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November 6, 2001

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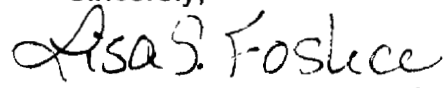
Re: 960786-A-TL (Section 271)

Dear Ms. Bayó:

Enclosed is the original and fifteen copies of BellSouth Telecommunications, Inc.'s Post-Hearing Brief in Support of its Application for InterLATA Relief Pursuant to Section 271 of the Federal Telecommunications Act of 1996 which we ask that you file in the captioned docket.

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

Sincerely,


Lisa S. Foshee (KA)

Enclosures

cc: All Parties of Record
Marshall M. Criser III
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**CERTIFICATE OF SERVICE
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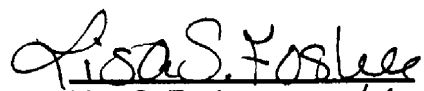
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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Consideration of BellSouth)	
Telecommunications, Inc.'s Entry Into)	
InterLATA Service Pursuant to)	Docket No. 960786-A-TL
Section 271 of the Federal)	
Telecommunications Act of 1996)	

**BELLSOUTH'S POST-HEARING BRIEF IN SUPPORT OF ITS APPLICATION FOR
INTERLATA RELIEF PURSUANT TO SECTION 271 OF
THE FEDERAL TELECOMMUNICATIONS ACT OF 1996**

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November 6, 2001

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BellSouth Telecommunications, Inc. (“BellSouth”) submits this Post-Hearing Brief in the above-captioned proceeding in support of its compliance with Section 271 of the Communications Act of 1934 (“the Act”), as amended. In this proceeding, BellSouth demonstrated that the Florida local exchange market is irreversibly open to competition and that BellSouth has met the requirements of the competitive checklist. The data show that alternative local exchange companies (“ALECs”) already have a significant market presence in Florida, providing local exchange service to Florida consumers via ALEC facilities, UNEs, and resale. BellSouth contends that the evidence in this docket, in conjunction with the evidence in Docket No. 960786B-TL, will support a positive recommendation by the Commission to the FCC in support of BellSouth’s application. ALECs are now reaping the benefits of the irreversible opening of the local exchange market. BellSouth, thus, has earned the right to compete in the interLATA market. More importantly, however, the citizens and businesses of Florida are now entitled to the full benefits of marketplace competition from all providers in all services.

Introduction

In BellSouth’s nine-state region, ALECs serve over three million access lines. In Florida alone, using conservative estimates, as of March 2001, BellSouth has lost over 831,761 access lines, approximately 10.8% of its total lines and 21.9% of its business lines to other carriers. Approximately one-third of these lines are served by ALECs using their own facilities, either exclusively or in combination with BellSouth’s unbundled network elements (“UNEs”). ALEC competitive successes are particularly significant in the large and small business markets where the ALECs have initially chosen to compete. In Florida, ALECs are collocated in BellSouth wire centers that serve 94% of BellSouth’s total access lines.

ALEC competition in Florida is comparable to the level of competition in states where Bell Operating Company (“BOC”) Section 271 relief already has been granted. For example, ALECs had captured between 5.5% and 9.0% market share at the time interLATA relief was granted in Oklahoma. Moreover, experience shows that the level of competition in local exchange services will accelerate after Section 271 relief is granted, as ALEC “fence sitters” lose their ability to delay BOC interLATA entry by deferring participation in the local market. As explained below, this increase in local exchange competition has been demonstrated in both New York and Texas. BellSouth’s ability to serve ALEC needs is not theoretical. A significant number of ALEC orders for access lines are being filled each month in BellSouth’s region. ALECs have achieved their substantial competitive gains because BellSouth’s systems and processes provide the meaningful opportunity to compete required by the Act and the Federal Communications Commission (“FCC”).

The ALEC comments and testimony opposing BellSouth’s application ignore BellSouth’s compliance and frequently misstate the facts or the law. In an effort to cloud the relevant issues, the ALECs have raised a variety of claims purporting to show that BellSouth does not satisfy the requirements of Section 271. However, as a threshold matter, the Public Service Commission of Florida (“FPSC”) should view the extreme arguments of AT&T and other interexchange carriers with particular skepticism. In fact, the lessons of New York and Texas are that the ALECs that claim most vociferously that local markets are not open are the first to compete once the barrier to BOC interLATA entry falls. For example, in New York, AT&T stated that “[n]o competitor, including AT&T, is yet able to compete for large volumes of orders from either residential or small to mid-sized business customers.” *Comments of AT&T Corp. in Opposition to Bell Atlantic’s Section 271 Application for New York*, CC Docket No. 99-

295, 2 (filed Oct. 19, 1999). However, just two months later, as Verizon was gaining Section 271 authority, AT&T seriously entered the market with a rapid increase from 97,989 local line customers in December 1999 to 750,000 local line customers by February 2001. *AT&T Offers New Yorkers a New Choice for Local Residential Phone Services*, (Dec. 1, 1999) (News Release), available at <http://www.att.com/press/item/0,1354,2302,00.html> (last visited October 18, 2001); *Local Exchange Companies Ranked by Lines Served*, New York Public Service Commission, as of 12/31/00, <<http://www.dps.state.ny.us/telecom/rankbyal.htm>>; Yochi J. Dreazen and Deborah Solomon. *AT&T Chief Says Baby Bells May Price Company Out of Local Service Markets*, Wall Street Journal A4 (Feb. 8, 2001).

