.

[24]In FCC Order No. 02-147 (Georgia/Louisiana 271 decision), the FCC again concluded: "We disagree with AT&T's claim that BellSouth must provide splitters . . . ." FCC Order No. 02-147 at ¶ 242.

C. Quality of Service Issue - US LEC

1. Parties' Arguments

According to witness Hvisdas, US LEC purchases special access circuits from BellSouth. The witness argues that the access provided by BellSouth is discriminatory because of constant failures of its loop facilities. He believes that the constant failures of BellSouth loop facilities adversely affect US LEC's ability to compete in Florida. Specifically, from September 2000 through May 2001, US LEC experienced 136 outages on loop facilities in Florida. The witness asserts that BellSouth does not dispute that these outages were caused by problems with its circuits. In its brief, the Competitive Coalition, of which US LEC is a member, asks that we require BellSouth to meet the same service quality measurements for special access circuits as required for other local loops.

Witness Hvisdas agrees that the circuits and the services in question are all special access circuits. Furthermore, he agrees that there are no service quality measures or performance measurements in this proceeding that deal with special access circuits. Finally, he is aware of an FCC undertaking to establish performance measurements and service quality measures for special access circuits, and that the FCC's proceeding is outside of the context of a 271 proceeding.

2. Opinion

As acknowledged by witness Hvisdas, the services it purchases from BellSouth are special access services, not unbundled loops; as such, they are not part of this issue. Accordingly, we do not address this matter at this time.

D. Quality of Service Issue

1. Parties' Arguments

According to KMC witness Sfakianos, KMC Telecom is not receiving nondiscriminatory access to loops. KMC claims that four of its large customers in the Pensacola area lose their T-1 service virtually every time it rains. Specifically, he notes that over a

three-week period in the June/July 2001 time frame, the Pensacola-Bayview location of a large hotel chain experienced eight outages, for a total of 93 hours, when their T-1 line was either down or experiencing trouble. The witness provided other examples in his testimony when T-1 lines serving KMC customers were not functioning properly.

On cross-examination, witness Sfakianos agreed that for each one of the concerns he raised there is a performance measurement to which we will look and decide whether BellSouth is providing performance at parity. Furthermore, the witness acknowledges that BellSouth customers also suffer outages with rainstorms. However, he notes that it seems that the service to BellSouth customers service is restored faster than it is restored to the KMC customers.

2. Opinion

While we believe quality of service issues are important, we do not believe that KMC's service outage problems should be addressed here. These issues are more appropriately addressed under the provisioning issues of the OSS portion of Docket No. 960786B-TL.

D. Rates

1. Parties' Arguments

As part of its 271 filing, BellSouth is asking that we establish interim rates for elements for which we have not previously approved rates. Specifically, cost studies were filed by BellSouth witness Caldwell for the unbundled copper loop-nondesigned, line sharing, and collocation. According to BellSouth witness Cox, she believes that it is appropriate for us to set rates in this docket. The witness did recognize that rate setting is not a purpose of this docket that was set forth anywhere in any of our procedural orders for this proceeding. Further, on cross examination, the witness acknowledged that interim rates are acceptable to determine 271 compliance, but that BellSouth would like to go to the FCC with a full FPSC finding that it has cost-based rates for all UNEs.

According to WorldCom witness Darnell, he does not believe any rates should be set in this docket. He notes "I believe a 271 review is for a review, not for establishment of new things." There was extremely limited testimony regarding establishment of rates.

2. Opinion

Again, we find this is not the appropriate forum for establishing rates. This proceeding is designed to allow us to formulate our recommendation to the FCC regarding whether or not BellSouth has met the requirements of Section 271 of the Act. The issues established for this proceeding were designed to facilitate the development of the record in that regard. As such, there is insufficient evidence in the record to support the establishment of any rates. Furthermore, because this proceeding is designed to allow us to fulfill our consultative role as contemplated by Section 271 (d)(2)(B) and has only been noticed as such, it is arguable whether or not sufficient notice has been provided to allow us to take such a substantive action as rate-setting in this proceeding.

3. Conclusion

The parties argued many issues under this Checklist item that relate to loops. We are of the opinion, however, that BellSouth's obligations under Checklist item 4 are very specific and find that many of the ALECs' arguments were not specifically addressing these requirements, but rather were addressing policies or procedures that the ALECs would like to see changed. Our analysis of BellSouth's policies and practices is limited to the specific requirements and obligations under this checklist item. As such, we render no judgment as to the validity of any policy or practice that was advanced by the parties that goes beyond BellSouth's 271 obligations.

Based on the record, we therefore conclude that other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are being considered in the non-hearing track in Docket No. 960786B-TL, BellSouth currently provides unbundled local loop transmission between the central office and the customer's premises separate from local switching or other

services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules and orders promulgated by the FCC. Furthermore, BellSouth provides all currently required forms of unbundled loops and has satisfied other associated requirements for this item.

VIII. COMPLIANCE WITH SECTION 271(C)(2)(B)(v)

A. Parties' Arguments

In this section, we consider BellSouth's compliance with Checklist item 5, which obligates BellSouth to provide "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." 47 U.S.C. § 271(c)(2)(B)(v). BellSouth witness Cox states that FCC Rule 51.319(d) requires a Bell Operating Company (BOC) to offer both dedicated and shared transport.

BellSouth witness Milner contends that BellSouth provides both dedicated and common (or shared) transport. Witness Milner explains that dedicated transport consists of BellSouth transmission facilities dedicated to a particular customer or carrier, between wire centers or between switches owned by BellSouth or ALECs. Common transport consists of "interoffice transmission facilities, shared between BellSouth and one or more ALECs, that connect end office switches, end office switches and tandem switches, or tandem switches in BellSouth's network."

BellSouth witness Cox states that BellSouth offers, through its interconnection agreements and through its Statement of Generally Available Terms (SGAT), nondiscriminatory access to unbundled local transport in compliance with the Act and the FCC's requirements. Witness Milner explains that with regard to dedicated transport, BellSouth does the following:

> (1) provides unbundled access to dedicated transmission facilities between BellSouth's central offices or between such central offices and serving wire centers ("SWCs"); between SWCs and interexchange carriers' points of presence ("POPs"); between tandem switches and SWCs, end offices, or tandems of BellSouth and the wire centers of BellSouth and requesting carriers; (2) provides all

> technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier (OCn) levels that the competing carrier could use to provide telecommunications, including the necessary electronics; (3) does not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (4) to the extent technically feasible, provides requesting carriers with access to digital cross-connect functionality in the same manner that the [sic] BellSouth offers such capabilities to IXCs that purchase transport services.

Regarding common transport, witness Milner states that BellSouth does the following:

> (1) provides common transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that BellSouth uses for its own traffic; (2) provides common transport transmission facilities between end office switches, between BellSouth's end office and tandem switches; and between tandem switches in BellSouth's network; (3) permits requesting carriers that purchase unbundled common transport and unbundled switching to use the same routing table that is resident in BellSouth's switch; and (4) permits requesting carriers to use common (or dedicated) transport as an unbundled element to carry originating traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service.

Witness Milner explains that as of March 31, 2001, BellSouth had provided 3,336 dedicated local transport trunks to ALECs in Florida. Although it is harder to determine the number of common transport trunks providing service, due to the fact that they are shared between multiple carriers, he states that from July 1999 to March 2001, there were 52 ALECs in Florida using common transport to some degree. Thus, witness Milner contends that BellSouth complies with the obligations of Checklist item 5.

Referring to our 1997 decision on BellSouth's 271 application, Order No. PSC-97-1459-FOF-TL (1997 Order), witness Cox states that "the FPSC found that because BellSouth was not able to bill usage sensitive UNEs, BellSouth had not met the requirements of checklist item 5." However, BellSouth witness Scollard states that BellSouth began to bill ALECs for usage sensitive UNEs as early as August 1997. He explains:

> Since that time, enhancements have been made to improve the system's capabilities. In August 1999, for example, BellSouth implemented the industry developed bill format specifically designed to bill usage charges associated with unbundled services. Pursuant to the guidelines, the bills are made available in paper or electronic format at the option of the ALEC.

As evidence of BellSouth's resolution of concerns identified by us in our 1997 Order, witness Scollard presents an example of a CABS-formatted UNE bill provided to an ALEC in November of 2000.

B. Opinion

In Order No. PSC-97-1459-FOF-TL, dated November 19, 1997, we stated:

> Based on the evidence in the record that BellSouth cannot bill for usage sensitive UNEs, we find that BellSouth has not met the requirements of Section 271(c)(2)(B)(v). This Commission has established that usage sensitive UNEs will be billed using the CABS billing system, or that those bills will be CABS-formatted. We note that BellSouth has not complied with either requirement. Accordingly, we are unable to determine if BellSouth has unbundled local transport from other services. We find, therefore, that BellSouth has not met the requirements of this checklist item.

Order at p.107.

The evidence in the record shows that BellSouth does, in fact, now provide billing for unbundled local transport on a usage-sensitive basis. In addition, we believe that BellSouth has shown that it

provides CABS-formatted billing and has satisfied the concerns raised in our 1997 Order.

We also believe that BellSouth has demonstrated that it provides unbundled local transport in accordance with the Act and FCC rules. It is noteworthy that only one ALEC witness has challenged BellSouth's compliance with this checklist item. WorldCom witness Argenbright contends that BellSouth does not currently provide unbundled local transport in accordance with the Act and FCC rules. He explains:

> Specifically, BellSouth does not provide, as an unbundled network element (UNE), dedicated transport that (1) connects two points on an ALEC's network (such as two switches, a network node and a switch, or two network nodes), or (2) connects a point on an ALEC's network to a point on the network of a different ALEC, even where the facilities to provide such UNEs are currently in place.

However, BellSouth witness Cox argues that the FCC "requires BellSouth to unbundle dedicated transport in BellSouth's existing network and has specifically excluded transport between other carriers' locations." In addition, witness Cox refers to the WorldCom/BellSouth arbitration[25], in which we concluded that BellSouth is not required to provide WorldCom with unbundled dedicated transport between WorldCom's switches, or other carriers' locations. In fact, WorldCom witness Argenbright concedes that we have ruled that BellSouth is not required to provide dedicated transport in the manner witness Argenbright requests.

Witness Cox argues that this is not the proceeding to relitigate arbitration orders. We agree. WorldCom is apparently attempting to persuade us to revise our previous arbitration decision on this issue, and the subsequent decision denying WorldCom's Motion for Reconsideration[26], by suggesting that

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[25] Petition by MCImetro Access Transmission Services LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Order No. PSC-01-0824-FOF-TP in Docket No. 000649-TP (March 30, 2001).

[26] Order on WorldCom's Motion for Reconsideration, Order No. PSC-01-1784-TP in Docket No. 000649-TP (August 31, 2001).

BellSouth is not in compliance with checklist item 5 if it does not provide the particular configuration of dedicated transport WorldCom seeks. We have previously ruled that BellSouth is not required to provide WorldCom with unbundled dedicated transport between WorldCom switches or other carriers' locations; therefore, we have not given WorldCom's request for such transport any weight when determining whether BellSouth is in compliance with Checklist item 5.

C. Conclusion

Upon consideration, we are of the opinion that BellSouth provides unbundled 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. The evidence in the record shows that BellSouth provides billing for usage-sensitive UNEs, and that BellSouth satisfies all other associated requirements. Therefore, other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are being considered in the non-hearing track in Docket No. 960786B-TL, we believe that BellSouth has met the requirements set forth in checklist item 5.

IX. COMPLIANCE WITH SECTION 271(C)(2)(B)(vi)

Section 271(c)(2)(B)(vi) of the Act requires a Bell operating company to provide local switching unbundled from transport, local loop transmission, or other services. In the Second BellSouth Louisiana Order, CC Docket 98-121, FCC Order No. 98-271 at ¶207, the FCC required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, in addition to the features, functions, and the capabilities of the switch. In the same paragraph of FCC Order No. 98-271, the FCC mandated that the features, functions, and capabilities of the switch must include basic switch functioning in addition to the same capabilities that are available to the ILEC's customers. Further, the FCC found that local switching includes all vertical features that the switch is capable of providing, whether or not the ILEC provides these features to its retail customers, and any technically feasible customized routing.

In its Bell Atlantic New York 271 Order, FCC Order No. 99-404 at ¶346, the FCC concluded Bell Atlantic demonstrated compliance with this item because it was able to show it provided line-side and trunk side facilities; basic switching functions; vertical features; customized routing; shared trunk ports; unbundled tandem switching; usage information for billing exchange access; and usage information for billing for reciprocal compensation. In its Texas 271 Order, FCC Order No. 00-238 at ¶339, and its Kansas and Oklahoma 271 Order, FCC Order No. 01-29 at ¶242, the FCC found Southwestern Bell in compliance with this checklist item using identical criteria and substantially the same language as was used in FCC Order No. 99-404 at ¶346. The criteria utilized in these decisions are defined in 47 C.F.R. §51.319(c).

In our 1997 review of BellSouth's petition for entry into interLATA service markets in Florida, this Commission found that BellSouth did not demonstrate an ability to bill for unbundled local switching on a usage sensitive basis, and we found BellSouth did not show evidence that its unbundled local switching included both trunk-side and line-side capabilities. Order No. PSC-97-1459-FOF-TL, issued November 19, 1997.

A. Parties' Arguments

In the current proceeding, BellSouth witness Scollard testifies that BellSouth began billing for usage sensitive UNEs in August 1997. The billing systems used by BellSouth to accumulate, rate and format ALEC billing transactions depend on the services ordered, according to witness Scollard. The witness explains, that if an ALEC orders a service for resale, the service request is channeled to BellSouth's Customer Records Information System (CRIS) to maintain a record for the ALEC of the services that BellSouth has provided. Service requests for all other UNEs and interconnection services are channeled through BellSouth's Carrier Access Billing System (CABS).

Witness Scollard testifies, "These two systems are the same systems used to bill BellSouth retail customers and interexchange carriers for the services provided by BellSouth. Regardless of which of the two systems are being used, BellSouth performs the same billing processes to prepare an invoice for an ALEC as it does for a retail customer."

BellSouth witness Cox asserts that BellSouth's compliance with this checklist item is affirmed by the number of agreements into which BellSouth has entered with ALECs to provide unbundled local switching. The ALECs with whom BellSouth has agreements to provide unbundled local switching include Access One, AT&T, Covad, ICG, DSLnet, e.spire, Intermedia, Northpoint, Time Warner, and Trivergent.

BellSouth witness Milner testifies that as of March 31, 2001, BellSouth had provisioned 30 unbundled switch ports in Florida, and, in connection with its loop/port combination offering, BellSouth had 71,588 switch ports in service in Florida. Additionally, witness Milner testifies, BellSouth offers ALECs customized routing in two forms in Florida: Advanced Intelligent Network (AIN) routing and Line Class Code (LCC) routing. As of the date his testimony was filed, witness Milner asserts, no Florida ALEC had requested either AIN or LCC routing. The difference between AIN and LCC routing, witness Milner explains, is as follows:

> In one case, the line class code method, yes, you require dedicated trunk groups from BellSouth's end office switches to whatever choice of operator platform the ALEC chooses. With the AIN method, the trunk group is shared between the end office and the so-called AIN hub. In other words, all ALECs traffic could share that one trunk group where a database lookup is done to determine how to handle the call from there.

BellSouth witness Milner maintains BellSouth is in compliance with the requirements for this issue because, in addition to customized routing options, it offers local switching, which is the network element that provides the functionality required to connect originating lines or trunks wired either to the main distribution frame (MDF) or to the digital cross connect panel to the appropriate line or trunk. This encompasses line-side and trunk-side facilities, in addition to all the features, functions and capabilities of the switch, witness Milner testifies.

AT&T witness Bradbury contends BellSouth has not satisfied the requirements for this item because it fails to provide non-discriminatory access to customized operator service/directory

assistance (OS/DA) routing for a specific customer efficiently and effectively. Customized routing, witness Bradbury asserts, provides ALECs the ability to obtain operator services and directory assistance services from suppliers other than the incumbent LEC, which in this case is BellSouth. In order to provide customized routing service, witness Bradbury testifies, central office software, trunking arrangements and customer-specific ordering processes are required.

Witness Bradbury appears to frame some of his argument that BellSouth has failed to provide customized routing against the backdrop of the Second Louisiana Order, FCC Order No. 98-271. In that Order, the FCC determined BellSouth did not meet the requirements outlined in the Local Competition First Report and Order, FCC Order No. 96-325, for providing customized routing, and was not, therefore, compliant with this checklist item. FCC Order No. 98-121 at ¶221. One reason BellSouth failed, according to the FCC, was that BellSouth proffered two methods of providing customized routing, AIN and LCC, but was not able to make available AIN routing. FCC Order No. 98-271 at ¶222. Witness Bradbury testifies, "Thus, according to the FCC, ALECs are free to select more than one OS/DA routing option, and BellSouth may not require the ALEC to provide actual line class codes in order to obtain any OS/DA routing option if BellSouth is capable of accepting a single code or indicator, on a region-wide basis."

In addition, witness Bradbury alleges that a disparity exists between routing for BellSouth customers and AT&T customers, which he describes in his testimony:

> When BellSouth's retail customers dial "0," they are greeted with the BellSouth brand and are provided with a menu of four options. By picking one of the options, the BellSouth customer can choose to place a call, or to have its call automatically routed to BellSouth's residence service and repair, business service and repair, or a BellSouth operator. In contrast, when AT&T's UNE-P business customers dial "0," they are greeted with the AT&T brand, but are provided a menu of only two options. AT&T customers can choose to place a call, or have its call routed to BellSouth's operator (branded as AT&T). AT&T's customers, however, are not provided the options

> of having their calls automatically routed to AT&T's residence or business repair service and repair.