This same scenario was repeated in Texas. In SBC's Section 271 proceedings at the FCC, AT&T claimed that "there is no factual basis on which this Commission could have concluded that competition in Texas will thrive with a level of service outages that the Commission deemed tolerable in New York," *Supplemental Reply Comments of AT&T Corp. in Opposition to SBC's Second Section 271 Application for Texas*, CC Docket 00-65, 22 (filed April 26, 2000), and that "[t]he simple fact is that SWBT does not provide parity access to its OSS now, and every indication is that the present disparity in treatment faced by CLECs will deepen as volume increases," *Reply Comments of AT&T Corp. in Opposition to SBC's Section 271 Application for Texas*, CC Docket 00-45, 42 (filed February 22, 2000). Despite these alleged problems, AT&T went from 150,000 local customers in Texas in July 2000 to 330,000 local customers by February 2001. Competitive lines lost to all ALECs in Texas increased 81% between January 2000 and January 2001. *SWB Long Distance Accelerates Market Competition*, (Public Affairs Release), available at <http://www.sbc.com/Long_Distance/0,2951,7,00.html> (last visited June 22, 2001). Thus, real-world evidence shows that the best way to increase

competition in the local exchange market is to grant the BOCs Section 271 authority and that ALEC cries of an inability to compete must be examined in light of actual ALEC behavior.

The ALECs have not shown even one failure on BellSouth's part that would support a finding of noncompliance. The comments of ALECs fall into several broad categories:

- *Incorrect statements of FCC rules or policies.* For instance, AT&T complains that BellSouth will not combine UNEs for AT&T. However, the Eighth Circuit has stated that BellSouth is not required to combine for ALECs UNEs that are not already combined; rather, BellSouth must provide ALECs with the opportunity to combine the elements themselves. AT&T also contends that BellSouth's failure to unbundle packet switching violates the Act. However, the FCC has repeatedly held that an ILEC has no legal obligation to unbundle packet switching, except in limited circumstances that do not exist in Florida.
- *Demands for BellSouth actions where no ALEC rights or ILEC obligations exist under federal or state rules.* WorldCom alleges that BellSouth must provide DSL services via line splitting to ALEC voice customers. However, the FCC has rejected WorldCom's arguments several times, including in the Southwestern Bell-Texas Order. WorldCom also asserts that BellSouth should provide dedicated transport facilities between ALEC network locations where such facilities do not currently exist. The FCC held that ILECs are not required to do so in the Local Competition Order and the UNE Remand Order.
- *Attempts to raise issues that fall outside the scope of the Section 271 process.* For instance, KMC makes accusations that BellSouth is using inappropriate methods to win back customers. This unsubstantiated claim is unrelated to the Section 271 decision before this Commission and is irrelevant to this proceeding.
- *Misstatements of BellSouth policies or practices.* In one case, AT&T asserts that BellSouth uses its Collocation Handbook to control ALEC collocation procedures. In fact, the Collocation Handbook is only a resource guide to aid ALECs contemplating collocation. Interconnection agreements or collocation tariffs control the rates, terms, and conditions of BellSouth's provision of collocation.
- *Factually incorrect claims.* AT&T asserts that BellSouth fails to provide operational processes for ALECs to engage in line splitting. BellSouth has provided several notices to ALECs of the process for ordering line splitting, and voluntarily hosts a weekly line splitting industry collaborative where it works with ALECs to refine and enhance these operational processes. In addition, BellSouth and AT&T signed an amendment to their interconnection agreement incorporating terms and conditions for line splitting.
- *Isolated problems occurring in the past.* WorldCom criticizes BellSouth for separating transit traffic from local and intraLATA toll traffic. However, BellSouth

offers ALECs the “supergroup” trunk, which includes the very thing WorldCom requests: the exchange of both transit traffic and local and intraLATA toll traffic between an ALEC and BellSouth on the same trunks.

- *Problems caused by ALECs rather than BellSouth.* ALECs often cause the problems they raise. For example, AT&T complains that in processing some customer orders, BellSouth delays disconnecting the customer after connecting AT&T service, resulting in improper routing of calls. The fault in these cases lies with AT&T because AT&T failed to provide the proper company code so the disconnect and connect orders could be coordinated.

In the face of a clear record of successful performance by BellSouth, the ALECs opposing the application largely focus their comments on isolated problems that they have experienced in the market-opening transition. In the ensuing sections of this response and associated testimony, each of these specific claims is squarely addressed. What is quickly evident, however, is that none of the ALEC objections involves systemic issues or rises to the level of noncompliance with the checklist requirements. Accordingly, as detailed below, BellSouth has met or exceeded the standards set for approval of its Section 271 application for Florida for the checklist items addressed in this proceeding.

The Commission’s Role and Issues Outside the Scope of Section 271

During the hearing, the Commission requested that the parties explain the Commission’s role in the Section 271 process. *Tr. Vol. XII, pp. 1871-72 (Gillan)*. 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).” The FCC consults with the state commission “to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreements(s) or general statement satisfy the ‘competitive checklist.’” *Application by 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*”).

Although the FCC has stated that it “has discretion in each section 271 proceeding to determine the amount of weight to accord the state commission’s verification... it will consider carefully state determinations of fact that are supported by a detailed and extensive record.”

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 (footnote omitted)(“*Verizon-CT Order*”).

The FCC has determined that it will give “substantial weight” to a state’s determination when that state conducts a “lengthy, rigorous and open collaborative process with active participation by Commission staff and competitive LECs” and is “an active participant in bringing competition for local competition.” *SWBT-TX Order*, 18360-61. In particular, in reviewing Bell Atlantic’s Section 271 application for New York, the FCC has found that there are four ways “in which rigorous state proceedings can contribute to the success of a section 271 application”:

- (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.

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 (footnote omitted) (1999) (“*BA-NY Order*”).