Witness Bradbury does, however, acknowledge the existence of negotiated contract language with BellSouth that, through the use of selective routing codes, "will allow AT&T to use a region-wide unique indicator to identify its choice of OS/DA routing options." Witness Bradbury testifies that although he is an architect of the language that will provide AT&T with customized routing, he contends that because the contract language has not been implemented, BellSouth is not in compliance with this checklist item. In its brief, AT&T reiterates this assertion, quoting from the FCC's Ameritech Michigan Order at ¶110, which reads in part, "the mere fact that a BOC (Bell operating company) has 'offered' to provide checklist items will not suffice."

AT&T witness Guepe raises the issue of enhanced extended links (EELs) in the context of this checklist item. The background for witness Guepe's testimony lies in the FCC's Third Report and Order, FCC Order No. 99-238. Essentially, the FCC concluded that it is appropriate to create an exception to an ILEC's switching unbundling obligations in certain circumstances in the top 50 metropolitan statistical areas (MSAs), which are defined by the Office of Management and Budget. See FCC Order No. 99-238 at ¶278. The FCC determined, "We find that requesting carriers are not impaired without access to unbundled local circuit switching when they serve customers with four or more lines in density zone 1 in the top 50 metropolitan statistical areas (MSAs). . . . where incumbent LECs have provided non-discriminatory, cost-based access to the enhanced extended link (EEL) throughout density zone 1."

An EEL is made up of an unbundled loop, multiplexing/concentrating equipment and dedicated transport. FCC Order No. 99-238 at ¶477. The FCC found utilization of EELs "allows requesting carriers to aggregate loops at fewer collocation locations and increase their efficiencies by transporting aggregated loops over efficient high-capacity facilities to their central switching location." FCC Order No. 99-238 at ¶288. The Florida markets that fall into the top 50 MSAs are Miami, Orlando and Fort Lauderdale.

Witness Guepe believes the rationale used by the FCC in creating the "four or more lines" exception to an ILEC's unbundled switching obligation was that an ALEC could economically serve end users with four or more lines using its own switch and either stand-alone loops or a loop/transport combination. Witness Guepe testifies the exception is intended to apply only when three or more lines were being served from the same local switch, not when, "disparate locations of a customer happen to have four or more lines on a billing statement." However, in the three Florida MSAs where the exception applies, witness Guepe testifies, BellSouth interprets in an anti-competitive manner the FCC's decision in FCC Order No. 99-238, which was subsequently incorporated into rule as 47 C.F.R. §51.319(c)(2). Witness Guepe testifies:

> BellSouth broadly interprets the limited exception to an ILEC's obligation to provide for ALECs' use of loop/switch obligations in applicable density zone 1 MSAs found in FCC Rule 319(c)(47 C.F.R. §319(c)). Specifically, if a customer has multiple locations throughout the MSA, receives one bill from BellSouth for all lines, and the total of these lines is more than three, then BellSouth asserts that none of the lines at any location may be served by a [sic] ALEC using the loop/switch combination.

The only "reasonable interpretation" of the "4 or more lines" exception of FCC Rule 51.319(2)(c), witness Guepe argues, is that the exception should only apply to each separate customer location and not the total number of lines from multiple locations. Witness Guepe believes BellSouth's interpretation means BellSouth effectively denies competitors access to UNE combinations at cost-based rates, which means BellSouth fails to comply with Section 271(c)(2)(B)(ii) of the Act.

BellSouth witness Cox rejects witness Guepe's assertion that BellSouth engages in anti-competitive behavior through its offering of EELs in density zone 1 MSAs instead of unbundled local switching. Witness Cox testifies BellSouth chose to exempt itself from unbundling obligations in those MSAs approved by the FCC and, as required by the FCC, provides EELs at cost-based rates approved by us. Witness Cox also points to our decision in Order No. PSC-01-1951-FOF-TP, issued in Docket No. 000731-TP, on the EELs issues

and testifies, "There is no need to relitigate this issue in this proceeding."

B. Opinion

BellSouth alleges it is in compliance with the criteria expressed in Section 271(c)(2)(B)(vi) of the Act and applicable rules and decisions promulgated by the FCC. None of the witnesses dispute whether BellSouth bills for unbundled local switching on a usage-sensitive basis. AT&T witness Guepe disputes BellSouth's compliance with a requirement to provide unbundled switching, and AT&T witness Bradbury contends BellSouth does not comply with the requirement to provide any technically feasible customized routing functions of a switch as required by 47 C.F.R. §51.319(c).

As we understand his arguments, AT&T witness Bradbury believes that BellSouth fails this checklist item because a specific agreement between BellSouth and AT&T using a selective routing code has been negotiated but has not actually been implemented. Witness Bradbury testifies this agreement, reached in negotiation between him and BellSouth witness Milner, requires the completion of software development. Similarly, AT&T argues in its brief that simply an offer to provide a checklist item is insufficient to satisfy this checklist item.

In previous Section 271 proceedings involving customized routing, the standard utilized by other state commissions and the FCC has been whether the Bell operating company was capable of delivering any technically feasible customized routing function provided by a switch. It appears from witness Bradbury's testimony that BellSouth is capable of providing a customized routing solution using a single field identifier for situations other than when a footprint order is utilized. It is, therefore, difficult to understand the application of witness Bradbury's testimony in the context of this proceeding. The evidence apparently demonstrates that BellSouth has gone beyond the mere offering of a customized routing solution. The testimony shows that BellSouth accepted a request for customized routing from AT&T, and the parties negotiated binding contract language to provide the customized routing solution. Subsequently, BellSouth engaged in development of software to implement the solution. These actions by BellSouth demonstrate the capability to provide customized routing. Witness

Bradbury argues BellSouth does not meet the checklist requirements because it has not implemented the AT&T solution, but that negotiation is a two-party endeavor and agreement. Implementation rests on both parties equally, not on one party to the exclusion of the other.

AT&T witness Guepe asserts that BellSouth's interpretation of FCC Rule 51.319(c) results in the effective denial of access to unbundled switching, which indicates failure to comply with this checklist item. It is noteworthy that AT&T's submission of witness Guepe's testimony on this issue raises the same concerns addressed in AT&T's arbitration with BellSouth in Docket No. 000731-TP. In that docket, we considered the arguments of the parties and, in our Final Order, Order No. PSC-01-1951-FOF-TP, rendered the following decision at page seven: "Therefore, we find that BellSouth will not be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer." Witness Guepe offers no evidence to suggest BellSouth has not complied with this Commission's order in the aforementioned docket.

C. Conclusion

BellSouth has provided evidence and testimony that it is in compliance with the criteria for this checklist item as defined by the FCC in a series of 271 proceedings. The ALEC's arguments either restate arbitration grievances already resolved by us or serve largely to confirm BellSouth's compliance with customized routing requirements. Therefore, we are of the opinion that other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are being addressed in the non-hearing track in Docket No. 960786B-TL, BellSouth currently provides 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. Specifically, we find that BellSouth bills for unbundled switching on a usage-sensitive basis, that BellSouth's use of EELs in the three density zone 1 MSAs in Florida is consistent with the decisions of the FCC and this Commission in the context of providing unbundled local switching options on the line-side and the trunk-side of the switch, and that BellSouth has satisfied

other associated requirements for this item; specifically, technically feasible customized routing functions.

X. COMPLIANCE WITH SECTION 271(C)(2)(B)(vii)

Section 271(c)(2)(B)(vii) requires BellSouth to provide nondiscriminatory access to (I) 911 and E911 services; (II) directory assistance services to allow other telecommunications carrier's customers to obtain telephone numbers; and (III) operator call completion services. In formulating our recommendation, we have applied the definition of nondiscriminatory as cited in 47 C.F.R. §51.217(a)(2), which reads:

> Nondiscriminatory access. "Nondiscriminatory access" refers to access to telephone number, operator services, directory assistance and directory listings that is at least equal to the access that the providing local exchange carrier (LEC) itself receives. Nondiscriminatory access includes, but is not limited to:
>
> (i) Nondiscrimination between and among carriers in the rates, terms, and conditions of the access provided; and
>
> (ii) The ability of the competing provider to obtain access that is at least equal in quality to that of the providing LEC.

In our 1997 Order, Order No. PSC-97-1459-FOF-TL, issued on November 19, 1997, we determined that BellSouth did not demonstrate that it provided nondiscriminatory access to all directory listings.

A. Parties' Arguments

1. 911/E911

BellSouth witness Milner testifies that BellSouth's E911 database contains the customer name, service address, class and type of service of the end user. He contends that BellSouth has employed policies since 1996, which allow ALECs to access BellSouth's 911 and E911 updating capabilities. Witness Milner

asserts that as of March 31, 2001, BellSouth had "provided 1,078 E911 trunks for ALECs in Florida," and that 38 of those ALECs completed mechanized updates to BellSouth for inclusion in the 911 database.

BellSouth witness Cox testifies that in ¶236 of the FCC's Louisiana II Order, Order No. FCC 98-271, the FCC found that "BellSouth again demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item (vii)(I)." BellSouth witness Milner asserts that there has been no material change since the FCC's Louisiana II Order. Therefore, the witness believes we should find that BellSouth is in compliance with its 911 and E911 obligation.

We note no other party has submitted testimony on this issue.

2. Directory Assistance

BellSouth witness Cox asserts that, "BellSouth makes all information contained in BellSouth's listing database for its own end users, ALECs' end users, and (ICO's) [independent company's] end users available to ALECs in the same manner" BellSouth provides it to itself. BellSouth witness Milner claims that BellSouth is not obligated to unbundle operator and directory assistance (DA) services, because BellSouth provides customized routing.

BellSouth witness Milner testifies that BellSouth provides ALECs with access to Directory Assistance Access Service (DAAS) and Directory Assistance Call Completion (DACC). He explains that DAAS allows ALEC end users to obtain telephone listing information from BellSouth, while DACC gives the end user the ability to select automatic call completion to that listing. Witness Milner asserts that as of March 31, 2001, ALECs in Florida had 1,031 DA trunks placed between ALEC switches and BellSouth's DA platform.

BellSouth witness Milner asserts that BellSouth provides ALECs with Directory Assistance Database Service(DADS), Direct Access to Directory Assistance Services(DADAS), and magnetic or cartridge tape access. He explains that DADS allows "ALECs to use BellSouth's subscriber listing information to set up their own directory assistance service," while DADAS allows "ALECs direct

access to BellSouth's DA database so that ALECs may provide directory assistance services." Witness Milner claims that as of March 31, 2001, eight service providers were using DADS to provide DA service and third-party listings data to end users.

Additionally, BellSouth witness Milner contends that ALECs may access BellSouth's intercept service, "which refers calls from a disconnected or non-working number to an appropriate announcement." He asserts that as of March 31, 2001, BellSouth had provided 30 intercept trunks via dedicated trunking to facilities-based ALECs.

3. Operator Service

BellSouth witness Milner testifies that BellSouth provides both live operator and mechanized functionality to ALECs. He states that call processing includes: "Call Assistance and Call Completion services; Alternate Billing Services such as third number billing, calling card billing, and collect call handling; verification and interruption of a busy line; and operator transfer service." Witness Milner adds that facilities-based ALECs may connect to BellSouth's operator services platform via trunk groups. He asserts that as of March 31, 2001, BellSouth provided ALECs in Florida with 1,042 operator services (OS) trunks, and 155 operator verification trunks.[27]

BellSouth witness Cox testifies that in the Louisiana II Order, FCC Order No. 98-271, issued October 13, 1998, the FCC found that "BellSouth makes a prima facie showing that it has a concrete legal obligation to provide such access"; however, the FCC found that "BellSouth fails to make a prima facie showing that it provides nondiscriminatory access: (1) to BellSouth-supplied operator services and directory assistance; and (2) to the directory listings in its directory assistance databases." She points out that the FCC concluded BellSouth had not separated the performance data between itself and ALECs, and "[i]n any future application, if BellSouth seeks to rely on such performance data to demonstrate compliance, it should either disaggregate the data or explain why disaggregation is not feasible or is unnecessary to

[27]An operator accessible trunk that may be switched to for busy line verification and call interruption.

show nondiscrimination."[28] BellSouth witness Milner contends that because BellSouth provisions OS/DA to ALECs at parity by design, disaggregation of performance measurements is unnecessary. In support, BellSouth demonstrated the routing and handling of OS/DA calls through a Hearing Exhibit, which describes the overall processing of calls to the Traffic Operating Position System (TOPS). BellSouth also provided an affidavit from one of its major suppliers, Nortel, Inc., which affirms the accuracy of BellSouth's exhibits.

4. Selective Routing and Other Associated Requirements

BellSouth witness Milner testifies that Originating Line Number Screening (OLNS) provides BellSouth with the ability to transfer end user local provider and branding preference information to BellSouth's OS/DA platform. He asserts that BellSouth offers BellSouth branded, unbranded, and custom branded call processing via OLNS. Witness Milner explains that OLNS allows multiple service provider calls from BellSouth's end offices to traverse a single trunk group to BellSouth's OS/DA platform where the end user's telephone number is queried, then used to determine whether to or how to brand the call. He points out that:

> BellSouth completed its deployment of OLNS in Georgia on December 31, 2000. BellSouth had earlier informed ALECs of this deployment in a carrier notification letter on BellSouth's interconnection website dated December 22, 2000. The current deployment schedule calls for OLNS availability to ALECs in Florida by June 11, 2001 and in the rest of BellSouth's region by July 13, 2001.

BellSouth witness Milner affirms that OLNS is also available to facility-based carriers; however, he opines that it would be most likely used in the context of resale and UNE-P, since facilities-based providers may choose an operator service provider other than BellSouth.

BellSouth witness Milner explains that calls to the TOPS platform are queued based on whether the call originated from a

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[28] Louisiana II Order, ¶245

public telephone or directory assistance trunks. Then, calls are sorted based on the automated selections entered by the customer, or queued for operator handling. Finally, calls are queued based on factors such as the order calls are received, equipment availability, and workforce management considerations. He adds that BellSouth's TOPS platform does not employ a routing mechanism that distinguishes between calls from BellSouth's or ALEC's end users.

BellSouth witness Milner asserts that one of the primary advantages of OLNS branding is that it allows ALECs to use the shared trunk group from BellSouth's end office to the TOPS platform. Therefore, the cost of transport is shared between BellSouth and all ALECs that employ OLNS at an end office.

AT&T witness Bradbury believes that BellSouth's call branding offering is not provided in a nondiscriminatory manner. He states that when a BellSouth customer dials "0," BellSouth provides its customers with four menu options. BellSouth customers may place a call, or have their calls automatically routed to BellSouth's residential service and repair, business service and repair, or operator. However, AT&T's customers do not have the option of connecting to AT&T's service and repair for either residential or business. Therefore, AT&T end users that dial 0- to reach service or repair require an operator to connect them, which is slower and results in higher charges for AT&T.

Witness Bradbury explains that AT&T customers initially were provided four menu options, but two of the options included routing the call to "BellSouth's residential service and repair" and "BellSouth's business service and repair." He states, however, that:

> These BellSouth branded menu choices were obviously problematic because of the potential for customer confusion and mis-routing of calls to BellSouth's service and repair centers rather than AT&T's service and repair centers.

Witness Bradbury adds that BellSouth should have fixed the problem; instead, "BellSouth simply eliminated the options."

BellSouth witness Milner contends that modifying BellSouth's OLNS functionality to provide AT&T's end user with the option of having their 0- calls automatically routed to AT&T's business service or repair center requires a substantial monetary investment from BellSouth. He proposes that if AT&T is willing to compensate BellSouth for the necessary modification, then BellSouth will provide the functionality AT&T seeks. Witness Milner adds that both the LCC and AIN methods of customized routing provide AT&T with the ability to route 0- calls to its service or repair centers.

B. Opinion

1. 911 and E911

BellSouth asserts that it provides access to its 911 and E911 databases, along with the capability of ALECs to update the information contained in the database. In our 1997 Order, this Commission found:

> Upon consideration of the evidence in the record, it appears that BellSouth is providing nondiscriminatory access to 911 in compliance with checklist item vii.

Order at p. 113.

BellSouth witness Cox points out that in ¶236 of the FCC's Louisiana II Order, the FCC found that BellSouth demonstrates that it provides nondiscriminatory access to 911/E911 services, and "thus satisfies the requirements of checklist item (vii)(I)." We note that no ALECs rebutted BellSouth's assertion that it provides nondiscriminatory access to its 911 and E911 databases. Moreover, no ALEC contributed testimony to persuade us that there may be a material change in the services provided since the prior findings of this Commission and the FCC. Therefore, we believe that BellSouth has met its obligation to provide access to 911 and E911 in a nondiscriminatory manner.

2. Directory Assistance and Operator Services

To the extent that AIN or LCC are used to route calls to BellSouth's TOPS platform, the previous section of this Opinion

specifically addresses the customized routing aspect. Here, we address whether BellSouth provides nondiscriminatory routing of traffic from its end offices to its TOPS platform, and whether an ALEC end user has nondiscriminatory access to OS/DA services.

In ¶243 of the FCC's Louisiana II Order, FCC Order No. 98-271, issued October 13, 1998, the FCC stated:

> BellSouth does not demonstrate that it is providing nondiscriminatory access to directory assistance and operator services as required by the Commission's rules pursuant to section 251(b)(3) of the Act, and thus does not satisfy the requirements of this checklist item. BellSouth makes a prima facie showing that it has a concrete legal obligation to provide such access, and that it provides access to its directory assistance database on a "read only" or "per dip" inquiry basis. BellSouth, however, fails to make a prima facie showing that it provides nondiscriminatory access: (1) to BellSouth-supplied operator services and directory assistance; and (2) to the directory listings in its directory assistance databases. We note, however, that many of the deficiencies we identify below should be readily correctable by BellSouth. We review BellSouth's compliance in relation to the methods of using BellSouth's operator services and directory listings described above.