This Commission has more than fulfilled the FCC's standard for rigorous review. It has: conducted extensive proceedings involving numerous ALECs; overseen thorough third-party testing of BellSouth's OSS; established performance measures and standards; and adopted a post-entry penalty plan. The Commission's effort has resulted in robust competition in the local market in Florida. In light of its comprehensive review, this Commission's assessment of BellSouth's application is convincing evidence of BellSouth's compliance with Section 271, and the FCC should give this Commission's determination substantial weight.

The Commission also asked the parties to consider whether it can approve BellSouth's Section 271 application based on the FCC's minimum standards but also consider additional requirements. *Tr. Vol. XII, p. 1856 (Gillan)*. Congress laid out specific requirements for BOCs to obtain Section 271 authority, which the FCC has interpreted through its Section 271 orders. As noted above, the state commission's role is "to verify the compliance of the Bell operating company with the requirements of subsection (c)." 47 U.S.C. § 271(d)(1)(B). Thus, in considering whether to approve BellSouth's application, this Commission should consider only whether BellSouth has met its statutory obligations.

The FCC has reiterated that the intent of the state is that the Section 271 analysis is confined to the requirements of the statute. For example, in the order approving Verizon's Section 271 application for Connecticut, the FCC found that Covad's complaint regarding Verizon's collocation rate for its interstate access service was "not relevant to this section 271 proceeding because it does not address collocation in this checklist item." *Verizon-CT Order*, ¶ 50. The FCC stated that this issue was before it in another proceeding. In that same Order, the FCC also rejected Sprint's claim that Verizon should not receive Section 271 authority because Verizon had not modified its SGAT to include reciprocal compensation on ISP-bound traffic, as

required by the Connecticut Department of Public Utility Control. The FCC stated that because the FCC had found that because “ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2),...whether Verizon modified its SGAT to apply reciprocal compensation to Internet traffic is not relevant to compliance with checklist item 13.” *Verizon-CT Order*, ¶ 67. It makes sense that BellSouth be judged against established obligations. To do otherwise would deprive BellSouth of the opportunity to ever meet the requirements of the checklist because the bar would be ever changing. Such an unattainable target was not the goal of the Act.

Congress has determined what conditions BOCs must meet to enter the in-region interLATA market. While the Commission remains free to make policy decision for the State of Florida, in this docket the Commission should not ignore the statute when determining whether BellSouth has met the requirements of Section 271. In his testimony on behalf of the Florida Competitive Carriers Association, Mr. Gillan acknowledged that the Commission could approve BellSouth’s application based on its “satisfying the national minimums, but then also conclude that in addition to those, BellSouth must do XYZ, and on.” *Tr. Vol. XII, pp. 1856-57 (Gillan)*. In fact, Mr. Gillan recognizes that three of the four things he stated ALECs want – providing new combinations at TELRIC rates; providing BellSouth xDSL service to customers who do not use BellSouth voice service; and providing the splitter in a line splitting arrangement – are not required by Section 271. *Id., pp. 1857-59*. BellSouth agrees with Mr. Gillan that the Commission can adopt obligations beyond those required by the statute – in fact, BellSouth itself has agreed to provide the splitter in a line-splitting arrangement as Mr. Gillan wants even though it has no obligation to do so. However, as Congress and the FCC have made clear, those issues are not part of the Section 271 determination. Therefore, BellSouth urges the Commission to

approve BellSouth's application based on its compliance with the established obligations of Section 271 and consider any additional issues raised by the parties in other proceedings.

Statement of Generally Available Terms and Conditions

In addition to negotiating and arbitrating private agreements with new entrants, the 1996 Act affords incumbent local exchange companies ("ILECs") the right to prepare and file an SGAT.¹ Once approved or permitted to take effect by the Commission, the SGAT can provide a vehicle for ALECs to use to enter the local market quickly without having to negotiate and/or arbitrate an interconnection agreement with an ILEC. In accordance with this provision, BellSouth filed a new SGAT in this proceeding. *Hearing Exhibit 13, CKC-5 ("Cox Exh.")*. BellSouth's SGAT provides a set of general terms and conditions from which any competitor in Florida can order interconnection facilities and UNEs or can resell BellSouth services to compete with BellSouth in the local market.

To be approved, an SGAT must comply with Section 251 and the pricing standards for interconnection, unbundled network elements, and resale contained in Section 252(d). This is the same standard applied by this Commission for approval of arbitrated agreements. *Compare 47 U.S.C. § 252(f)(2) with 47 U.S.C. § 252(e)*. BellSouth has developed and incorporated into the SGAT comprehensive performance standards and measurements that demonstrate that BellSouth is providing nondiscriminatory access to ALEC customers. In addition, the SGAT contains cost-based rates available to ALECs. Moreover, BellSouth agrees that it will incorporate final rates from Docket No. 990649-TP and other relevant dockets into the SGAT.

¹ Section 252(f)(1) of the 1996 Act provides that: "A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company *generally offers* within that state to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section." (emphasis supplied).

Accordingly, BellSouth's SGAT satisfies the requirements of Sections 251 and 252(d) of the Act.

The Act explains that a BOC may use an approved SGAT under 47 U.S.C. § 271(c)(2)(A) ("Track A") to supplement one or more binding agreements to demonstrate full compliance with the 14-point competitive checklist under that Track. *See Evaluation of the United States Department of Justice, Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, CC Docket No. 97-121, ¶ 22-24 (filed Mar. 16, 1997). Accordingly, the rates, terms, and conditions of interconnection, unbundling, and resale in the SGAT give BellSouth a "concrete and specific legal obligation" to furnish each checklist item to competitors. As demonstrated above, BellSouth's SGAT satisfies the Act's requirements and should be approved by this Commission.

Track A Compliance and Local Competition

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

- (a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?*
- (b) Does BellSouth currently provide access and interconnection to its network facilities for the network facilities of competing providers?*
- (c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?*

****Position:** BellSouth satisfies the Track A provisions of Section 271. BellSouth has entered into numerous binding agreements approved under Section 252 with unaffiliated competing providers. BellSouth is providing access and interconnection to competing providers that are providing service to residential and business customers. No party challenges BellSouth's compliance with these provisions.**

The best evidence of market openness is the state of competition in Florida. The level of ALEC competition in Florida is comparable to or exceeds the level of competition evidenced in New York, Texas, Kansas, and Oklahoma at the time BOC Section 271 relief was granted for these states. “Florida is fourth in the nation in terms of end-user lines serviced by ALECs.” *Hearing Exhibit 13, Affidavit of Victor K Wakeling (“Wakeling”), p. 5* (citing FCC Local Competition Report at Table 6). Using conservative estimates, more than 120 ALECs (providing service to 40 or more lines) that are parties to over 500 approved interconnection, collocation, and resale agreements serve over 830,000 access lines in the state as of February, 2001, which represents 10.8 percent of the total local access lines in BellSouth’s territory. *Tr. Vol. II, p. 183 (Cox); Wakeling, p. 9*. ALECs serve approximately 21.9 percent of the business market and 4.5 percent of the residential market. Approximately three quarters of ALEC lines are served using their own facilities, either exclusively or in combination with BellSouth’s unbundled network elements. BellSouth has completed more than 1600 collocation requests in over 130 wire centers, which allow one or more ALECs to serve approximately 94 percent of BellSouth’s total access lines with their own facilities. Almost 97 percent of BellSouth’s residential lines and 84 percent of BellSouth’s business access lines have *three or more* ALECs competing for their local service. *Tr. Vol. II, pp. 79-81, Cox; Wakeling, pp. 3-11*.

The Florida Competitive Carriers Association (“FCCA”) and Florida Digital Network (“FDN”) both recognize that competition exists in Florida, but claim that it is not growing fast enough. *Tr. Vol. XI, p. 1618 (Gallagher); Tr. Vol. XII, p. 1796 (Gillan)*. FCCA focuses on a purported drop in the level of resale entry as evidence that competition in Florida is either stagnating or declining. *Tr. Vol. XII, pp. 1799-1801 (Gillian)*. The supposed drop in resale activity is illusory. FCCA bases its conclusion on comparing resale data reported by BellSouth

in December with the data from March, 2001 presented in Exhibit JPG-2. *Id.*, pp. 1799-1800.

The data show a relatively modest 1,842 line decline from December to March that can be almost entirely accounted for by the migration from resale lines to UNE-P during that same period. *Tr. Vol. II, pp. 184-85.*

Even if FCCA's concerns about falling resale demand were true, this would not demonstrate a lack of local competition. The number of lines served by UNE-P continues to grow and has almost doubled over the first two quarters of 2001. *Id.* Of course, in order to determine whether a market is irreversibly open to competition, it is necessary to consider ALECs as a whole, not just one segment of competitive carriers.

A decline in resale activity may also be expected as the competitive market develops. Resale is a transitional measure used to allow competition before ALECs move to facilities-based competition. Resale allows competitors to enter markets quickly and build customer bases with minimal investment. However, in the long run, resale entry is not as profitable as other forms of entry because it prevents companies from differentiating their products or adding their own innovative features. *Tr. Vol. VII, pp. 887-88 (Taylor)*. It is thus logical to assume that as the competitive market matures, the demand for transitional measures such as resale will decline. Moreover, during the period FCCA identifies, UNE-P services have become available to ALECs. *Id.*, p. 888. Given that these services are cheaper than and functionally similar to resale, it is unsurprising that ALECs would switch their services. In any event, Section 271 does not guarantee any entrant business success – only an opportunity to compete. *Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order*, CC Docket No. 01-138, ¶ 126 (rel. September 19, 2001) (“*Verizon-PA Order*”).

Rather than recognizing that other factors have affected ALECs nationwide, FCCA speculates that BellSouth's conduct is to blame for ALEC problems, especially those providing resale service. *Tr. Vol. XII, pp. 1800-01, 1803-04 (Gillan)*. Some ALECs have experienced difficulties; however, those difficulties arose primarily from a cyclical downturn in the economy, tightening of capital markets, and misguided efforts to exploit unsustainable arbitrage opportunities such as reciprocal compensation for Internet Service Provider ("ISP") bound traffic. In other cases, retail rates that contain existing implicit subsidies make competition for customers receiving the subsidized rates challenging. Finally, some ALECs, such as the long-distance companies, have strategic reasons to defer competitive local entry in an attempt to delay BOC entry into the long distance market. *Tr. Vol. VII, pp. 877-78 (Taylor)*.

FCCA also challenges BellSouth's estimates of competition in Florida. *Tr. Vol. XII, pp. 1804-08 (Gillan)*. Most striking in this criticism is the fact that the ALECs provide *no* actual data to rebut BellSouth's evidence. The logical inference is that the ALECs did not provide data because the data support BellSouth. Moreover, FCCA's reworking of BellSouth's Method 1 estimates disregards without comment the ALEC E911 listings, which ALECs themselves report, and which are significantly higher than the UNE loops and UNE-P numbers that FCCA uses. *Tr. Vol. II, pp. 186-87 (Cox)*. Further, FCCA provides no evidence for its assertion that a 10 lines-to-1 trunk relationship is the appropriate assumption to make, and no explanation for why the line-to-trunk ratios used by FCCA's witness seem to change from one Section 271 proceeding to another.²

² FCCA's witness applied a 2:1 ratio in Alabama, applied a 2:1 ratio in Louisiana, applied a 1:1 line: trunk ratio in Mississippi, applied a 4:1 ratio in Kentucky, applied a 4:1 ratio in South Carolina, and applied a 4:1 ratio in Georgia. *Tr. Vol. II, pp. 188-89 (Cox)*