We agree with BellSouth that it is not obligated to unbundle its DA service, because it provides customized routing in a manner consistent with the requirements of the FCC. No ALECs rebutted BellSouth's assertion that it provides nondiscriminatory access to its DA services. BellSouth witness Cox testifies that BellSouth does provide access to all directory listings in the same manner it provides itself. Absent any evidence to the contrary, it appears to us that BellSouth has met its obligation to allow other telecommunications carrier's customers to obtain telephone numbers and all directory listings in a nondiscriminatory manner.

Only AT&T filed testimony addressing the issue of OLNS routing. Hence, the other parties adopted AT&T's position or neglected to take a position on this issue. We acknowledge AT&T's

testimony that BellSouth's end users encounter four menu options when dialing 0-, while ALEC end users have only two menu options and note that BellSouth initially provided AT&T with four menu options. However, the other routing options were to BellSouth's service and repair centers rather than to AT&T's.

At first blush, one might think that BellSouth is providing discriminatory access, since it provides its end users with more routing options. However, upon careful review, we find AT&T's argument is insufficient to warrant a finding of non-compliance. Typically an ALEC would choose BellSouth's OLNS method when serving end users via resale or the unbundled network element-platform (UNE-P). Although facility-based ALECs may choose OLNS, we agree with BellSouth that most likely, such carriers would choose a third-party provider. Further authority on this point may be found in the FCC's UNE Remand Order, FCC Order No. 99-238, issued November 5, 1999:

> It appears that this increasing availability of competitive OS/DA providers coincides with a decrease in incumbent LEC OS/DA call volumes. Evidence in the record indicates that call volumes to incumbent OS/DA services have declined steadily over the past few years. . . . This trend, combined with the number of alternative operator services and directory assistance providers outside the incumbent LECs' networks, strongly suggests that requesting carriers are not impaired without access to the incumbent LECs' OS/DA service.

FCC Order No. 99-238 at ¶464.

We are unaware of any requirement of the Act, the FCC, or this Commission requiring BellSouth to unbrand its service or repair centers. As noted at ¶443 of the FCC's UNE Remand Order:

> In the Local Competition Second Report and Order, the Commission clarified that the nondiscriminatory requirements of section 251(b)(3) included the obligation of LECs to comply with the reasonable request of a competing provider to rebrand or unbrand its OS/DA

> services.[29] We recently reaffirmed this holding in the Directory Listing Information Order, where we stated that to the extent technically feasible, a LEC must identify and rebrand the traffic it provides to its competitors.[30]

Without a requirement for BellSouth to unbrand its service or repair centers, AT&T's argument has no merit. Moreover, AT&T has a customized routing solution available to it that would provide AT&T with the ability to route 0- calls to its service and repair center. Also, BellSouth charges the ALEC for shared transport, which is consistent with ¶321 of the UNE Remand Order:

> We find that requesting carriers are impaired without access to unbundled dedicated and shared transport network. In particular, self-provisioning ubiquitous interoffice transmission facilities, or acquiring these facilities from non-incumbent LEC sources, materially increases a requesting carrier's costs of entering a market or of expanding the scope of its service, delays broad-based entry, and materially limits the scope and quality of a requesting carrier's service offerings. . .

FCC Order No. 99-238 at ¶321.

We do have concern with the number of routing options that are offered to AT&T. BellSouth witness Milner testifies:

> Mr. Bradbury recommends creating parity by BellSouth's providing AT&T's 0- callers with options of having their calls automatically routed to AT&T's residence or business service or repair centers. Modifying the OLNS functionality as Mr. Bradbury suggests requires a

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[29]Local Competition Second Report and Order at 19455, paras. 128-29 (operator services) and 19463, para. 148 (directory assistance); 47 C.F.R. § 51.217(d).

[30]Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 99-227, paras. 141-148 (rel. September 9, 1999) (Directory Listing Information Order).

> substantial monetary investment for BellSouth. If AT&T is willing to fund this offering, BellSouth is perfectly willing to provide this service.

It seems to us that if AT&T provided dedicated transport from BellSouth's TOPS platform to AT&T's repair and service center, BellSouth should offer a mechanized option to route calls to those trunks without additional cost to AT&T. If BellSouth designed an additional OLNS routing path for its end users, and failed to offer an additional path for other ALECs, BellSouth's OLNS would be discriminatory. However, AT&T offered no testimony that it has such dedicated transport to BellSouth's TOPS platform. Moreover, we believe that typically an ALEC providing service via resale or UNE-P would not have dedicated trunking from its repair and service centers to BellSouth's TOPS platform.

C. Conclusion

Based on the foregoing, we are of the opinion that, other than those aspects related to OSS matters, which are not dealt with in this proceeding, but instead are being considered in the non-hearing track in Docket No. 960786B-TL, BellSouth provides nondiscriminatory access to 911 and E911 services, directory assistance, and operator services, pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC.

XI. COMPLIANCE WITH SECTION 271(C)(2)(B)(viii)

In this section, we consider whether BellSouth currently provides white pages directory listings for customers of other telecommunications carriers' telephone exchange service. BellSouth was found to have met the requirements of § 271 (c)(2)(B)(viii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, in our previous Order No. PSC-97-1459-FOF-TP.

A. Parties' Arguments

Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide "[w]hite page directory listings for customers of other carrier's telephone exchange service." 47 C.F.R. §

271(c)(2)(B)(viii). BellSouth witness Cox notes that the FCC has concluded that in order to satisfy this requirement:

> . . . a BOC must demonstrate that it is providing for customers of competitive LECs white pages directory listings that are nondiscriminatory in appearance and integration. Additionally, these listings must have the same accuracy and reliability that the BOC provides for its own customers.

In the current proceeding, BellSouth witness Cox asserts that BellSouth is "updating the record with evidence that BellSouth continues to meet the requirements of checklist items 3, 4, 7, 8, 9, 10, 11, 12, and 13." (emphasis added) BellSouth is updating and not relitigating this issue based on our determination in the 1997 Order that because "BellSouth has met the requirements of several checklist items that it may not be required to relitigate those issues in a future proceeding." See Order No. PSC-97-1459-FOF-TP at p.15. Furthermore, witness Cox states that "BellSouth provides evidence in this proceeding that demonstrates BellSouth's compliance with all of these checklist items."

BellSouth witness Cox asserts that BellSouth's agreements and SGAT illustrate that BellSouth provides white page listings for customers of resellers and facilities-based carriers. In fact, witness Cox states that the FCC found that BellSouth's SGAT and agreements, in effect, "provide a concrete legal obligation to provide white pages listings to competitors' customers." These listings are provided free of charge and include the primary listing information, in standard format. Witness Cox contends that additional and optional listings can be purchased at rates set forth in BellSouth's GSST or, if resold, through the applicable state-established wholesale discount.

BellSouth witness Milner asserts that Checklist item 8 requires BellSouth to include in its interconnection offerings, white pages directory listings for customers of an ALEC. He states that white pages listings include "the subscriber's name, address, and telephone number." Witness Milner contends that:

> BellSouth has long made its white pages listing capabilities available to independent LECs and other

> service providers. Because methods and procedures have been in place to allow other carriers access to BellSouth's white pages listing capabilities for many years, the necessary methods and procedures pursuant to which ALECs may obtain such listings are business as usual for BellSouth.

In support of BellSouth's position, BellSouth witness Cox states that "BellSouth provides ALECs with white pages directory listings at terms and conditions that are the same in Florida as those found to be compliant by the FCC in Louisiana." Furthermore, witness Cox contends that nothing material has changed since this Commission's 1997 Order that would affect BellSouth's compliance with checklist item 8. In agreeing with witness Cox's statement, witness Milner goes on to state:

> Both the Florida Commission in the 1997 Order and the FCC in the Second Louisiana Order found BellSouth in compliance with this checklist item. Nothing has changed since those decisions were reached that impacts BellSouth's compliance with its obligations. The Commission should reaffirm that BellSouth is in compliance with Checklist item 8.

Despite taking no position on this issue in its post-hearing brief, KMC contests BellSouth's compliance with Checklist item 8. During BellSouth witness Milner's cross-examination, KMC raised translation problems that had resulted in ALEC listings being dropped from BellSouth's directory listings in Augusta, Georgia, and another instance in which numbers for a medical center in another state were published incorrectly. During this cross-examination, witness Milner repeatedly stated that he was not aware of any such claims and that he did not recall any testimony regarding such issues here in Florida.

BellSouth witness Milner also outlined how a white pages directory listing is processed and where listings might be dropped in the process if it did, in fact, occur. Witness Milner stated ". . . it's possible that you have got problems in the ordering process, but those flows converge pretty early on, so I wouldn't expect the incidence of ALEC problems being any different than BellSouth's problems." In addition, witness Milner contends that

BellSouth, specifically BellSouth Advertising & Publishing Company (BAPCO), notifies ALECs of the directory closing dates and also makes preview copies of the directory available to the ALECs. He goes on to state that BellSouth has worked with ALECs beyond those dates at times to ensure that the information is correct. These efforts are designed, along with other processes, so that ALEC listings have the same level of accuracy as do BellSouth's.

B. Opinion

FCC Rule 47 C.F.R. § 51.319 requires ILECs to provide nondiscriminatory access to white page listings on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. In the 1997 Order, this Commission stated, "[w]e believe BellSouth has met this requirement." Order No. PSC-97-1459-FOF-TP at p. 130. We find nothing in this record, specifically no new claim regarding discrepancies, that would lead us to believe that BellSouth now fails to meet those same requirements. If there are any problems in the provisioning of white page listings, it appears that those problems occur at the same or lesser frequency than BellSouth itself experiences. We believe this to be true based on the lack of evidence to the contrary and the fact that no Florida-specific problems were identified by any ALEC in the record.

Although we acknowledge the examples proffered by KMC Telecom, these examples do not specifically address problems within BellSouth's Florida territory. Moreover, while not dispositive of this issue Florida, in addressing similar allegations raised by KMC against BellSouth in the Georgia/Louisiana 271 proceeding[31], the FCC stated "[w]e disagree with KMC that BellSouth provides directory listing information in a discriminatory manner." (emphasis added) Order at ¶ 258. The FCC went on to state:

> We find that KMC's allegations, even if true, describe merely isolated incidents and not systemic problems.

[31]In the matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, Inter-LATA Services in Georgia and Louisiana, CC Docket No. 02-35, Order No. 02-147, issued May 15, 2002.

> Thus, we decline to find noncompliance for checklist item 8. (emphasis added)

Id.

There may be isolated instances in which an ALEC's white pages listings might contain errors. However, we do not believe that this is a common occurrence. Furthermore, the record does not reflect that such errors occur at a rate that is any different than what BellSouth experiences with its own listings.

This Commission has previously found that "BellSouth has provided, and can generally offer, white page directory listings for customers of other carriers' telephone exchange service." See Order No. PSC-97-1459-FOF-TP at p. 124. We also concluded that "BellSouth was providing nondiscriminatory access to white page directory listings in accordance with the Act and FCC rules." We are not persuaded to deviate from that opinion by anything in this record.

The evidence of record supports BellSouth's claim that it currently provides white pages directory listings for other carriers' customers on a non-discriminatory basis. BellSouth not only currently offers white pages directory listings for customers of other carriers, but has done so since at least 1997. Based on the evidence of record, it appears to us that BellSouth has met the requirements set forth pursuant to § 271 (c)(2)(B)(viii).

C. Conclusion

Other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are being considered in the non-hearing track in Docket No. 960786B-TL, we are of the opinion that BellSouth currently provides nondiscriminatory access to white pages directory listings in accordance with Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC.

XII. COMPLIANCE WITH SECTION 271(C)(2)(B)(ix)

Here, we consider whether BellSouth has met its obligation to provide nondiscriminatory access to telephone numbers for

assignment to other telecommunications carriers' telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC. In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997 (1997 Order), we found that BellSouth met the requirements of this checklist item; however, important changes in the responsibility for numbering administration have occurred since that time.

It is noteworthy that no party other than BellSouth offered a substantive argument with respect to this issue, although related testimony from AT&T on the topics of number reassignments and oddball codes (ZipConnect™ and UniServ™) are proffered in the context of this issue. However, these topics is more appropriately addressed in the section of this Opinion dealing with number portability.

A. Parties' Arguments

BellSouth witness Cox states that Section 271(c)(2)(B)(ix) of the Act requires that ILECs must provide nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange service customers, until the date by which telecommunications numbering administration guidelines, plans or rules are established. In general terms, the witness believes that nondiscriminatory access to telephone numbers means that all carriers have the same ability to obtain telephone numbers and that no single carrier has any greater ability to do so than any other carriers.

Witness Cox states that in our 1997 Order at page 126, we found BellSouth, as the numbering administrator for its service territory, met the requirements of this checklist item. We found that the ALECs were provided nondiscriminatory access to telephone numbers for assignment, according to the witness. Citing the FCC's Second Louisiana Order, FCC Order No. 98-271, the BellSouth witness asserts that a similar finding was reached in that matter as well. Specifically, in ¶262, the FCC found that "BellSouth demonstrates that it has provided nondiscriminatory access to telephone numbers for assignment to other carriers' telephone exchange customers, and thus BellSouth has satisfied the requirements of Checklist Item (ix)."

BellSouth's witnesses state that numbering administration functions were at one time the responsibility of the large ILECs, but are no longer. They note a significant change in the responsibility for numbering administration has occurred since the issuance of our 1997 Order -- namely, that a third-party entity has assumed from BellSouth the full responsibility for numbering administration. Witness Cox elaborates:

> At the time [of the 1997 Order,] the FCC and the FPSC found BellSouth to be in compliance with checklist item 9, BellSouth was the code administrator for its region for central office code assignment and Numbering Plan Administration. However, during February 1998 Lockheed-Martin assumed all NANPA [North American Numbering Plan Administrator] functions. Subsequently, on November 17, 1999, NeuStar [NeuStar, Inc.] assumed all NANPA responsibilities when the FCC approved the transfer of Lockheed-Martin's Communication Industry Service division to NeuStar.

Witness Milner offers more detailed information on the subject:

> During February 1998, Lockheed-Martin assumed the NANPA functions previously provided by Bell Communications Research, Inc. (Bellcore), now Telcordia Technologies, Inc. This did not include the central office code assignment and NPA relief planning functions that continued to be performed by the dominant ILEC serving the particular geographic territory until a transition plan could be finalized to transfer these functions to Lockheed-Martin. The central office code assignment function was transferred to Lockheed-Martin region-by-region through an industry-accepted transition plan. In BellSouth's region, that transition began July 6, 1998, and concluded August 14, 1998. At this time, BellSouth no longer performs the central office code assignment function. NeuStar assumed all NANPA responsibilities on November 17, 1999 when the FCC approved the transfer of Lockheed-Martin's Communication Industry Service to NeuStar.

As a result, BellSouth no longer administers the assignment of numbering resources, but nonetheless has established a support team to assist ALECs with code assignment-related matters. He states:

> BellSouth has responded to ALEC concerns about accurate and timely activation of central office codes ("NXXs") by establishing, effective May 15, 1998, its NXX activation Single Point of Contact ("SPOC") . . . The NXX SPOC processes requests for NXX activity coordination, and provides information concerning BellSouth's architecture arrangements, assistance in trouble resolution for code activation, and assistance in preparing the [NeuStar] Code Request. If an ALEC or independent LEC intends to interconnect directly with BellSouth, or if interconnection arrangements are already in place, the ALEC or independent LEC should send to BellSouth a courtesy copy of its Central Office Code Request in conjunction with the submission . . . to NANPA (NeuStar). If the ALEC gives BellSouth a copy . . . BellSouth is better able to activate the Central Office Code in BellSouth's network.

In summary, BellSouth believes it offers nondiscriminatory access to telephone numbers through its agreements and its SGAT. Witness Cox states that "[t]he FCC and the FPSC previously found BellSouth to be in compliance with this checklist item. BellSouth adheres to industry guidelines and complies with FCC rules adopted pursuant to Section 251(e) of the Act. For these reasons, BellSouth requests that the FPSC again find BellSouth compliant with checklist item 9."

B. Opinion

As noted, BellSouth was the only party to offer an argument with respect to the issue of whether BellSouth provides nondiscriminatory access to telephone numbers for assignment to other telecommunications carriers' telephone exchange service customers in accordance with the requirements of the Section 271 of the Act.

We observe that Section 271(c)(2)(B)(ix) of the Act requires the following:

> **COMPETITIVE CHECKLIST.-** Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:
>
> > (ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we determined that BellSouth met the requirements of this checklist item. See Order No. PSC-97-1459-FOF-TL at p. 126. We note that significant changes have occurred with respect to numbering administration responsibilities, as evidenced by the testimony of BellSouth witnesses Cox and Milner. The changes are significant with respect to this issue, considering that the numbering administration functions and responsibilities were transitioned away from BellSouth to a third party. Since BellSouth no longer performs numbering administration functions for itself and the other carriers in its service territory, the specific obligation of Section 271(c)(2)(B)(ix) is, in effect, met by default or rendered moot.

Again, it is noteworthy that no party offered a specific, substantive argument to rebut BellSouth's stated position that it meets this checklist item. AT&T's witness Berger contends that its concerns with number reassignments and oddball codes (ZipConnect™ and UniServ™) are relevant to this issue, but we disagree. AT&T's principal concerns with number reassignments and oddball codes are operational in nature, and the analysis for these topics is more appropriately suited for our discussion of the number portability requirement.

In this current matter, no substantive argument was presented challenging BellSouth's assertion that it meets the requirements of this checklist item. Since BellSouth no longer provides code assignment services to other telecommunications carriers, it appears to us that BellSouth's obligation in Section 271(c)(2)(B)(ix) to provide nondiscriminatory access to telephone numbers for assignment to other telecommunications carriers' telephone exchange service customers has been met by default.

C. Conclusion

Since BellSouth no longer performs numbering administration functions for itself and the other carriers in its service territory, we are of the opinion that the specific obligation of Section 271(c)(2)(B)(ix) is, in effect, met by default.

XIII. COMPLIANCE WITH SECTION 271(C)(2)(B)(x)

Section 271(c)(2)(B)(x) of the Act states that RBOCs must, through either access or interconnection, provide or generally offer "nondiscriminatory access to databases and associated signaling necessary for call routing and completion." We believe that the scope of this checklist item is limited to access to those databases necessary for call routing and completion, and associated signaling necessary for call routing and completion, and we have addressed this issue from that perspective.

In our 1997 Order, Order No. PSC-97-1459-FOF-TL, issued on November 19, 1997, we determined that BellSouth demonstrated that it provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

A. Parties' Arguments

BellSouth witness Cox testifies that "BellSouth provides ALECs with nondiscriminatory access to databases and associated signaling at terms and conditions that are the same in Florida as those found to be compliant by the FCC in Louisiana." Moreover, she maintains that BellSouth's actions and performance are consistent with its previous showing to this Commission. BellSouth witness Milner states that BellSouth provides nondiscriminatory access to its

signaling networks, including Signal Transfer Points ('STPs'), Signaling Links, Service Control Points ('SCPs'), Line Information database (LIDB), Toll Free Number Database, Calling Name (CNAM) database, Local Number Portability database, Advanced Intelligent Network (AIN) Toolkit, and the AIN method for Customized Routing.

BellSouth witness Milner asserts that BellSouth's signaling networks allow ALEC switches to communicate with both BellSouth's switches and third-party networks connected to BellSouth's signaling network. He testifies that BellSouth provides SS7 network service to ALECs, so that an ALEC may provide SS7-based services to its end users and end users of other ALECs subtending its STP. Witness Milner maintains that the "signaling link between the ALEC's switch and BellSouth's STP" is an unbundled network element (UNE). He explains that "STPs are signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases." In addition, STPs provide access to other UNEs connected to BellSouth's SS7 network such as: 1) BellSouth-provided local end office switching or tandem switching; 2) BellSouth-provided SCPs or databases; 3) third-party provided local end office switching or tandem switching; and 4) third-party provided SCPs or databases.

BellSouth witness Milner testifies that a "SCP is a specific type of network element where call related databases can reside." He asserts that deploying a SCP in a SS7 network allows for the execution of applications in response to SS7 queries. Moreover, SCPs provide operational interface for the provisioning, administration and maintenance of end user data and service application data.

BellSouth witness Milner testifies that the "LIDB is a transaction-oriented database accessible through Common Channel Signaling ('CCS') networks such as BellSouth's SS7 network." He asserts that the LIDB contains records associated with end user line number and Special Billing Numbers, and may be accessed when the ALEC puts the required signaling links in place. Witness Milner maintains that the LIDB processed more than 1.5 billion queries from carriers from January 1997 through February 2001.

BellSouth witness Milner testifies that the "CNAM service enables the called end user to identify the calling party by a

displayed name before the call is answered (often referred to as a 'caller ID' service)." He asserts that when an ALEC acquires unbundled local switching, the CNAM database is accessed in the same manner as BellSouth's end users. He adds that BellSouth's CNAM Service Query allows facilities-based carriers to query BellSouth's CNAM database. Witness Milner claims that as of April 1, 2001, BellSouth's CNAM database had over 70 customers, which consist of ALECs and independents.

BellSouth witness Milner testifies that access "to the Toll Free Number and Number Portability Databases allows an ALEC to access BellSouth's Toll Free Number and Number Portability databases for the purpose of switch query and database response." He asserts that the Toll Free Number Portability Database contains the appropriate routing information for 800 and 888 numbers. Witness Milner asserts that the Number Portability database is accessed in the following manner:

> The **Routing service**, which is a default porting service (if a company does not sign up for a query service, it will automatically use the Routing service to port calls) is available to any company and no registration is necessary. The **Query service** is available to any company as well, but a three-page form must be completed and returned to BellSouth. The differences between the two services is that the query service is about one-fourth of the cost of the routing service. (Emphasis added by witness)

He adds that a contract is not required for either service.

BellSouth's witness Milner explains that BellSouth offers three options to access its call-related databases:

> 1) an ALEC that employs SS7 capable switches may attach its switch to BellSouth's STP and then to BellSouth's call related database;
>
> 2) an ALEC that employs SS7 capable switches may attach its switch to a third party's STP and then to BellSouth's call related database;

> 3) an ALEC that employs switches not capable of supporting SS7 protocols may achieve access via a Bona Fide Request (BFR).

Witness Milner points out that when an ALEC acquires unbundled local switching from BellSouth, it accesses BellSouth's Toll Free Number and Number Portability databases in the same manner as does a BellSouth end user.

BellSouth witness Milner testifies that BellSouth's Automatic Line Identification/Data Management System (ALI/DMS) database "contains end user information (including name, address, telephone information, and sometimes special information from the local service provider or end user) used to determine to which Public Safety Answering Point the call should be sent." He maintains that ALECs have access to ALI/DMS through a BellSouth datalink, or an ALEC may provide its own datalink.

BellSouth witness Milner testifies that "AIN is a vendor-independent network architecture deployed by BellSouth that provides capabilities for creation of custom telecommunications services that are invoked by SS7 messages (called 'triggers') from a switch through the STP to a SCP database." Witness Milner asserts that BellSouth provides access to its AIN SCP, or database, via the AIN Toolkit and AIN SMS Access Service. He claims that BellSouth uses the same tools to create and deploy AIN service for itself.

B. Analysis

No ALECs rebutted BellSouth's assertion that it complies with the provisions of Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC. We, therefore, refer only to ¶403 of the *UNE Remand Order*, FCC Order No. 99-238, issued November 5, 1999:

> In the Local Competition First Report and Order, the Commission defined call-related databases as "databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of

> telecommunications service."[32] The Commission further required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.[33] No commenter in this phase of the proceeding challenges the definitions of call-related databases or AIN that were adopted in the Local Competition First Report and Order, and we find no reason for modifying those definitions. As discussed below, however, we clarify that the definition of call-related databases includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.

It appears that BellSouth meets the requirements of ¶403 of the FCC's UNE Remand Order, and therefore, meets the requirements of Section 271(c)(2)(B)(x) of the Act.

C. Conclusion

Based on the evidence of record in this proceeding, we are of the opinion that other than those aspects related to OSS matters, which are dealt with in the non-hearing track in Docket No. 960786B-TL, BellSouth provides nondiscriminatory access to all required 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.

XIV. COMPLIANCE WITH SECTION 271(C)(2)(B)(xi)

Here, we consider whether BellSouth has met its obligation to provide number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC. In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997 (1997 Order), we found that BellSouth met the requirements of this checklist item.

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[32] Local Competition First Report and Order, 11 FCC Rcd at 15741 n.1126.

[33] Id. at 15741-42, para. 484.

A. Parties' Arguments

BellSouth witness Cox states that number portability is an obligation for all LECs, according to Section 251(b)(2) of the Act. "As a LEC, BellSouth has the duty to provide, to the extent technically feasible, number portability according to requirements prescribed by the FCC," claims the witness. Witness Cox states that BellSouth's interconnection agreements and SGAT describe BellSouth's provisioning of number portability. The witness describes number portability as:

> . . . a service arrangement that allows end user customers to retain, at the same location (or a nearby location that is served by the same BellSouth central office), their existing telephone numbers when switching from one telecommunications carrier to another facilities-based telecommunications carrier.

BellSouth's witness Cox contends the initial FCC regulations addressing number portability were issued on July 2, 1996, in the First Number Portability Order, CC Docket 95-116. The witness also states that Section 271(c)(2)(B)(xi) of the Act requires BellSouth and other BOCs to provide "interim" number portability until such time that the FCC issues regulations to require "permanent" number portability. The witness states FCC Rule 47 C.F.R. §52.27 provides for the deployment of transitional measures for number portability from "interim" to "permanent". In our 1997 Order, BellSouth witness Milner claims we found that BellSouth met its obligation of Section 271(c)(2)(B)(xi) by providing "interim" number portability. The witness asserts that BellSouth ceased offering "interim" number portability on March 31, 2000, and it began offering permanent local number portability ("LNP") thereafter.

BellSouth's witness Cox offers that FCC Rule 52.23 provides for the deployment of long-term database methods for LNP. The witness states:

> LNP must support network services, features and capabilities existing at the time number portability is implemented. LNP must efficiently use number resources and may not

> require end users to change their phone numbers or telecommunications carriers to rely on databases or other network facilities or services provided by other telecommunications carriers to route calls to the terminating destination. In addition, service quality and network reliability should be maintained when number portability is implemented and when customers switch carriers.

Since the issuance of our 1997 Order, the FCC has mandated that BellSouth implement LNP, and witness Cox reports that ". . . by March 31, 2000, 100% of BellSouth switches in Florida were LNP capable," after following a staggered implementation statewide. According to witness Milner, BellSouth has ported 258,227 business and 49,523 residential directory numbers using LNP in Florida, as of March 31, 2001. In its nine-state service region, the quantities are 1,113,649 and 133,703 numbers, respectively, according to the witness. BellSouth believes this adequately confirms the availability of LNP.

Witness Milner concludes that "BellSouth has implemented both interim number portability and permanent number portability methods in every BellSouth central office in Florida in accordance with the FCC's rules [and] . . . BellSouth's process meets or exceeds any national standards for number portability."

AT&T witness Berger asserts that "[l]ocal number portability is critical in the context of local competition," and states that BellSouth does not meet its obligations in that area. She continues:

> The problems that AT&T and its customers are having with BellSouth's number portability processes have persisted for years and continue to resurface. After several years of what should have been fully mechanized number portability, ALECs are still experiencing chronic problems with BellSouth's processes which directly impact ALEC customers.

"Until BellSouth fixes its problems with local number portability and consistently meets its benchmark, BellSouth should not be granted 271 relief," claims the witness.

Witness Berger identifies six specific number porting problems AT&T has experienced: (1) BellSouth has failed to disconnect ported numbers from its switches; (2) BellSouth has reassigned telephone numbers that belong to ALEC customers; (3) BellSouth has not correctly processed "partial ports"; (4) BellSouth has not provided Calling party information; (5) BellSouth has porting problems with "special use," or "oddball" numbers; and (6) BellSouth has no process to quickly migrate customers back to BellSouth (a "snap back" program). By numeric topic, the witness clarifies, as follows:

1. BellSouth's failure to disconnect ported numbers from its switches

Witness Berger states that "BellSouth's failure to disconnect ported numbers from its switches causes ALEC customers to lose the ability to receive calls from some BellSouth customers, generally those that are in their home switch area or in their neighborhood area." A secondary concern is duplicate billing, according to the witness. Until rectified, the ALEC customer would continue to receive a billing statement from BellSouth for service that does not exist.

2. BellSouth reassigns telephone numbers that belong to ALEC customers

Ideally, when a telephone number is ported to an ALEC, it should stay with that end-use customer, according to witness Berger. However, at times, BellSouth erroneously reissues the ALEC customer's number to a new BellSouth line, according to witness Berger. The witness asserts that the problem is "a failure on the part of BellSouth to put in a field identifier on the [number porting] order that BellSouth created." The witness asserts that AT&T's reassignment problems also impact their direct-inward-dial ("DID") numbers, but concedes that BellSouth resolves these types of complaints in "a couple of days."

3. BellSouth cannot correctly process a "partial port"

Witness Berger explains that a "partial port" occurs when customers choose to only shift a portion - but not all - of their service from an ILEC to an ALEC. In effect, witness Berger says the customer is "trying out" the service from the ALEC. The witness claims that BellSouth has had a difficult time successfully porting a subset of a customer's lines, especially if the customer's main number, the number which BellSouth has identified for billing purposes, is ported to an ALEC. The ALEC must identify a "new" main billed number for BellSouth, claims the witness, and states that BellSouth only allows for this via the 'remarks' section on the porting order.

Witness Berger emphasizes that, ironically, a "partial port" can cause trouble on the customer's lines that remain with BellSouth, though the presence of any trouble whatsoever often convinces a customer that migrating all lines to the ALEC is too risky. The witness concludes that the troubles that result from "partial port" difficulties could potentially inhibit competition.

4. Calling party information is not provided

Calling party information depends upon the presence of ten-digit Global Title Translation ("GTT") capabilities in the network carrying the call, according to witness Berger. End user customers are typically familiar with GTT capability because it enables caller ID units to function as intended. The witness states that BellSouth only provides a six-digit GTT on numbers it ports to ALECs. The witness offers more of an explanation:

> This [six-digit GTT] is not a problem for customers whose local service is provided by BellSouth. BellSouth dips their own Calling Name database and identifies the calling party. However, when the customer changes his service to an ALEC and that ALEC does not subscribe to BellSouth's Calling Name Database ("CNAM") service, BellSouth, because it only dips six digits, can identify neither the

> calling party's name nor his local service provider.

The net result, according to witness Berger, is that the caller ID features for BellSouth's customers do not work when the calling party's line is served by AT&T, which, in turn, gives AT&T's customers the impression that something is "wrong" with their service. Witness Berger states that it pursued a remedy with BellSouth:

> BellSouth offered the choice of an interim semi-automated solution or a manual solution that would have required both companies to resort to manual processes for each new AT&T customer. The interim semi-automated solution would have cost AT&T over $350,000 to implement, only to throw it away when BellSouth fixes the real problem. Thus, the semi-automated solution was not acceptable . . . and the manual solution was . . . [only] acceptable . . . as a short-term solution.

Witness Berger offers that AT&T then sought assistance through the regulatory process, and filed a complaint with the Tennessee Regulatory Authority. The rulings from that case led to network modifications from BellSouth that "fix" the GTT problem, but implementation for all of Florida will not take place until November 2001, according to the witness. Therefore, until such time that the "fix" is implemented statewide, AT&T is at a competitive disadvantage, states witness Berger.

5. Porting problems with "special use," or "oddball" numbers

"Special use" or "odd-ball" numbers are numbers that BellSouth had originally designated for its own purposes for functions that support retail centers including, but not limited to billing, repair, or testing. These unique arrangements allow BellSouth customers to use a seven-digit number for statewide applications, according to the witness. The problems were spawned when BellSouth began assigning these "oddball" numbers to its retail customers. The witness states that the problems are twofold, encompassing

trunking requirements that BellSouth imposes, and BellSouth's designation of these numbers as "nonportable numbers."

Regarding the trunking requirements, Witness Berger states that "an ALEC's local service customers cannot complete calls to "oddball" codes unless the ALEC installs prohibitively expensive and duplicative interconnection trunking to one BellSouth end office in each NPA in the LATA, an inefficient result that is not required under the Act." Consequently, ALEC local service customers are unable to call BellSouth customers who have been assigned these "oddball" codes [unless the ALEC installed the above-described trunking], according to the witness.

Additionally, witness Berger contends that BellSouth representatives told her that certain numbers are "not portable to ALECs," which she believes causes competitive harm. She states:

> Since over 80% of all customers who choose a competitive carrier port their telephone numbers, the customers who own these telephone numbers are reluctant to port their services to another carrier . . .. [O]ddball codes are internal to BellSouth and cannot be ported to ALECs. This means that a BellSouth retail customer with an "oddball" code number that was considering changing local service providers could be deterred from making the change because it would lose its established telephone number.

6. The absence of a "snap back" process

The phrase "snap back" refers to a process by which an ALEC could return an end-use customer's service to an ILEC in a rapid manner, according to the witness. "Snap backs" generally occur because a customer changes his mind about switching to the ALEC, and are most common in residential settings, states witness Berger. "Snap backs" can, however, be rooted in facility problems for either the ILEC or the ALEC, but this is less common than customers that simply change their mind. The witness states that "snap backs" should cover anything that is unusual at the time of the port, and would allow an ALEC such as AT&T to quickly get the

customer back onto the ILEC's facility so that their service is not impaired. She offers:

> An efficient "snap back" process is often necessary to assure continuity of service. BellSouth's failure to provide reliable snap back causes customers in Florida and other BellSouth states to risk [a] loss of service in instances where the ALEC has facility problems. Moreover, when a customer makes the choice to return to BellSouth and is told it cannot do so immediately, the customer's needs are frustrated. Customers understandably blame the ALEC.

AT&T believes that BellSouth's lack of a "snap-back" process is anti-competitive. Thus, the witness concludes that "AT&T is asking to do . . . what every other ILEC has done, and that is, give us a process to quickly 'snap back' the customer's service . . . until the problem can be isolated and fixed."

For the reasons set forth above, AT&T believes that BellSouth has failed to adequately provide number portability.

Through surrebuttal testimony, BellSouth' witnesses responded to AT&T witness Berger's contentions regarding deficiencies in BellSouth's provisioning of number porting. BellSouth's witness Milner does not agree with AT&T's assertions:

> BellSouth has put into place procedures to efficiently handle number ports. For the majority of orders involving number portability, BellSouth automatically issues an order that assigns what we call a trigger to the number to be ported once BellSouth has received the ALEC's service request as accurate and complete.