FDN does challenge BellSouth's use of ALEC E911 listings to estimate lines. FDN suggests that the E911 database may not be current with regard to ALEC listings and that BellSouth's estimate regarding ALEC lines "is inconsistent with FDN's observation and experience in the marketplace." *Tr. Vol. XI, pp. 1618-19 (Gallagher)*. BellSouth is not in a position to evaluate FDN's skepticism regarding the ALEC industry's diligence in keeping their E911 listings current, "and must presume that ALECs exercise the same diligence BellSouth does, recognizing the extreme importance of 911 listings for public safety." *Tr. Vol. II, p. 192 (Cox)*. FDN's general description of a two percent sample to support its own line estimate is not statistically valid. The sample was provided without supporting documentation, was based on only one BellSouth central office, and was conducted by FDN's own marketing department. Indeed, FDN witness Mr. Gallagher conceded that he did not know whether FDN's sample was statistically valid. *Id., p. 193; Tr. Vol. XI, 1647-48 (Gallagher)*. FDN's unsupported estimates contradict both the FPSC staff's survey of ALECs in Florida and FDN's own previously released data. *Tr. Vol. II, p. 193 (Cox)*.

Experience shows that granting BellSouth Section 271 authority will further stimulate local competition. FCC reports have shown that both New York and Texas experienced increased local competition following Section 271 approval for the BOC serving each of those states. ALECs serve 20% of the total market in New York—more than any other state. In Texas, ALECs now serve 12% of the total market, and made a gain of more than 500,000 lines in the six months following Section 271 approval. These levels of competition are much higher than are present in comparable states that have not allowed BOC long distance entry. *Federal Communication Commission Releases Latest Data on Local Telephone Competition, May 21, 2001, ¶ 2.; Tr. Vol. VII, pp. 884-85 (Taylor)*. It follows, therefore, that the Florida market, which

is irreversibly open to competition, will experience further competition once BellSouth receives Section 271 approval.

Checklist Items

Checklist Item 1: Interconnection

Issue 2: Does BellSouth currently provide 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?

****Position:** BellSouth satisfies its checklist item 1 obligations to “provide[] equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory . . . at any technically feasible point” within its network, including “providing collocation . . . in accordance with the [FCC’s] rules.”^{3**}

Notably, state commissions in Georgia,⁴ Louisiana,⁵ and Mississippi⁶ recently confirmed that BellSouth is meeting the checklist item 1 requirement.

Collocation

(a) Has BellSouth implemented physical collocation requests in Florida consistent with FCC rules and orders?

³ *Application of Verizon New England Inc., Bell Atlantic Communications, Inc., (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization To Provide In-Region InterLATA Services in Massachusetts*, 16 FCC Rcd 8988, ¶ 182 (2001) (“*Verizon-MA Order*”).

⁴ *Consideration of Bell South Telecommunications, Inc.’s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 6863-U, Order (Ga. P.S.C. Oct. 2, 2001) (“*GA PSC Order*”)

⁵ *Consideration and Review 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-2252, Subdocket E, Order No. U-22252 (e), (La. P.S.C. Sept. 19, 2001) (“*LA PSC 271 Order*”)

⁶ *Consideration Of the Provision Of In-Region InterLATA Services By BellSouth Telecommunications, Inc. Pursuant To Section 271 Of TA 96*, Docket No. 97-AD-321, Final Order, (Ms. P.S.C. Oct. 4, 2001) (“*MS PSC 271 Order*”)

****Position:** BellSouth must provide collocation in accordance with the FCC's rules. *BA-NY Order*, 3979. BellSouth's interconnection agreements, its Florida collocation tariff, and the SGAT it filed in this proceeding all establish legally binding collocation terms and conditions, consistent with Sections 271 and 251. *Tr. Vol. II, p. 90 (Cox).*******

Regarding physical collocation, BellSouth offers caged, shared cage, cageless, remote site, and microwave collocation, at an ALEC's option. BellSouth also offers adjacent collocation if space in a particular premises is legitimately exhausted. Virtual collocation is available where space for physical collocation is legitimately exhausted, or at an ALEC's request regardless of the availability of physical collocation. In addition, BellSouth makes physical collocation available in its remote terminals. BellSouth permits the collocation of equipment that is necessary for interconnection or access to UNEs in the provision of telecommunications services. *Tr. Vol. VIII, pp. 1103-08 (Milner).*

BellSouth's commercial usage and performance data demonstrate that BellSouth provides nondiscriminatory access to collocation. As of March 31, 2001, BellSouth had provisioned 1,498 physical collocation arrangements for over 50 different ALECs in Florida, in addition to 142 virtual collocation arrangements. Another 161 physical collocation arrangements and 3 virtual collocation arrangements were underway as of March 31, 2001. In addition, ALECs are collocated in 135 of the 196 central offices in Florida. *Id., pp. 1105-07.*

(b) Does BellSouth have legally binding provisioning intervals for physical collocation?

****Position:** The Florida Commission established provisioning intervals for physical collocation in Docket Nos. 981834-TP and 990321-TP.******

BellSouth provisions physical collocation space in Florida within 90 calendar days of receipt of a complete, accurate, and error-free Bona Fide Firm Order ("BFFO"), or as agreed to

by the parties. Thereafter, BellSouth must complete changes to physical collocation space as soon as possible, within a maximum of 45 calendar days from receipt of a complete, accurate and error-free BFFO, or as agreed to by the parties. BellSouth has incorporated these intervals into its SGAT, collocation tariff, and applicable interconnection agreements. BellSouth also complies with all of the collocation requirements established by the FCC in its *Collocation Order* and *Collocation Reconsideration Order*. *Id.*, pp. 1105-06.

Other associated collocation requirements. The ALECs raise a laundry list of issues regarding BellSouth's compliance with the checklist. For example, AT&T devotes considerable time and attention to attacking BellSouth's Collocation Handbook. *Tr. Vol. X, pp. 1521-33 (Turner)*. However, notwithstanding Mr. Turner's claims to the contrary, the Collocation Handbook is only a resource guide to aid ALECs seeking to collocate with BellSouth; it does not control the rates, terms, or conditions of BellSouth's provision of collocation, nor is it the "legally binding document" upon which BellSouth relies for 271 purposes. Collocation is governed by interconnection agreements reviewed and approved by this Commission, which may not be "unilaterally" changed by BellSouth. BellSouth's legally binding obligations with respect to physical and virtual collocation are set forth in BellSouth's interconnection agreements, FCC tariff, Florida tariff, and SGAT. BellSouth cannot and does not use the Collocation Handbook to modify or avoid such obligations. *Tr. Vol. VI, pp. 755-64 (Gray)*. Even Mr. Turner, AT&T's witness, admitted that BellSouth has executed collocation agreements in Florida upon which it can rely for purposes of providing its legally binding obligations. *Tr. Vol. X, pp. 1557-58 (Turner)*.

AT&T alleges that BellSouth unilaterally places the point of termination ("POT") bay far from the interconnection frames. *Id.*, pp. 1522-23. Contrary to AT&T's claims, the placement

of POT bays is mutually negotiated by the parties. In allocating floor space for POT bays, the parties must weigh the need for both parties to have access to the POT bay, the available floor space, and the proximity to caged equipment. AT&T and BellSouth negotiated such provisions in a recent interconnection agreement and a memorandum of understanding. *Tr. Vol. VI, pp. 764-67 (Gray)*. Moreover, Mr. Turner admitted that unless BellSouth has unfettered access to an ALEC's collocation space (which it does not), it is not practical to put bays inside the collocation space. *Tr. Vol. X, pp. 1560-61 (Turner)*.

AT&T's claim that BellSouth fails to meet the requirements of the FCC's rules by not offering off-site adjacent collocation and not providing shared collocation in the appropriate manner also is incorrect. *Tr. Vol. X, pp. 1521-22, 1528-33 (Turner)*. As AT&T itself concedes, the FCC's rules do not explicitly require offsite adjacent collocation. The FCC's rules do require shared collocation "pursuant to the terms and conditions agreed to by the competitive LECs." *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, 4748 (1999) ("*Advanced Services Order*") Consistent with this Order, BellSouth provides shared collocation by contracting with a "host" ALEC, which in turn contracts with other ALECs. AT&T can negotiate with BellSouth if it desires a different collocation arrangement. *Tr. Vol. VI, pp. 777-78 (Gray)*.

BellSouth is in compliance with the shared collocation obligations imposed by this Commission. The Commission has held that an 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 collocater." *Id.*, p. 780, (quoting Commission Order No. PSC-00-0941-FOF-TP in its General Collocation Proceeding, Docket Nos. 981834-TP and 990321-TP). Consistent with this requirement, BellSouth permits each ALEC in a shared

collocation arrangement to order equipment placement, UNEs, interconnection, and other services directly from BellSouth. Only the sharing arrangement between two or more ALECs would be negotiated directly between those parties. Thus, BellSouth complies fully with its collocation obligations.

AT&T argues that the FCC recently clarified that ILECs must make available collocator-to-collocator cross connects. *Tr. Vol. X, pp. 1532-33 (Turner)*. The FCC's Fourth Report and Order in CC Docket No. 98-147 only became effective on September 19, 2001. As Mr. Gray testified, BellSouth has modified its collocation offering to comply with this order. *Tr. Vol. VI, p. 800 (Gray)*.

AT&T's complaints about the charges for physical collocation are similarly misplaced. *Tr. Vol. X, pp. 1525-26 (Turner)*. BellSouth's current space preparation rate structure is consistent with TELRIC principles, and the rates are based on forward-looking long-run incremental cost. This rate structure is included in BellSouth's standard interconnection agreement and several signed interconnection agreements. If BellSouth were required to perform a major renovation or upgrade on a central office in Florida to accommodate physical collocation, BellSouth is allowed to require collocators to share in the costs of such renovations or upgrades. *Tr. Vol. VI, pp. 770-72 (Gray)*.

AT&T also raises several concerns about BellSouth's recovery of power plant augmentations. *Tr. Vol. X, pp. 1528-29 (Turner)*. AT&T states that the Texas Commission prohibits SWBT charging for DC power augmentations, but does not demonstrate that this Order has any bearing on BellSouth's obligations in Florida. AT&T also notes that this Commission required BellSouth to recover the cost of power plant augmentations through a recurring charge. Consistent with this requirement, BellSouth recovers the cost of power plant augmentations

through a recurring per amp charge. Further, BellSouth's cost-based recurring power rate is consistent with TELRIC and will be reviewed by the Commission in Phase II of the Generic Collocation Docket, Docket Nos. 981834-TP and 990321-TP. *Tr. Vol. VI, pp. 774-75, 823 (Gray)*. Thus, AT&T's concerns do not demonstrate noncompliance with this checklist item.

AT&T incorrectly claims that BellSouth is double recovering its costs of providing DC power. *Tr. Vol. X, pp. 1525-27 (Turner)*. Even a cursory review of the collocation rates in Florida demonstrates the fallacy of AT&T's argument. Historically, there have been two power-related physical collocation charges: a recurring power rate and an ICB nonrecurring power construction charge. These are two separate charges for power, each of which addresses different costs, and thus there is no double recovery. *Tr. Vol. VI, pp. 769-70 (Gray)*. While BellSouth is currently investigating a DC power billing dispute with AT&T, such billing disputes do not demonstrate that BellSouth's charges are unjust or unreasonable and do not raise issues under Section 271. *Id., pp. 771-74*. Moreover, as Mr. Turner admitted, BellSouth and AT&T have negotiated a standard rate for power in their new interconnection agreement. *Tr. Vol. X, pp. 1559-60 (Turner)*.