Point-by-point, BellSouth responds to witness Berger's statements.

1. AT&T's assertion that BellSouth fails to disconnect ported numbers from its switches

BellSouth's witness Milner believes that the AT&T witness is referencing a specific allegation that was summarized in an August 14, 2000 letter from AT&T to BellSouth. The circumstance involved the number porting of "DID" numbers, and the witness asserts that BellSouth responded to the AT&T letter with a letter of its own that detailed its policies for "DID" ports. The response letter was dated August 25, 2000. Witness Milner contends that BellSouth's response letter also asked AT&T to furnish it with a list of specific Purchase Order Numbers ("PONs") to better enable BellSouth to investigate the allegations levied in the original letter. "To date, AT&T has not responded to BellSouth's August 25, 2000, request for PONs," states the witness. The witness states that for the vast majority of number porting orders, BellSouth's automated process makes the necessary assignments, but for certain number types - including "DID" and Private Branch Exchange ("PBX") conversions - a BellSouth Project Manager assists in the process.

Regarding the duplicate billing issue raised by AT&T, BellSouth's witness Ainsworth acknowledges that this does in fact occur, but states that either party, BellSouth or AT&T, can be at fault. Duplicate billing could occur in the following scenarios:

> [T]here could be duplicate billing for disconnects processed during a current billing period, where the ALEC does not transfer all of the end user services or in situations where the ALEC does not properly complete the porting of all telephone numbers associated with the Local Service Request ("LSR").

BellSouth will investigate and work to resolve all such occurrences of duplicate billings, according to witness Ainsworth. The witness concludes by asserting that "[w]here duplicate billing issues do occur, the proper process is for the ALEC to contact the Billing Resolution Group who will investigate any individual issues and work with the ALEC to resolve it in an expeditious manner."

2. AT&T's assertion that BellSouth reassigns telephone numbers that belong to ALEC customers

BellSouth's witness Ainsworth believes that BellSouth had two number reassignment problems, and that it has resolved each. The witness explains the two and their respective solutions:

> The first issue was identified in 1999. BellSouth determined that when orders were issued without a certain field identifier ("FID"), the number would not indicate a ported designation in BellSouth's number assignment database . . . In December of 1999, BellSouth implemented an edit in the order negotiations systems, to ensure that the appropriate FIDs were included on the ported out order, thus preventing the erroneous duplication of number assignments.
>
> The second issue surfaced in the last quarter of 2000 . . . . [and] after researching the problem, BellSouth determined that . . . a ported block of "DID" numbers would only mark the lead number as ported in the database. A software solution is currently being pursued to resolve this issue. BellSouth implemented an interim manual solution in January 2001 to correct this problem. The manual work-arounds will continue to ensure that all future port out activity [for "DID" numbers] will be properly marked in BellSouth's number assignment database to prevent duplicate assignment of numbers.

BellSouth believes it has solved the problem involving FIDs that AT&T witness Berger highlights. BellSouth states that through its on-going initiative to permanently solve the "DID" porting problem, it has agreed to review all numbers ported since AT&T first identified the problem, back to the time period when BellSouth implemented the manual work-around. The witness acknowledges that despite the manual process implemented in January 2001, and

BellSouth's on-going review, reassignments may still be occurring, but he cites this is due to the archiving, or aging, of the numbers. The witness states that BellSouth estimates that the software solution to prevent all number reassignments will not be implemented until the third quarter of 2002. Nonetheless, witness Ainsworth believes that BellSouth's manual work-around will ensure that number reassignments will not be a factor in future ports.

4. AT&T's assertion that BellSouth cannot correctly process a "partial port"

BellSouth's witness Ainsworth states that the AT&T witness is not correct in assuming that BellSouth cannot correctly process a "partial port." He states: "Ms. Berger did not provide any specific examples in support of her allegations; thus, BellSouth cannot specifically address her concerns other than to say that BellSouth successfully conducts partial migrations for ALECs without any interruption to end user's service every day."

The witness claims that BellSouth's detailed processes and procedures for a "partial port" can be found in Section 2.4 of the General Local Service Ordering Information for Partial Migration in BellSouth's Business Rules. The witness states that this information is readily available through BellSouth's interconnection website.

5. AT&T's assertion that calling party information is not provided

BellSouth witness Milner questions AT&T's pursuit of this matter at all, given that ten-digit GTT is currently in place throughout Florida. BellSouth's implementation began in March 2001 in Florida, and will conclude November 2, 2001, according to the witness.

Regarding the two interim solutions BellSouth offered AT&T, the witness claimed the first one was already in use by two other ALECs. That solution allowed AT&T to select the names of its customers that it wanted added to BellSouth's Customer Name ("CNAM") database, as explained by witness Milner:

> This interim solution was first offered to the Southeastern Competitive Carriers Association ("SECCA"), of which AT&T is a member, in October, 1999. Under the interim solution, AT&T could pass a file that would contain as many names as it wanted to add to the CNAM database and the file would electronically update the BellSouth CNAM database, using the same methodology that BellSouth uses to update the database for its own end users.
>
> [Later], BellSouth developed an additional solution for AT&T in May, 2001 that would enable AT&T to pass a simple text file to BellSouth. BellSouth would then convert the text file to the CNAM file format and load the names into the database.

Witness Milner asserts that AT&T only used the text-file solution for a total of 5 customers in Florida, even though AT&T had insisted that BellSouth develop this process for its exclusive use. Additionally, witness Milner states that BellSouth's resolution of the ten-digit GTT initiative preceded the directive from the Tennessee Regulatory Authority.

In conclusion, BellSouth's witness disputes AT&T witness Berger's allegation that AT&T is "competitively disadvantaged" because it lacked ten-digit GTT. BellSouth's witness Milner states:

> [AT&T] did not store any of its customers' names in any CNAM database until the second half of 2000, in spite of the fact that AT&T began porting numbers from BellSouth in late 1998. Because AT&T chose not to store customer names in the CNAM database, even if BellSouth had implemented 10-digit GTT in 1998, the names of AT&T's customers would not have been delivered to BellSouth Caller ID subscribers until the second half of 2000.

6. Problems with "special use," or "oddball" numbers

In this regard, the BellSouth witness believes that the AT&T witness is confusing BellSouth's "special use" codes, BellSouth's ZipConnect™, and "choke" network codes. The witness clarifies the three:

> ZipConnect™ is . . . a BellSouth retail Advanced Intelligent Network ("AIN") based service. BellSouth does not use ZipConnect™ to support customer interface to any of its retail support centers . . . [T]he NXX code that BellSouth uses for its end users' access to support services, such as BellSouth's business offices and repair in Florida is the 780 NXX code. BellSouth does not provide any retail customer service through the 780 NXX code. The 780 NXX code is for official use only. [However,] AT&T could allow its end users to dial both the ZipConnect™ and BellSouth support center numbers by obtaining the correct routing information from BellSouth for the areas in which AT&T wishes to make such routing available.
>
> "Choke" codes are used to reduce the excessive load on the Public Switched Telephone Network when, for example, radio stations broadcast a contest call-in number. Numbers in these codes are assigned to retail subscribers, but the "choke" codes themselves are not portable . . . The actual numbers behind the "choke" codes are, however, portable and the necessary routing changes to point the "choke" codes to a different ALEC's switch can be coordinated between the company to which the number will be ported and BellSouth.

He further explains that by not porting the "choke" code itself, a large quantity of queries to the LNP database by all carriers is averted, and the "choke" functionality aspect of the NXX is

maintained. In summary, witness Milner states that "[i]f AT&T is not allowing its end users to dial "choke" codes, it is only because AT&T has chosen to block these calls or has not established the proper choke arrangements in its own network."

7. AT&T's request for a "snap back" process

BellSouth's witness Ainsworth is unsure where the term "snap back" originated, but understands that "snap back" refers to a process "of bringing a customer back because of a conversion issue." He offers an overview:

> If AT&T requests that the number port order be canceled prior to porting, the order will be canceled. AT&T is in control of when the number is ported. BellSouth does not perform the activation of the number port. Once AT&T has ported a customer's number in NPAC, the order is completed and BellSouth requires that an order be issued to port the customer back to BellSouth . . . If AT&T discovers that either the customer has changed his mind or that AT&T has problems that will not allow them to provide service to the customer, AT&T should notify BellSouth of this prior to the scheduled date for the port and AT&T should not perform the number port activation.

He asserts that pre-port testing could eliminate an ALEC's facility issues. He believes the ALEC, in this instance AT&T, is in complete control of the number port activation process, and also that pre-port line testing prior to porting "should negate the need for post-port issues and snap backs." Nonetheless, the witness states that BellSouth is willing to work with AT&T and other ALECs to resolve any post-port issues as expeditiously as possible, but asserts that in "most instances, we would have to establish new orders." The new orders are necessary to maintain accurate facility records. Finally, BellSouth's witness Ainsworth states that a lot of work activities are necessary for returning a customer to BellSouth if the number porting efforts go astray. Though it lacks a defined "snap back process," BellSouth believes that its process of working closely with the ALEC to resolve number

porting problems is "the most efficient method to perform that operation."

AT&T and four other parties filed briefs to address this issue, though only AT&T had previously filed testimony to support its argument. The parties are identified as the Competitive Coalition[34], Florida Digital Network, Inc. (FDN), the Joint ALECs[35], and WorldCom, Inc (WorldCom).

The Competitive Coalition and the Joint ALECs adopt AT&T's argument on this issue. FDN asserts that it "[a]grees with WorldCom, AT&T, and other ALECs." WorldCom states two things in its position: first, that it adopts the Joint ALECs' position, and second, that it believes "the Commission cannot make a final determination regarding BellSouth's compliance with this checklist item until conclusion of the OSS phase of this proceeding."

B. Opinion

As previously noted, this issue considers whether BellSouth has met its obligation to provide number portability in accordance with the requirements of Section 271(c)(2)(B)(xi) of the Act. Number portability is defined in the Act at Section 3(30) as follows:

> **Sec. 3. [47 U.S.C. 153] DEFINITIONS.**
> For the purposes of this Act, unless the context otherwise requires -
>
> (30) Number Portability.- The term "number portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when

[34]The Competitive Coalition's brief was filed on behalf of US LEC of Florida, Inc., NuVox Communications, XO Florida, Inc., and Time Warner Telecom.

[35]The Joint ALEC's brief was filed on behalf of the Florida Competitive Carriers Association (FCCA), Covad Communications, and NewSouth Communications.

switching from one telecommunications carrier to another.

Section 271(c)(2)(B)(xi) of the Act requires:

> **COMPETITIVE CHECKLIST.-** Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:
>
> (xi) Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we determined that BellSouth met the requirements of this checklist item. Order No. PSC-97-1459-FOF-TL at p. 145.

As noted, only AT&T put forth a substantive argument on this checklist item, and numerous parties adopted its position. Therefore, these are the arguments upon which we focus our attention.

AT&T's basic argument is that BellSouth does not meet its obligations for number portability. Witness Berger claimed that "[u]ntil BellSouth fixes its problems with local number portability and consistently meets its benchmark, BellSouth should not be granted 271 relief," and the witness identifies the six specific deficiencies. The witness contends: (1) BellSouth fails to disconnect ported numbers from its switches; (2) BellSouth reassigns telephone numbers that belong to ALEC customers; (3) BellSouth cannot correctly process a "partial port;" (4) Calling party information is not provided by BellSouth; (5) BellSouth has

porting problems with "special use," or "oddball" numbers; and (6) BellSouth lacks a "snap back" program. We consider each points as follows.

1. AT&T believes that BellSouth fails to disconnect ported numbers from its switches

We believe that the first part of AT&T's argument lacks specificity sufficient to determine the source of the problem. AT&T's witness Berger states that "BellSouth's failure to disconnect ported numbers from its switches causes ALEC customers to lose the ability to receive calls from some BellSouth customers, generally those that are in their home switch area or in their neighborhood area." The topic of number porting for "DID" numbers was explored with BellSouth's witness at hearing, and based on that testimony, we are inclined to agree with BellSouth's witness Milner that the "DID" number porting issues are at the crux of this allegation, since AT&T failed to specifically identify the manner in which BellSouth fails to disconnect ported numbers from its switches. We note BellSouth witness Milner's testimony regarding the letters exchanged, BellSouth's request for more specific information from AT&T to investigate the allegations levied in the original letter from AT&T to BellSouth, and AT&T's apparent lack of a response. Furthermore, based on the evidence, we are satisfied that BellSouth offers Project Management teams to assist in the porting process for "DID" and "PBX" circuits.

We believe the duplicate billing issue is a collateral issue where either party can be at fault. AT&T seemed to characterize the "problem" as being exclusively a "BellSouth problem," but we do not agree. BellSouth's witness Ainsworth discusses that ALECs share in the process to accurately port numbers. He states that if duplicate billing issues do occur, "the proper process is for the ALEC to contact the Billing Resolution Group who will investigate any individual issues and work with the ALEC to resolve it in an expeditious manner." This testimony demonstrates that BellSouth is responsive to investigating and fixing errors that would produce duplicative billing statements.

2. AT&T believes that BellSouth reassigns telephone numbers that belong to ALEC customers

AT&T's two primary concerns regarding number reassignments have been adequately addressed by BellSouth. Witness Berger contends that the first of BellSouth's number reassignment problems was the result of "a failure on the part of BellSouth to put in a field identifier on the [number porting] order that BellSouth created." BellSouth's witness Ainsworth addresses BellSouth's response to the "field identifier" problem:

> [W]hen orders were issued without a certain field identifier ("FID"), the number would not indicate a ported designation in BellSouth's number assignment database . . . In December of 1999, BellSouth implemented an edit in the order negotiations systems, to ensure that the appropriate FIDs were included the ported out order, thus preventing the erroneous duplication of number assignments.

Since AT&T did not specifically address the timing aspects of its field identifier concern, it appears that AT&T's concerns presumably pre-date the BellSouth "fix" that its witness Ainsworth describes, and thus we believe that this problem has been resolved.

AT&T's witness Berger also asserts that AT&T has had number reassignment problems with "DID" numbers. BellSouth's witness Ainsworth contends that BellSouth uncovered the problem with porting "DID" numbers, that only the lead number would be marked as ported in the database. We note that BellSouth is currently working on a solution for this problem. However, for the interim, BellSouth has developed a manual work-around process for "DID" number porting, and has committed to review all prior number ports through an audit process to catch any potential number reassignments.

BellSouth is pursuing a software solution to resolve this issue, and BellSouth's witness estimates that it will not be implemented until the third quarter of 2002. BellSouth acknowledges that despite these efforts, some reassignment of

numbers may occur in the near term due to the archiving of the numbers. However, we believe that BellSouth's concerted efforts in this regard should minimize the occurrences until the software solution totally eliminates the reassignment problem.

3. AT&T believes that BellSouth cannot correctly process a "partial port"

On this issue, we also believe AT&T's argument lacks specificity. AT&T's witness Berger states that BellSouth has had a difficult time with "partial ports," and states that if "partial ports" are not handled properly, the result can potentially inhibit competition. However, AT&T offers little substantive support for this assertion. BellSouth's witness Ainsworth states that BellSouth's detailed processes and procedures for a "partial port" can be found in Section 2.4 of the General Local Service Ordering Information for Partial Migration in BellSouth's Business Rules. According to its witness, this information is readily available through BellSouth's interconnection website. There is no record evidence about whether AT&T has consulted the named BellSouth resources, or whether the problems it has encountered were the result of performing some aspect of the "partial port" in an incorrect manner.

4. AT&T believes that Calling party information is not provided by BellSouth

The ten-digit GTT issue is a moot point, because BellSouth now provides this functionality throughout Florida. According to its witness, BellSouth's implementation of ten-digit GTT was to be completed November 2, 2001.

5. AT&T believes that BellSouth has problems with "special use," or "oddball" numbers

AT&T believes its problems with "special use" or "oddball" numbers are twofold, encompassing trunking requirements that BellSouth imposes, and BellSouth's designation of these numbers as "nonportable numbers." BellSouth's witness Milner believes that AT&T's witness Berger has inadvertently confused various aspects of this issue. We agree that this appears to be the case. AT&T has

apparently blended interconnection and number portability concerns, though the topics are independent of each other.

Only one of AT&T's assertions is germane to this issue, the topic of "nonportable numbers." AT&T's trunking requirements argument is misplaced in the context of number porting. Furthermore, an issue in our WorldCom-BellSouth arbitration addressed the routing and trunking of Uniserv™ and Zipconnect™ calls, and our finding counters witness Milner's assertion that BellSouth's ZipConnect™ should require the specific trunking arrangements he describes. In Order No. PSC-01-0824-FOF-TP, issued March 30, 2001, we found that "traffic from WorldCom's network to BellSouth's customers served via Uniserv™, ZipConnect™, or any other similar services, shall be delivered to the local point of interconnection for local traffic or the access point of interconnection for access traffic without special trunking." Order No. PSC-01-0824-FOF-TP at p. 64. Therefore, "special trunking" is not required for Uniserv™, ZipConnect™, or any other similar services in the current WorldCom-BellSouth interconnection agreement. AT&T and other ALECs could opt in to the WorldCom-BellSouth agreement, if desired.

Although AT&T makes the allegation that certain numbers from BellSouth are "not portable to ALECs," it does not provide more specific data to support its allegation. Witness Berger was apparently referring to customers who are served by BellSouth via "oddball" NXX codes and agrees with AT&T that such a customer "could be deterred from making the change [to an ALEC] because it would lose its established telephone number." We agree with witness Berger that competitive harm could result if certain numbers from BellSouth are "not portable to ALECs," but lack the record evidence to adequately evaluate the allegation.