NewSouth contends that BellSouth's charges for power are based upon the fused amps provided to an ALEC's collocation space and that because of the size of the fuses BellSouth offers, BellSouth charges NewSouth for power it does not use. *Tr. Vol. VIII, pp. 1039-40 (Fury)*. NewSouth's allegation is incorrect. The Commission affirmed BellSouth's position in its arbitration with WorldCom.⁷ Specifically, the Commission concluded that "the per ampere rate for the provision of DC power to WorldCom's collocation space shall apply to fused capacity."

⁷ Mr. Beasley's testimony was adopted by Mr. Fury. *Tr. Vol. VIII, p. 1014 (Fury)*. At the hearing, Mr. Fury admitted that he had not read this decision, and NewSouth's attorneys indicated that they were only minimally familiar with the order. *Tr. Vol. VIII, pp. 1062-63 (Fury)*.

Tr. Vol. VI, p. 783 (Gray) (quoting WorldCom Arbitration, Order No. PSC-01-0824-FOF-TP (rel. March 30, 2001)). The recurring power rate reflected in BellSouth's Access Tariff in Florida is \$8.86 per -48V DC Amp. The recurring rate includes a 0.67 multiplier to take into account the fact that an ALEC would not normally use the full capacity of the protection device. BellSouth is not, therefore, charging ALECs for power they do not use. *Id.*, pp. 784-95.

Further, NewSouth's problems result from the inefficient network configuration it chose. NewSouth witness Mr. Fury testified that NewSouth designed its current network configuration with the knowledge that the BellSouth main power board required 225 amps. However, as Mr. Fury is aware, BellSouth also provides NewSouth the option of connecting its battery distribution fuse bay ("BDFB") to BellSouth's BDFB in smaller fuse increments. *Tr. Vol. VIII, p. 1060 (Fury)*. By reconfiguring its collocation space to utilize the smaller fuse increments offered by BellSouth, NewSouth could resolve its concerns.

Methods of Interconnection

(c) Does BellSouth currently provide local tandem interconnection to ALECs?

****Position:** ALECs can interconnect to BellSouth's network through: (1) physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber optic meet point arrangements; and (5) purchase of facilities from the other party.**

Local traffic or local/intraLATA toll traffic may be delivered at the BellSouth local tandem, the BellSouth access tandem, or the BellSouth end office. BellSouth has provisioned more 132,850 interconnection trunks in Florida. *Tr. Vol. VIII, pp. 1080-81, 1094-95 (Milner)*.

(d) Does BellSouth currently permit the use of a Percent Local Usage (PLU) factor in conjunction with trunking?

****Position:** BellSouth uses the appropriate PLU factor to bill ALECs for their use of two-way trunks and other types of trunks.**

BellSouth uses a manual method to bill the full charge to the ALEC, with a subsequent credit to account for BellSouth's use of a portion of the trunk. Eventually, BellSouth intends to develop a mechanized means to calculate the percent usage for each company and to allocate the charges based on that calculation will be created. *Tr. Vol VII, pp. 988-89 (Scollard)*. No ALEC disputed BellSouth's compliance on this issue.

(e) Does BellSouth currently provide ALECs with meet point billing data?

****Position:** BellSouth provides ALECs with meet point billing data. It has complied with, and will continue to abide by, the meet-point billing guidelines developed and maintained by the industry Ordering and Billing Forum ("OBF").**

Meet point billing data is exchanged by local exchange companies that jointly provide a telecommunications service to a third party. The carriers need this data to bill the third party for the services they provide. The carriers select vendors to act as intermediaries to collect usage data from the other carriers. The vendor selected as an intermediary is called the "Revenue Accounting Office (RAO) Host." In some instances, ALECs choose BellSouth as their RAO Host. *Id., p. 7*. In April 2001, BellSouth provided over 134 million meet point billing usage records to ALECs in the region either directly as an RAO Host company or through the RAO Host selected by those ALECs. *Id.* No ALEC disputed BellSouth's compliance with this obligation.

Other associated interconnection requirements. While no ALEC disputes that BellSouth provides interconnection at any technically feasible point within its network, some ALECs nonetheless raise issues concerning interconnection charges. In particular, WorldCom contends that BellSouth should bear the cost of transporting traffic originated on BellSouth's network to the competitor's point of interconnection ("POI"), even when the POI is not in the

same local calling area as the BellSouth customer and the ALEC customer. *Tr. Vol. VII, pp. 1881-87 (Argenbright)*. As an initial matter, the FCC has expressly rejected this argument as a basis for a finding of noncompliance with checklist item 1. *Verizon-PA Order*, ¶ 100 and n.341.⁸ The FCC previously declined to address this argument on the merits in the Section 271 context, holding that it was more appropriately resolved by state commissions. *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*, 16 FCC Rcd. 6237, ¶ 239 (2001) (“*SWBT-KS/OK Order*”). The Florida Commission currently is considering this issue in its generic docket on reciprocal compensation, Docket No. 000075-TP. This is not an issue related to checklist compliance, but rather one that should be dealt with in the context of the Commission’s ongoing reciprocal compensation proceeding. *Tr. Vol. II, pp. 196-99 (Cox)*.