We note that on October 26, 2001, AT&T filed a complaint outside of this instant proceeding against BellSouth for improper use and treatment of certain NXX codes[36]. However, AT&T filed a Notice of Voluntary Dismissal in that docket on July 15, 2002. The

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36. Complaint of AT&T Communications of the Southern States, Inc. d/b/a AT&T, TCG South Florida and AT&T Broadband Phone of Florida, LLC d/b/a AT&T Digital Phone against BellSouth Telecommunications, Inc. for improper use and treatment of certain NXX codes (Docket No. 011392-TP).

terms of any settlement reached between AT&T and BellSouth were not disclosed.

6. BellSouth lacks a "snap back" program

AT&T believes that "snap backs" should cover anything that is unusual at the time of a port, and should allow an ALEC to quickly restore the customer to the ILEC so that service is not disrupted. AT&T's witness Berger believes that BellSouth's failure to provide a "snap back" process causes customers in Florida to risk a potential loss of service, though we do not believe the witness makes a persuasive argument on this point. At first glance, a "snap back" process may appear to be helpful; however, such a process might bypass the ordering process, and could result in some inaccuracies in BellSouth's database or facilities records.

Even though BellSouth lacks a defined "snap back" process, BellSouth's process of working closely with the ALEC to resolve post-number porting problems demonstrates that it is addressing post-port problems as expeditiously as possible. We are unaware of any requirement that would obligate BellSouth to offer a "snap back" process. Regarding AT&T's concern over number reassignments for "DID" numbers, BellSouth's argument is more persuasive and includes specific evidence. We emphasize BellSouth witness Ainsworth's estimate that the software solution to prevent all number reassignments will be implemented in the third quarter of 2002, which BellSouth believes will mitigate all number reassignment issues, including "DID" numbers. Therefore, for the reasons set forth above, we are not persuaded with this and AT&T's other arguments that BellSouth does not meet its obligations to provide number portability, pursuant to Section 271(c)(2)(B)(xi) of the Act.

Subsequent to this proceeding the FCC found in its order for 271 authority in the states of Georgia and Louisiana[37], FCC 02-147, at ¶260 that the number portability problems identified by AT&T " . . . are *de minimis* and isolated, and thus do not warrant a

[37]In the matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana, CC Docket No. 02-35, Order No. 02-147, issued May 15, 2002.

finding of noncompliance for this checklist item." (Id., Italics in Original)

Based on the foregoing, it appears to us that (1) BellSouth does not fail to disconnect ported numbers from its switches; (2) though BellSouth has reassigned telephone numbers that belong to ALEC customers, it is actively pursuing a solution and has an adequate interim mechanism in place; (3) BellSouth can correctly process a "partial port"; (4) Calling party information is provided by BellSouth; (5) the problems with "special use," or "oddball" numbers should diminish without the requirement of special trunking; and (6) though BellSouth lacks a "snap back" program, it demonstrates that it is responsive in addressing the problems that a "snap back" program is designed to rectify.

C. Conclusion

Upon consideration, we are of the opinion that other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are addressed in the non-hearing track in Docket No. 960786B-TL, BellSouth currently provides number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC.

XV. COMPLIANCE WITH SECTION 271(C)(2)(B)(xii)

In this section, we address whether BellSouth has met its obligation to provide nondiscriminatory access to such services that allow competitive carriers to implement local dialing parity in accordance with the requirements of Section 271(c)(2)(B)(xii) and applicable rules. In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we found that BellSouth met the requirements of this checklist item.

Additionally, it is noteworthy that no party other than BellSouth offered an argument with respect to this issue; ALECs only offered their briefs to counter the BellSouth position stated herein.

A. Parties' Arguments

BellSouth's witness Cox asserts Section 251(b)(3) of the Act addresses the ILEC's responsibility to provide dialing parity. Therein, the responsibility is defined as "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." Additionally, the witness contends that FCC Rules 47 C.F.R. §§ 51.205 and 51.207 address local dialing parity. She offers:

> FCC Rule 51.205 requires a LEC to provide local dialing parity to competing providers with no unreasonable dialing delays. Dialing parity shall be provided for all services that require dialing to route a call. Rule 51.207 states that a LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local call . . . .

Witness Cox believes that the FCC's conclusion in the Bell Atlantic New York Order, FCC Order No. 99-295, clearly sets forth the FCC's interpretation of Rules 51.205 and 51.207. At ¶373, the FCC found that "customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call. Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers."

BellSouth witness Milner states that BellSouth is in full compliance with the objectives of checklist item 12, asserting:

> BellSouth's interconnection arrangements do not require any ALEC to use access codes or additional digits to complete local calls to BellSouth customers. Neither are BellSouth customers required to dial any access codes or additional digits to complete local calls to the customers of any ALEC. While BellSouth is unable to determine the full extent of ALEC dialing policies, BellSouth is not aware of any complaints from ALEC

> customers that they are required to dial any access codes or additional digits to complete local calls.

The witness states that the local dialing plans for all products, including UNE-P, are available to ALECs in the same manner as offered to BellSouth's retail end users. "The interconnection of the BellSouth network and the network of the ALEC will be seamless from a customer perspective, unless the ALEC chooses otherwise," claims witness Milner.

Collectively, the BellSouth witnesses believe that both the FCC and the Florida Commission have previously found BellSouth to be in compliance with this checklist item. In the FCC's review of Louisiana's bid for 271 approval, the FCC found at ¶296 of FCC Order No. 98-271, that BellSouth had demonstrated it "provides nondiscriminatory access to such services as are necessary to allow a requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3), and thus satisfies the requirements of checklist item (xii)," according to witness Cox. Regarding Florida in particular, witness Cox states:

> BellSouth provides dialing parity to ALECs in Florida on terms and conditions that are the same for Florida as those found to be compliant by the FCC in Louisiana. BellSouth's actions and performance are consistent with its previous showing [in Order No. PSC-97-1459-FOF-TL], and nothing material has changed since 1998 that should cause this Commission to reach a different conclusion than the FCC reached in its Louisiana II Order [FCC 98-271] or than the FPSC reached in 1997.

BellSouth witness Milner agrees, and adds that local dialing parity is also achieved through the implementation of interconnection, number portability, and access to telephone number requirements of Section 251 of the Act.

In its Brief, AT&T asserts that "oddball codes" are significant for consideration in this issue, because of the number porting problems it has encountered with such codes. No other ALEC put forth a similar argument or a specific allegation regarding local dialing parity.

B. Opinion

As noted, BellSouth was the only party to present any testimony with respect to the issue of whether BellSouth provides local dialing parity in accordance with the requirements of Section 271 of the Act. We acknowledge that AT&T believes that "oddball codes" should be addressed in the context of this issue, but do not agree. AT&T's concerns with "oddball codes" are operational in nature, and are more appropriately addressed in the context of the number porting.

The immediate issue considers whether BellSouth has met its obligation to provide nondiscriminatory access to such services that allow competitive carriers to implement local dialing parity in accordance with the requirements of Section 271(c)(2)(B)(xii) of the Act. Local dialing parity is defined in the Act at Section 3(15) as follows:

> **Sec. 3. [47 U.S.C. 153] DEFINITIONS.**
> For the purposes of this Act, unless the context otherwise requires -
> (15) Dialing Parity.- The term "dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

Additionally, Section 271(c)(2)(B)(xii) of the Act provides:

> **COMPETITIVE CHECKLIST.-** Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:
>
> (xii) 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).

In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we determined that BellSouth met the requirements of this checklist item. See Order No. PSC-97-1459-FOF-TL at p. 148. Although not directly affecting to our consideration of BellSouth's compliance in Florida, we note that the FCC's recent joint Order on BellSouth's request for 271 authority in Georgia and Louisiana[38], FCC Order No. 02-147, states at ¶268 that " . . . [w]e find that BellSouth satisfies the requirements of this checklist item." BellSouth witness Milner states that "BellSouth continues to provide ALECs with dialing parity, and thus . . . remains in compliance with this Checklist item." We agree and note that only BellSouth offered evidence with respect to this issue; the ALEC parties offered no rebuttal other than AT&T's assertions as noted previously.

C. Conclusion

Upon consideration, we are of the opinion that BellSouth currently provides 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 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC.

XVI. COMPLIANCE WITH SECTION 271(C)(2)(B)(xiii)

A. Parties' Arguments

We have also considered BellSouth's compliance with Checklist item 13, which requires that BellSouth provide for "reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." Section 271(c)(2)(B)(xiii). Section 252(d)(2) of the Act establishes a standard for just and reasonable prices

[38]In the matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana, CC Docket No. 02-35, Order No. 02-147, issued May 15, 2002.

for reciprocal compensation such that each carrier receives mutual and reciprocal recovery of costs associated with the transport and termination of traffic that originates on the networks of other carriers, according to BellSouth witness Cox.

In our 1997 Order on BellSouth's application for Section 271 authority to provide interLATA service, we found that BellSouth had met the requirements of checklist item 13. Order at p. 151. We determined that BellSouth's reciprocal compensation arrangements were being carried out in accordance with the requirements of the Act. Id.

BellSouth witness Cox contends that BellSouth provides reciprocal compensation arrangements to ALECs in Florida at terms and conditions that are the same as those previously found to be compliant in the 1997 Order, and nothing material has changed that should cause the Commission to reach a different conclusion. She asserts that BellSouth demonstrates its legal obligation to provide reciprocal compensation in BellSouth's interconnection agreements, as well as through its Statement of Generally Available Terms (SGAT). Witness Cox states:

> BellSouth has in place reciprocal compensation arrangements set forth in its binding interconnection agreements, and makes all payments pursuant to those arrangements in a timely fashion. Thus, BellSouth is in compliance with this checklist item.

However, WorldCom witness Argenbright challenges BellSouth's compliance with this checklist item. He argues that BellSouth does not currently provide reciprocal compensation in accordance with the Act. Witness Argenbright explains:

> (1) BellSouth does not pay reciprocal compensation at the tandem interconnection rate to ALECs that do not operate a traditional tandem switch, but who nevertheless utilize a switch that serves a geographic area comparable to that served by a BellSouth tandem switch. I will refer to this as the "tandem interconnection" issue.
>
> (2) BellSouth has not agreed to pay reciprocal compensation in situations in which an ALEC provides a

competitive foreign exchange (FX) service by assigning NXXs to a customer with a physical location outside the rate center in which the NXX is homed. I will refer to this as the "FX" issue.

Witness Argenbright contends that we should give no weight to our decision in the 1997 Order with respect to these two issues. He explains that since the 1997 Order, the FCC's rules related to the tandem interconnection issue have been reinstated by the courts and clarified by the FCC. In addition, witness Argenbright asserts that the FX issue had not been raised prior to the 1997 Order. Therefore, neither of these issues has been considered by this Commission in the context of a 271 application. Witness Argenbright argues that unless we rule that BellSouth is obligated to pay the tandem interconnection rate based solely on the geographic coverage of an ALEC's switch, and that BellSouth is required to pay reciprocal compensation for local calls to numbers assigned to end users located outside of the rate center to which the numbers are homed, BellSouth will not have met its obligation under the Act to provide reciprocal compensation on just and reasonable terms.

B. Opinion

As mentioned above, we determined in our 1997 Order that BellSouth had met the requirements of checklist item 13. Upon consideration of this record, there is no evidence in the present record that would indicate BellSouth does not continue to meet these requirements. To the contrary, we believe the record shows that BellSouth presently has reciprocal compensation arrangements, in its interconnection agreements and SGAT, that are in accordance with the requirements of Section 252(d)(2) of the Act.

However, WorldCom witness Argenbright argues that BellSouth does not meet these requirements. He asserts that BellSouth does not pay reciprocal compensation under two circumstances: the so-called tandem interconnection and FX issues. Witness Argenbright contends that until we determine that BellSouth is required to pay reciprocal compensation under these two circumstances, BellSouth will not be in compliance with checklist item 13.

BellSouth witness Cox argues that "it is not incumbent upon the Commission to resolve every interpretive dispute raised by the [ALECs] in this proceeding." We agree. Although WorldCom witness Argenbright goes into considerable detail in framing WorldCom's position on these specific issues, we shall not address the merits of either party's arguments regarding the tandem interconnection and FX issues in this proceeding. The FCC, in its SBC Communications Kansas/Oklahoma 271 decision[39], stated:

> The section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application. Congress designed section 271 proceedings as highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular State at a particular time. Such fast-track, narrowly focused adjudications are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability. Second, such a requirement would undermine the congressional intent of section 271 to give the BOCs an incentive to open their local markets to competition. That incentive would largely vanish if a BOC's opponents could effectively doom any section 271 application by raising a host of novel interpretive disputes in their comments and demanding that authorization be denied unless each one of those disputes is resolved in the BOC's favor.

SBC Kansas/Oklahoma Order at ¶19. The issues raised by WorldCom witness Argenbright are interpretive disputes, and should not be addressed in a 271 proceeding. In addition, the issues of appropriate compensation for tandem switching and FX, or virtual NXX service, were addressed in our Docket No. 000075-TP, by Order No. PSC-02-1248-FOF-TP.

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[39] Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Report and Order FCC 01-29 (Released January 22, 2001)

C. Conclusion

Upon consideration, we are of the opinion that BellSouth currently provides reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Act, pursuant to Section 271(c)(2)(B)(xiii) and applicable FCC rules. The evidence in the record supports a finding that BellSouth has met the requirements of Checklist item 13. Other than interpretive disputes that are inappropriate for a 271 proceeding, interveners have presented no evidence in the record to the contrary.

XVII. COMPLIANCE WITH SECTIONS 251(C)(4) AND 252(D)(3) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(C)(2)(B)(xiv)

Here, we address whether or not BellSouth has provided nondiscriminatory access to resold services in accordance with the Telecommunications Act of 1996, FCC rules and orders, and our orders.[40] As outlined in Section 271(c)(2)(B)(xiv) of the Act, a Bell operating company meets the requirements of this subparagraph if such access and interconnection satisfies the following:

> Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

Section 251(c)(4) imposes a duty on incumbent LECs to offer certain services for resale at wholesale rates. Specifically, section 251(c)(4) requires the incumbent:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at

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[40] BellSouth did not meet the requirements of this checklist item in our 1997 review. In Order No. PSC-97-1459-FOF-TL, we found that: ". . . BellSouth has not met the requirements of Section 271 (c)(2)(B)(xiv). BellSouth has failed to demonstrate that it is providing nondiscriminatory access to resold services, including access to its operations support systems functions as required by the Act, the FCC's rules, and this Commission's arbitration order." Order at p. 186.

> retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Section 252(d)(3) sets forth the pricing standard for wholesale rates. Specifically, Section 252(d)(3) states:

> For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

By Order No. PSC-96-1579-FOF-TP, in Docket No. 960833-TP, issued December 31, 1996, we set wholesale discounts for BellSouth that comply with the Telecommunications Act of 1996. As directed by Section 251(d)(3), the wholesale discounts set by us exclude the portions of retail costs that BellSouth will avoid in the provision of wholesale service. The residential discount was set at 21.83% and the business discount at 16.81%. Order at p. 67. Furthermore, in that Order, we agreed with the FCC that restrictions may be imposed on cross-class selling and short term promotions. Order at pp. 51 and 71. We determined that no restrictions on the resale of services shall be allowed, except for restrictions applicable to the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Order at p. 71. The FCC's First Interconnection Order, FCC Order No. 96-325 at ¶ 948, is also clear, and this Commission agreed, that promotional or discounted offerings should not be excluded from resale; however, short term promotions, those in effect for no more than 90 days, are not

subject to the wholesale discount. Order No. PSC-96-1579-FOF-TP at p..51)

A. Parties' Arguments

According to BellSouth witness Milner, Checklist item 14 specifically requires BellSouth to offer for resale at wholesale rates, without unreasonable or discriminatory conditions or limitations, any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The witness provides data which reflects that ALECs are purchasing services for resale. Specifically, he notes that as of March 31, 2001, there were 850,902 units being resold by ALECs in Florida; of those units in service in Florida, there were 75,840 resold business lines and 100,799 resold residence lines.

BellSouth witness Cox contends that through its agreements and SGAT, BellSouth offers its tariffed retail telecommunications services to other carriers for resale to their end user customers, thereby demonstrating the availability of resale. The witness notes that there are six specific terms and conditions that apply to the resale of certain services. These are:

1) A reseller of BellSouth's retail services is prohibited from cross-class selling. (For example, residential service may not be resold to business customers.)

2) BellSouth offers for resale its promotions of 90 days or more at the promotional rate less the FPSC-approved wholesale discount.

3) Grandfathered services may be resold only to subscribers who have already been grandfathered. Grandfathered services may not be resold to a different group or a new group of subscribers.

4) LinkUp/Lifeline services are available for resale. These services may be resold only to subscribers who meet the criteria that BellSouth currently applies to subscribers of these services.

5) Contract service arrangements (CSAs) may be resold to the specific BellSouth end user for whom the CSA was constructed or to similarly situated end users. End users are similarly situated if their quantity of use and time of use, and the manner and costs of service are the same. If a reseller assumes all of the terms and conditions of a CSA, no termination charges will apply upon the assumption of the CSA.

6) N11/911/E911 services, including state specific discount plans, are available for resale. BellSouth provides 911/E911 service to ALECs for resale in the same manner that it is provided in BellSouth's retail tariffs.

BellSouth outlined the FCC's findings in other recent 271 proceedings regarding this checklist item as follows.

According to BellSouth, in its Bell Atlantic New York Order, the FCC reiterated its conclusions from the Local Competition First Report and Order, stating that "[m]ost significantly, resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory." Order at ¶ 379.

The company also maintains that in its SWBT Order-TX, the FCC found SWBT to be in compliance with this checklist item because it commits to making its retail services, including customer specific arrangements, available to competing carriers at wholesale rates. Moreover, according to the FCC, SWBT made such services available to ALECs "without unreasonable or discriminatory conditions or limitations," meaning that SWBT offers ALECs services identical to the services it provides to its retail customers for resale and permits the ALEC to resell those services to the same customer groups in the same manner. Order at ¶¶ 388 and 389.

As for its SWBT Order-KS/OK, according to BellSouth, the FCC addressed commenters' claims that the FCC should allow customers in long-term contracts to switch to competing carriers without termination liabilities. The FCC confirmed, "in the *Bell Atlantic New York Order* and the *SWBT Texas Order*, we determined that although termination liabilities could, in certain circumstances,

be unreasonable or anti- competitive, they do not on their face cause a carrier to fail checklist item 14." Indeed, in its UNE Remand Order, the FCC stated that "any substitution of unbundled network elements for special access would require the requesting carrier to pay any appropriate termination penalties required under volume or term contracts." Order at ¶ 253 and fn. 985. Specifically with regard to BellSouth, the FCC found in its Louisiana II Order that "but for the deficiencies in its OSS systems described above, BellSouth demonstrates that it makes telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3). Thus, but for these [OSS] deficiencies, BellSouth satisfies the requirements of checklist item (xiv)." Order at ¶ 309.

The FCC's finding in its Louisiana II Order is similar to the 1997 finding of this Commission regarding this checklist item. In Order No. PSC-97-1459-FOF-TL, we found:

> . . . BellSouth has not met the requirements of Section 271 (c)(2)(B)(xiv). BellSouth has failed to demonstrate that it is providing nondiscriminatory access to resold services, including access to its operations support systems functions as required by the Act, the FCC's rules, and this Commission's arbitration order.

Order at p. 186.

As previously noted, in evaluating this checklist item today, OSS issues are being addressed in the separate non-hearing track in Docket No. 960786B-TL.

The ALECs, particularly witnesses Gallagher and Gillan, argue that BellSouth fails to meet its resale obligations, because it has refused to provide resale of high-speed data services and because resale competition is declining rapidly. We address these points separately.

1. Resale of High-Speed Data Services (DSL)

FDN witness Gallagher maintains that BellSouth's refusal to resell high-speed data services violates Sections 251(c)(4) and 252(d)(3) of the Act. FDN's allegations appear to center around

two arguments. First, FDN believes that BellSouth's current network configuration prohibits FDN from providing DSL services to a significant number of voice customers, thereby allowing BellSouth a competitive advantage. Second, FDN believes that BellSouth is legally obligated to resell its high-speed services. FCCA witness Gillan also believes BellSouth has a legal obligation to resell its advanced services.

2. Anti-Competitive Argument

FDN believes that in order to compete, it must have the ability to offer its customers a combination of circuit-switched voice services, such as local dial tone, and packet-switched high-speed data services, such as Digital Subscriber Line (DSL) service. While FDN notes that it is able to provide DSL to some endusers in Florida by collocating its own DSL access multiplexers (DSLAMs) in BellSouth's central offices (COs), it argues that it is precluded from providing high-speed data service where BellSouth has deployed Digital Loop Carrier[41] (DLC) facilities.

FDN notes that between 60% and 70% of all BellSouth access lines in Florida pass through DLCs. Moreover, BellSouth does not offer any resale products that would enable CLECs to provide high-speed data service to consumers who are served by DLC loops where the CLEC is the voice provider. FDN witness Gallagher argues that it will be essential for FDN to offer high-speed data services on a ubiquitous basis in Florida over the same customer loops that it uses to provide its voice services. Furthermore, witness Gallagher contends that this issue is of paramount importance for FDN to be able to launch a facilities-based competitive local voice option for residential subscribers. He states that he believes Florida is lagging in facilities-based local voice competition for residential subscribers at this time.

While FDN is collocated in more than half of BellSouth's COs in Florida, and is able to offer voice services to 100% of accessible consumers served by these COs, witness Gallagher maintains that FDN is unable to provide DSL service to

[41] The DLC performs an analog to digital conversion that aggregates telecommunications from the individual customer subloops to a shared transmission facility bound for the central office.

approximately 70% of endusers because of the presence of BellSouth DLCs. The FDN witness states that it would be "very difficult" to sustain its long-term viability if it is limited to providing DSL only on non-DLC loops, especially as demand for DSL increases. Witness Gallagher argues that:

> With such a high percentage of the DSL market closed to central-office-only strategies, CLECs will not be able to compete for customers without BellSouth at least fulfilling the resale obligation addressed in this testimony. If BellSouth is the only carrier that can provide DSL to a substantial percentage of consumers, it can leverage its market power to suppress competition for voice services, as I have indicated above. If FDN is unable to offer high-speed data services, it will not only lose opportunities in the data market, but it will also be unable to remain competitive in the voice local exchange and interexchange markets in Florida.

According to FDN, in April 2001, BellSouth had 133,015 high-speed data subscribers in Florida, 43,291 of which were added in first quarter 2001. Witness Gallagher notes that Florida customers represent nearly one-half of BellSouth's DSL lines region-wide, and approximately one-half of its first quarter growth. Witness Gallagher reiterates the urgency of this issue to FDN by noting:

> Therefore, FDN's efforts to obtain resale for a bundled DSL and voice offering are extremely urgent and of utmost importance to FDN's short-term and long-term viability in the state. Because FDN is unable in most cases to offer DSL service to the customer on the same telephone line, the customer is likely to lose interest in obtaining voice telephone services from FDN, even when FDN is able to offer superior pricing and service. BellSouth's ability to manipulate its market power to injure competitors will only increase as competitive DSL providers continue to disappear.

3. Legal Argument

Both FDN witness Gallagher and FCCA witness Gillan believe BellSouth has a legal obligation under which it must offer for

resale high-speed services.[42] Specifically, witness Gillan argues that the ASCENT[43] decision makes it clear that BellSouth must permit the resale of its advanced services at a wholesale discount. He notes that "BellSouth has not shown through commercial usage or other information, however, that it is prepared to honor this obligation." Witness Gallagher makes a similar argument in which he states:

> BellSouth and its affiliates are required to offer, on a discounted wholesale basis, all of their retail telecommunications services, including xDSL and other high-speed data services, pursuant to the resale obligations applicable to incumbent local exchange carriers under Section 251(c)(4) of the Act. While resale is not the only means of access, the Act does require BellSouth to offer it, and BellSouth should be required to provide FDN such access.

Witness Gallagher contends that BellSouth's only wholesale high-speed data service in Florida is its voluntary market-rate offer to Internet Service Providers (ISPs). Furthermore, he notes that BellSouth offers this service only for telephone lines on which BellSouth is the local exchange carrier. Witness Gallagher is concerned that because BellSouth considers the service to be voluntary, there is no guarantee that it will continue to be made available at rates, terms and conditions that would allow a competitor to compete with BellSouth's retail service.

According to witness Gallagher, BellSouth's retail high-speed data service is sold as BellSouth FastAccess Internet Service. He notes that:

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[42] According to witness Gallagher, Section 251 applies only to telecommunications services, and that is all that FDN is seeking to resell. However, he argues BellSouth cannot refuse to separate its telecommunications service from its enhanced services for the purpose of denying resale. FDN believes the FCC bundling rules require BellSouth to offer its telecommunications services separately from any enhanced services, even if it only sells them as a bundled product.

[43] For clarity, what parties commonly refer to as the ASCENT or ASCENT I decision is the decision of the US Court of Appeals for the District of Columbia, decided January 9, 2001. The ASCENT II decision is the decision of the US Court of Appeals for the District of Columbia decided on June 26, 2001.

> FDN seeks to be able to resell the telecommunications portion of this service, which, depending on BellSouth's deployment, could be provided either over DSL, fiber-fed DLC, or all-fiber loops. (I refer to the telecommunications portion of this service as BellSouth's retail DSL service, but for the purposes of this testimony I intend to include with this term any technology BellSouth uses to provide consumer high-speed data services.)

Like witness Gillan, witness Gallagher looks to the ASCENT v. FCC decision to support his position. Specifically, he notes that in ASCENT v. FCC[44], decided in January 2001, the United States Court of Appeals for the District of Columbia held that retail sales of advanced telecommunications services by ILEC affiliates are subject to the resale obligations of the Act. He states that the Court found that an ILEC may not "sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly owned affiliate." Although the witness acknowledges that the case involved a regulation pertaining only to SBC, he believes the logic of the decision applies equally to BellSouth. Therefore, FDN contends that the FCC's ISP exemption cannot be read to exempt BellSouth from its obligation to resell the retail telecommunications service that is provided by any BellSouth affiliate. Specifically, the FCC's ISP exemption discussed in the Second Report and Order in Docket No. 98-147, stated:

> . . . we conclude that advanced services sold to Internet Service Providers under the volume and term discount plans described above are inherently and substantially different from advanced services made available directly to business and residential end-users, and as such, are not retail services and are not subject to the discounted resale obligations of section 251(c)(4).

FCC Order No. 99-330, issued November 9, 1999, at ¶ 8.

In the ASCENT II case, decided on June 26, 2001, the United States Court of Appeals for the District of Columbia denied a

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[44]Association of Communications Enterprises v. FCC, 235 F.3d 662, (D.C. Cir. January 9, 2001)

petition for review of the FCC's Advanced Services Second Report and Order that defined ILEC sales of high-speed data service to Internet Service Providers as a wholesale offering that is not subject to the resale obligation of Section 251(c)(4). However, witness Gallagher argues that the June 26, 2001, decision and BellSouth's arguments are inapplicable to the issue here, because BellSouth sells its own retail DSL through a BellSouth-owned ISP affiliate, and BellSouth's ISP affiliate is treated as part of BellSouth's ILEC operation for the purposes of Section 251, and not as a separate affiliate.

Furthermore, witness Gallagher notes that at least one state commission has found that the "ISP exemption" created by the FCC's Second Report and Order is not relevant to an ILEC's obligation to resell high-speed data service it provides through its own ISP.

On June 27, 2001, the Indiana Utility Regulatory Commission (IURC) ruled that Ameritech must offer for resale at a wholesale discount the DSL service it provides through its own ISP affiliate. The IURC found that if the FCC's ISP exemption in the Second Report "were the only authority guiding the Commission's decision, Ameritech's position might prevail." However, the FDN witness contends that the IURC held that the DC Circuit's January 9, 2001, *ASCENT I* decision required that sales of DSL by an ILEC ISP were not eligible for the exemption under the Second Report, as the retail services of all ILEC affiliates were to be considered collectively as products of the ILEC. Specifically, the IURC held that "the Second Report . . . do[es] not change that fact," and that "notwithstanding the definition of 'at retail' found in the Second Report," Ameritech could not avoid its DSL resale obligations "by setting up a wholly owned affiliate to offer those services."

Witness Gallagher notes that Ameritech was required to make available a resale high-speed data service offering in the manner requested by FDN in this proceeding. Therefore, the witness believes that if the Second Report had no bearing on the decision to require Ameritech to resell its high-speed data service in Indiana, the D.C. Circuit's affirmation of the Second Report likewise has no bearing on BellSouth's obligation to resell its high-speed data services in Florida.

In addition to the IURC decision, witness Gallagher notes that the Connecticut Department of Public Utility Control (DPUC) has taken steps to require an ILEC to make available for resale the retail DSL products of separate ISP affiliates. On May 7, 2001, the DPUC issued a draft decision that would require Southern New England Telephone Company (SNET), to resell any telecommunications service, including DSL, that is sold by its ISP affiliate and any other affiliates. Witness Gallagher observes that the draft decision rejected arguments by SNET that are virtually identical to those offered by BellSouth. As the DPUC noted,

> [t]he ASCENT [I] Decision clearly holds that 'an ILEC [may not be permitted] to avoid § 251(c) obligations as applied to advanced services by setting up a wholly owned affiliate to offer those services.' [SNET's] repeated claim that this holding has no application to the services it offers ignores that decision's plain language.[45]

According to the FDN witness, BellSouth claims that its DSL services are exempt from the resale obligations of Section 251(c)(4) of the Telecommunications Act, which applies to retail telecommunications services. Witness Gallagher explains:

> As I understand its position, BellSouth maintains that its local exchange carrier entity does not sell retail DSL, but instead sells DSL only to Internet Service Providers (ISPs). This position is based upon the FCC's 1999 decision that sales of DSL to ISPs are wholesale services that are exempt from resale obligations under Section 251(c)(4). However, the BellSouth group of companies, taken together, is the largest retail DSL provider in Florida. BellSouth does sell retail DSL through an ISP that it owns and controls. BellSouth's ISP obtains DSL from BellSouth's local exchange company. BellSouth promotes and sells its telephone and DSL services using the same advertisements, customer service and sales agents, and internet sites, including

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45. Petition of DSLnet Communications, LLC Regarding Section 251(c) Obligations of the Southern New England Telephone Company, Docket 01-01-17, Draft Decision at 9 (Conn. D.P.U.C. May 7, 2001) (internal citation omitted)

> www.BellSouth.com. Revenues from DSL sales and telecommunications services are reported together and accrue for the benefit of the same BellSouth shareholders. If BellSouth were permitted to avoid its Section 251 obligations by selling all of its telecommunications service on a wholesale basis to other affiliates, it would render the unbundling and resale obligations of the Federal Act meaningless. Therefore, retail sales of telecommunications services by any BellSouth affiliate should be attributed to the local exchange carrier operation for the purposes of Section 251.

According to BellSouth witness Cox, the ASCENT I Decision does not support the allegations of witnesses Gillan and Gallagher. The witness believes that "Mr. Gillan and Mr. Gallagher have taken a statement out of context and used it inappropriately." She explains that the ASCENT decision dealt with regulatory relief granted by the FCC regarding resale of advanced services if conducted through the separate affiliate established in the Ameritech and SBC merger. Further, the witness notes that the Court ruled that an ILEC may not "sideslip §251 (c)'s requirements by simply offering telecommunications services through a wholly owned affiliate." She argues that this is not what is at issue here, nor does the ruling require BellSouth to resell its advanced data services at a wholesale discount. She maintains that BellSouth has no separate affiliate for the sale of advanced services, and therefore, the ASCENT Decision does not apply to BellSouth.[46]

Moreover, witness Cox believes the June 26, 2001 court ruling speaks directly to the allegations of witnesses Gillan and Gallagher. In the background discussion in its decision in Association of Communications Enterprises, Petitioner v. Federal Communications Communication and United States of America,

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[46]BellSouth Telecommunications, Inc. is a wholly owned subsidiary of BellSouth Corporation. BellSouth.net Inc. is also a wholly owned subsidiary of BellSouth Corporation. BellSouth Telecommunications, Inc. has no ownership in BellSouth.net Inc. BellSouth.net Inc. provides equipment and professional services under contract to BellSouth Telecommunications, Inc. BellSouth.net Inc. provides services only to BellSouth Corporation affiliates. It does not provide services to any retail customer.

Respondents, On Petition for review of an Order of the Federal Communications Commission, Case No. 00-1144, decided June 26, 2001, (ASCENT II) the Court states:

> At issue in this case is that part of the 'Second Report and Order' in which the Commission addressed the question whether the resale requirement of §251(c)(4)(A) applies to an ILEC's offering of advanced services. As the Commission acknowledged, it had previously determined that advanced services constitute 'telecommunications service' and that the end-users and ISPs to which the ILECs offer such services are 'subscribers who are not telecommunications carriers' within the meaning of §251(c)(4)(A). The remaining issue, therefore, was whether an ILEC's offering of certain advanced services, including DSL, is made 'at retail' so as to trigger the discount requirement. The Commission ultimately concluded that while an incumbent LEC DSL offering to residential and business end-users is clearly a retail offering designed for and sold to the ultimate end-user, an incumbent LEC offering of DSL services to Internet Service Providers as an input component to the Internet Service Provider's high-speed Internet service offering is not a retail offering. Accordingly,. . .DSL services designed for and sold to residential and business end-users are subject to the discounted resale obligations of section 251(c)(4) . . . . [H]owever,. . .section 251(c)(4) does not apply where the incumbent LEC offers DSL services as an input component to Internet Service Providers who combine the DSL service with their own Internet Service.
>
> The Association of Communication Enterprises (ASCENT) petitioned for review of this determination, and various telecommunications and DSL providers intervened on behalf of the Commission.

In conclusion, the Court states:

> In sum, having considered ASCENT's objections, we find the Commission's Order in all respects reasonable.

The BellSouth witness continued by remarking that the FCC reiterated its position on the resale of advanced services in its Bell Atlantic New York Order. Specifically, in ¶ 393 of that Order, addressing Bell Atlantic's ADSL Access Tariff offering, the FCC stated:

> We agree with Bell Atlantic that it is not required to provide an avoided-cost discount on its wholesale ADSL offering because it is not a retail service subject to the discount obligations of section 251(c)(4).

Furthermore, witness Cox notes that more recently, in its Verizon Connecticut Order, the FCC clearly stated that resale obligations only extend to telecommunications services offered at retail. Therefore, she maintains that BellSouth is not required to offer its wholesale DSL telecommunications service to ALECs at a resale discount, nor is it required to resell its high-speed Internet access service. Witness Cox notes that the only DSL telecommunications service that BellSouth offers is a wholesale service offered to ISPs. BellSouth does not offer a retail DSL telecommunications service, and based on the FCC's Second Report and Order referred to above, as well as the Court's Decision, she contends that BellSouth has no obligation to make available its wholesale telecommunications DSL service at the resale discount, pursuant to section 251(c)(4). Therefore, BellSouth is in compliance with the FCC's requirements with respect to resale of advanced services.

4. Resale Competition Is on the Decline

FCCA witness Gillan argues that resale competition is declining rapidly, and at a rate far faster than gains in either UNE-P or loops individually. According to the witness:

> The number of resold lines declined by roughly 30% *in just the first quarter alone.* Nearly 25% of the competitive activity that BellSouth claims exists - and an even greater percentage of the *actual* competition once proper adjustments are made to BellSouth's estimate of facilities-based entry - are based on an entry strategy that is not only not irreversible, it is in full reverse already.

Witness Gillan believes there are many explanations for the "vanishing" resale-based competitor. First, he argues that there are unattractive economics. He believes with only a small margin between the wholesale and retail rate, most carriers that experimented with resale either moved to a different strategy or fell into bankruptcy. Further, witness Gillan believes that the negligible margins that exist now may be subject to further reduction in light of the Eighth Circuit Court of Appeals vacation of the FCC's avoidable cost methodology.

Witness Gillan continues by noting that he believes that resale neither permits a carrier to innovate, or effectively offer integrated local/long-distance packages. He contends that:

> This latter limitation on service-resale arises because BellSouth continues to assess access charges on the reseller's lines. As a result, the reseller is limited in the toll rates it may offer because it must pay access on each of its customer's long distance calls to BellSouth.

BellSouth witness Cox believes that witness Gillan's arguments regarding resale limiting a carrier's ability to innovate or effectively offer integrated local/long distance packages are " . . . irrelevant to a determination of BellSouth's compliance under checklist item 14." The witness notes that to prove checklist compliance with Section 271(c)(2)(B)(xiv)requires that BellSouth demonstrate that "[t]elecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)." The witness believes that BellSouth has demonstrated the availability of resale through its SGAT and through existing interconnection agreements.

While BellSouth witness Cox emphasizes that she does not believe FCCA witness Gillan's arguments on this point are germane, she does respond to his assertions. Specifically, she notes that assessing access charges on a resold line is not unique to BellSouth. Moreover, she contends that, "In its Local Competition First Report and Order (¶ 980), the FCC established that ILECs continue to bill access when local services are resold under section 251(c)(4)."

Furthermore, witness Cox believes that the resold line counts do not indicate a significant decline in total resale lines during the first quarter of 2001. She supports this belief by providing the following statistics:

- December 2000 - 202,780 resold lines
- February 2001 - 188,320 resold lines
- March 2001 - 200,938 resold lines

Moreover, the BellSouth witness argues that resale activity since March 2001 further demonstrates that witness Gillan's claim of "unattractive economics" is false. Specifically, she notes that in June 2001, there were over 212,000 total resold lines. In addition, during the first two quarters of 2001, the number of UNE-P has almost doubled, apparently associated with a migration to the facilities-based UNE-P offering, for business resold lines in particular. The witness believes that witness Gillan would find this migration consistent with his view that:

> UNE-based entry is the most likely path to bring competitive benefits to the average Florida consumer or small business. UNE combinations, in particular, hold the most promise in this regard." (Emphasis added)

Witness Cox maintains that the long-term migration from resale service to facilities-based competition has been anticipated as competition matures. For example, she notes:

> . . . the Association for Local Telecommunications Service ("ALTS") indicated: "The amount of resale competition is expected to decline as ALECs continue to build their networks." Additionally, Professor Marius Schwartz, affiant-economist for the DOJ, referring to UNEs and resale, wrote: ". . . such entry modes can assist and accelerate the transition to full-facilities competition, by allowing entrants to attain a customer base before being forced to build extensive facilities." (*See* ¶50, Affidavit of Dr. Marius Schwartz on behalf of the United States DOJ, May 14, 1997, Re: Bell Atlantic 271 filing).

Finally, witness Cox contends that Congress envisioned three separate options for ALECs to enter the local exchange telecommunications market, with resale being only one of those options. The witness believes that the situation presented by witness Gillan is simply the construct of the resale model. Moreover, the BellSouth witness believes that there are several ALECs making a business of resale in Florida that may disagree with FCCA witness Gillan's conclusions. She believes that if resale is not a viable alternative for some ALECs, Congress also provided opportunities for an ALEC's entry through leasing facilities (UNEs) from BellSouth or constructing its own facilities. Furthermore, the witness believes that Congress did not envision resale as a long-term entry method. For this reason, witness Cox maintains that the long-term migration from resale service to facilities-based service has been expected as competition matures.

B. Opinion

In order to conclude that BellSouth has complied with the provisions of checklist item 14, this Commission must determine that BellSouth makes available for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers, and that it is not imposing unreasonable or discriminatory conditions or limitations on the resale of any such services.

BellSouth contends that through its agreements and SGAT, it offers its tariffed retail telecommunications services to other carriers for resale to their end user customers, thereby demonstrating the availability of resale. However, ALEC witnesses Gillan and Gallagher strenuously disagree. Both witnesses argue that BellSouth fails to meet its legal obligation by refusing to resell high-speed data services. Furthermore, witness Gillan believes resale competition is in decline.

First, we address witness Gallagher's arguments which focus on BellSouth's current network configuration. Witness Gallagher argues that BellSouth's current architecture precludes FDN from providing high-speed data services to more than half of the voice end-users in BellSouth's territory because of the presence of

DLCs.[47] The witness contends that with such a high percentage of the DSL market precluded from central-office-only strategies, CLECs will not be able to compete for customers without BellSouth at least fulfilling its resale obligation. Furthermore, the FDN witness notes that a customer that wishes to change their voice service to FDN will lose its BellSouth-provided DSL service as soon as they are ported to FDN. While we acknowledge the claims raised by FDN, this argument is not relevant to this particular checklist item. BellSouth's obligations as they relate to resale require only that it demonstrate that it makes available for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers, and that it is not imposing unreasonable or discriminatory conditions or limitations on the resale of such service. We do not believe that BellSouth's network configuration as it relates to DSL services is an issue for consideration under the resale checklist item in a 271 proceeding. Accordingly, we find that BellSouth's current network architecture has nothing to do with whether or not BellSouth is meeting its resale obligations.

Next, witnesses Gallagher and Gillan argue that BellSouth is obligated to resell its advanced services at the wholesale discount. However, it is not clear to us if by "advanced services" the parties are referring to BellSouth's FastAccess high-speed Internet access service, its federally tariffed ADSL service, or both. If the parties believe BellSouth is obligated to resell at the wholesale discount its FastAccess Internet service, we disagree. BellSouth's FastAccess Internet service is a nonregulated information service, not a telecommunications service; as such, it is not subject to the resale requirements of Section 251. Alternatively, if witnesses Gallagher and Gillan believe BellSouth must resell its federally tariffed ADSL offering, we again disagree. BellSouth's ADSL service is a federally tariffed wholesale product that is not offered on a retail basis. In FCC Order No. 99-330, released November 9, 1999, the FCC made it clear that an ILEC is not obligated to resell its high-speed data service offerings at the wholesale discount unless they are sold at retail. Specifically, the FCC stated:

[47]Although there are technical alternatives, such as collocating DSLAMs at remote terminals, because of cost and space considerations FDN does not see this as a feasible alternative.

> Based on the record before us, we conclude that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. . . . We reach a different result as to advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering. We conclude that these advanced services are inherently different from advanced services made available directly to business and residential end-users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).

FCC Order No. 99-330 at ¶ 3.

Moreover, this conclusion is reinforced in the recent Georgia/Louisiana 271 Order, FCC Order No. 02-147, where the FCC stated:

> We disagree with commenters that argue that BellSouth fails to comply with checklist item 14 in provisioning of DSL services. Specifically, AT&T and ASCENT assert that BellSouth does not meet its obligation under checklist item 14 because it does not make DSL transport services available for resale at a wholesale discount. According to BellSouth, however, it provides two categories of DSL-related service: (1) a wholesale telecommunications service which it offers to Internet Service Providers (ISPs); and (2) a retail information service. With respect to both categories, BellSouth argues that it is not providing DSL telecommunication service at retail and, thus, has no obligation to make these services available for resale pursuant to the section 251(c)(4) discount.
>
> . . . BellSouth offers a tariffed DSL telecommunications transport to ISPs, which we conclude is a wholesale offering as articulated by the Commission in the AOL Bulk Services Order. Because that offering is not a telecommunications service sold at retail, BellSouth is not required to offer it at a resale discount pursuant to

> 251(c)(4). Accordingly, we conclude that BellSouth demonstrates compliance with the checklist requirements with regard to DSL resale as articulated in our recent orders.
>
> Moreover, we find that there is no violation of checklist item 14 with respect to BellSouth's high-speed Internet access service. Commenters contend that BellSouth makes this DSL transport component available to end users "at retail" and, thus, must also make the underlying DSL transport component available to competitive LECs for resale pursuant to section 251(c)(4). In response, BellSouth argues that it provides end users with a retail service that is an information service, not a telecommunication service, and it is accordingly not subject to resale at a wholesale discount under 251(c)(4).
>
> We conclude . . . that neither the Act nor Commission precedent explicitly address the unique facts or legal issues raised in this case. . . . Accordingly, because Commission precedent does not address the specific facts or legal issue raised here, we decline to reach a conclusion in the context of this section 271 proceeding.

FCC Order No. 02-147 at ¶¶ 273-277.

Finally, we emphasize that we addressed this issue in Docket No. 010098-TP, FDN/BellSouth arbitration. In that proceeding, we concluded:

> We find that BellSouth's DSL service is a federally tariffed wholesale product that is not offered on a retail basis. Since it is not offered on a retail basis, BellSouth's DSL service is not subject to the resale obligations contained in Section 251(c)(4)(A). Therefore, we find that BellSouth shall not be required to offer either its FastAccess Internet Service or its

DSL service to FDN for resale in the new BellSouth/FDN interconnection agreement[48].

Order No. PSC-02-0765-FOF-TP at p. 24.

The record reflects that BellSouth's DSL service offerings are only made available to ISPs and are not available "at retail." As such, we do not believe BellSouth is obligated under checklist item 14 to offer either its FastAccess Internet service or its federally tariffed ADSL service for resale at a wholesale discount.

Additionally, the arguments fostered by FCCA witness Gillan are beyond the scope of this issue. The requirements of this checklist item do not take into consideration at what levels resale is occurring. Therefore, we have only taken into consideration whether of not BellSouth makes available for resale at wholesale rates any telecommunication service that it provides at retail to subscribers who are not telecommunications carriers, and whether it is not imposing unreasonable or discriminatory conditions or limitations on the resale of any such service.

C. Conclusion

Upon consideration, we believe that BellSouth's resale obligations under checklist item 14 are clear and that there is a distinct difference between what ALECs may want to purchase for resale at wholesale rates and what BellSouth is obligated to provide. The record reflects that BellSouth offers for resale at wholesale rates the telecommunications services that which it provides at retail to subscribers who are not telecommunications carriers. Furthermore, the restrictions outlined by BellSouth witness Cox are reasonable and nondiscriminatory. As such, we are of the opinion that other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are being considered in the non-hearing track in Docket No. 960786B-TL, BellSouth currently provides telecommunications services available for resale in accordance with the requirements

[48]On June 17, 2002, FDN filed a Motion for Clarification, or Reconsideration of Order No. PSC-02-0765-FOF-TP. On June 20, 2002, BellSouth also filed a Motion for Reconsideration, or in the Alternative, Clarification of Order No. PSC-02-0765-FOF-TP. As of August 20, 2002, both motions are still pending.

of Sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC.

XVIII. COMPLIANCE WITH SECTION 271(E)(2)(A)

Section 271(e)(2)(A) requires a BOC to provide intraLATA toll dialing parity (that is, allowing ALEC customers for local long distance to dial without having to provide a carrier access code) throughout Florida coincident with its exercise of interLATA authority. Additionally, Section 271 (e)(2)(B) states that:

> Except for single-LATA States and States that have issued an order by December 19, 1995, a State may not require a Bell Operating Company to implement intraLATA toll dialing parity in that State before a Bell Operating Company has been granted authority to provide interLATA services originating in that State or before 3 years after the date of enactment of the Telecommunications Act of 1996, whichever is early.

In Order No. PSC-95-0203-FOF-TP issued February 13, 1995, we required intraLATA toll dialing parity to be implemented in Florida by the end of 1997.

A. Parties' Arguments

According to witness Cox, BellSouth has been providing intraLATA toll dialing parity in Florida since March of 1997. In support of this statement, she cites this Commission's Order No. PSC-95-0203-FOF-TP in Docket No. 930330-TP, that required BellSouth to provide 1 + intraLATA presubscription by the end of 1997. In fact, as emphasized by witness Cox, when we first reviewed BellSouth's compliance with Section 271 in Order No. PSC-97-1459-FOF-TL, we agreed that BellSouth was already providing intraLATA toll dialing parity. More specifically, witness Cox contends that in that Order, we agreed with the testimony of BellSouth witness Varner that BellSouth had been providing intraLATA toll presubscription in all of its end offices since the end of March 1997. Therefore, BellSouth asserts that it has complied with the requirements of this checklist item.

No ALEC has provided testimony or took a position in their post-hearing brief disputing BellSouth's compliance with this checklist item.

B. Opinion

BellSouth has demonstrated compliance with this checklist item. Not only did BellSouth submit the testimony of witness Cox detailing when BellSouth began providing intraLATA toll dialing parity in Florida, but that testimony was undisputed by any ALEC. In fact, no ALEC took a position in their post-hearing briefs denying BellSouth's compliance with this checklist item. Perhaps the most convincing, is that fact that in Order No. PSC-95-0203-FOF-TP, issued in 1995, we directed BellSouth to provide intraLATA toll dialing parity by the end of 1997.

C. Conclusion

Based on the foregoing, we are of the opinion that BellSouth has provided intraLATA toll dialing parity throughout Florida since the end of March 1997, and therefore complies with Section 271(E)(2)(A).

XIX. COMPLIANCE THROUGH COMBINATION OF AGREEMENTS

In this section, we address whether BellSouth has met the 271 requirements in a single agreement or through a combination of agreements.

A. Parties' Arguments

BellSouth witness Cox contends that BellSouth complies with the requirements of Section 271 of the Act and has, therefore, "earned the right to enter the interLATA services market." In support, she states:

> This Commission has previously determined in its 1997 order that BellSouth has met the requirements of Checklist Items 3, 4, 8, 9, 10, 11, 12, 13, and part of 7. In this proceeding BellSouth updates the record with evidence that BellSouth continues to meet the

> requirements of these checklist items thereby affirming the Commission's previous ruling. Further, BellSouth provides evidence to demonstrate its compliance with all checklist items.

BellSouth witness Cox contends that BellSouth can demonstrate compliance with the checklist "through agreements approved by the FPSC or through an SGAT approved by the FPSC." BellSouth argues that it has negotiated or arbitrated over 500 agreements which have been approved by this Commission. Witness Cox asserts that these very agreements cover all of the checklist items as outlined in Section 271. In addition, witness Cox states:

> BellSouth can show checklist compliance through a single interconnection agreement with a new entrant that offers facilities-based local exchange services to both residential and commercial customers. BellSouth also can combine multiple agreements, which collectively cover the fourteen-point checklist. In addition, the FCC's interpretation of Section 271(d)(3) provides that a combination of agreements in conjunction with the SGAT can be used to meet the checklist requirements.

Furthermore, she states:

> BellSouth has satisfied the obligations imposed on it by Congress, the FCC, and the FPSC. BellSouth has negotiated agreements in good faith with its competitors to provide equitable local interconnection and wholesale services. BellSouth also makes its agreements and SGAT available to any competitor who wishes to enter the telecommunications market in Florida.

B. Opinion

We find that the record in this proceeding is clear that BellSouth has met the Section 271 requirements. The record also reflects that BellSouth has met these checklist requirements in Florida through a combination of agreements. We acknowledge the number of BellSouth agreements approved by this Commission, whether through negotiation or arbitration, is substantial and undisputed by the parties in the record. BellSouth has demonstrated that when

its approved agreements are combined, those agreements cover the §271 checklist items and meet the requirements set forth in §271(c)(1)(A)(Track A).

C. Conclusion

Based on the foregoing, we are of the opinion that other than those aspects related to OSS matters, which are not dealt with in this proceeding but instead are being considered in the non-hearing track in Docket No. 960786B-TL, that the Section 271 requirements have been met by BellSouth through a combination of agreements.

XX. CONSULTATIVE OPINION CONCLUSION

Having conducted an extensive review in order to fulfill our role as set forth in Section 271 (d)(1)(B) of the Federal Telecommunications Act of 1996, it is our concluding opinion that BellSouth has met all the requirements of Section 271 of the Act that have been addressed in this proceeding. In reaching this conclusion, we emphasize the full and complete record upon which this opinion is based, and that we have carefully considered all evidence presented in this matter. We note that we will issue a separate opinion on our findings regarding BellSouth's Operations Support Systems.

Having completed our review and reached this conclusion, we find it appropriate to now close this docket. Hereafter, a transmittal letter will be prepared for purposes of forwarding our consultative opinion on the Section 271 matters addressed through our hearing, as well as those addressed through our Track B testing of BellSouth's OSS.

It is therefore

The OPINION of the Florida Public Service Commission that BellSouth Telecommunications, Inc. has complied with the requirements set forth in Section 271 of the Telecommunications Act of 1996 as set forth in the body of this Opinion and should be authorized to provide interLATA service in Florida. It is further

ORDERED that this Docket shall be closed.

By DIRECTION of the Florida Public Service Commission this 25th Day of September, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

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