Nondiscriminatory Access to Interconnection Trunks

BellSouth’s actions and performance demonstrate that its interconnection agreements subject it to a legal obligation to provide interconnection in accordance with FCC rules, as previously held in the *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region InterLATA Services in Louisiana*, 13 FCC Rcd. 20599, 20648-9 and n.210 (1998) (“*Second Louisiana Order*”); *Tr. Vol. II, p. 90 (Cox)*. In Florida, BellSouth has provisioned 132,850 interconnection trunks from ALECs’ switches to BellSouth’s switches as of March 31, 2001, and 64,132 two-way trunks (including transit traffic) to 52 different ALECs. *Tr. Vol. VIII, pp. 1095-96 (Milner)*. This

⁸ See also Staff’s Final Recommendation, 28, adopted in *LA PSC 271 Order* (concluding that “apparently the FCC does not believe this issue to be critical to a 271 proceeding, given the fact that it has not required other ILECs to assume this obligation in other 271 proceedings.”).

significant degree of commercial usage indicates that ALECs can and do interconnect with BellSouth's network.

The evidence further shows that BellSouth provides access to interconnection trunks in a manner equivalent to that which it provides itself. BellSouth follows the same installation process and uses the same equipment, interfaces, technical criteria, personnel and service standards for both ALECs and itself. *Id.*, pp. 1092-1102. The various assertions by ALECs to the contrary have no merit.

WorldCom criticizes BellSouth for separating transit traffic from local and intraLATA toll traffic. *Tr. Vol. XII, pp. 1887-90 (Argenbright)*. BellSouth has used separate trunk groups to facilitate proper billing of transit and other traffic. Nonetheless, as WorldCom is aware, BellSouth offers ALECs the "supergroup" trunk, which includes exchange of both transit traffic and local and intraLATA toll traffic between an ALEC and BellSouth. It is therefore unclear why WorldCom continues to raise the issue. *Tr. Vol. VII, pp. 996-97 (Scollard)*; *Tr. Vol. IX, p. 1200 (Milner)*. Further, in its *Second Louisiana Order*, the FCC stated that BellSouth "offers routing of local and intraLATA traffic over a single trunk group. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, is routed via a separate trunk group. . . . BellSouth, therefore, establishes that it has a legal obligation to provide interconnection *consistent with our rules.*" *Second Louisiana Order*, 20649 (emphasis added). Thus, requiring a separate trunk for transit traffic is consistent with the FCC's requirements.

WorldCom also complains that BellSouth does not allow ALECs to use interconnection trunks to send access traffic to BellSouth end offices. This allegedly limits ALECs' ability to compete for tandem provider services because BellSouth always provides those services. *Tr. Vol. XII, pp. 1890-92 (Argenbright)*. The handling of switched access traffic is governed

pursuant to switched access tariffs. If ALECs delivered terminating switched access traffic to BellSouth end offices over local interconnection trunks, BellSouth would not have the necessary information to bill for its services. Call records do not contain the information required to determine which calls originate from a particular ALEC, leaving BellSouth unable to distinguish access traffic from local traffic. WorldCom's proposed alternative would force BellSouth to rely on "self-reports" of ALECs' usage. The Commission already resolved these issues in BellSouth's favor in WorldCom's arbitration with BellSouth. WorldCom has not presented any new evidence that would warrant the Commission reaching a different conclusion. *Tr. Vol. VII, pp. 997-99 (Scollard)*.

AT&T and other ALECs use outdated trunk group blocking reports to conclude erroneously that there are problems with trunk blocking. *Tr. Vol. VIII, pp. 1244-46, 1288-1302 (Milner)* (cross examination by counsel for AT&T and counsel for XO Communications, Time Warner Telecom, US LEC, and NuVox Communications). First, the trunk group blocking reports upon which ALECs rely assume that all trunk groups are of the same size. Because trunk groups actually vary in size, the percentage of trunk groups experiencing blocking does not accurately reflect the experience of end users. Second, the old trunk blocking reports do not differentiate between blocking caused by BellSouth and blocking caused by ALECs. BellSouth now reports the average number of blocked calls, providing a more accurate indication of the end-user experience. The new reports also account for ALEC-caused problems.

The more reliable trunk blockage reports demonstrate that BellSouth provides ALECs a meaningful opportunity to compete. *Tr. Vol. IX, pp. 1244-45, 1321-22 (Milner)*. In fact, according to these reports, BellSouth's trunking performance has been exemplary. Specifically, since August 2000, there have been *no failures* attributed to BellSouth. *Tr. Vol. IX, p. 1246*

(*Milner*). Nor has there been a difference in overall trunk group performance between ALEC trunks and BellSouth trunks of one-half percent or greater for two consecutive hours since August, 2000. Consequently, ALEC and BellSouth end users have observed no difference in service. *Tr. Vol. IX, pp. 1385-86 (Milner)*.

NewSouth's allegation that BellSouth does not properly augment trunks is, as Mr. Fury admitted, inaccurate. *Tr. Vol. VIII, pp. 1020-1026 (Fury)*. In the vast majority of cases, shortcomings in trunk augmentation arise from poor forecasting by ALECs or a failure by the ALEC to inform BellSouth about expected spikes in traffic. BellSouth makes every effort to predict accurately network capacity needs even for those ALECs, such as AT&T, that do not provide any forecast to assist BellSouth in this critical component of network management. However, in some cases this is impossible.

For example, NewSouth asserts that trunk blocking occurred in Baton Rouge, Louisiana, and Macon, Georgia, due to inadequacies in BellSouth trunk augmentation. However, NewSouth's traffic volumes on the trunk group in Baton Rouge almost tripled in a one-month period without any warning to BellSouth.⁹ Had NewSouth provided BellSouth with advance notice of the expected increase in traffic volume, BellSouth could have planned accordingly.¹⁰ *Tr. Vol. IX, pp. 1206-08 (Milner)*. Indeed, NewSouth witness Mr. Fury conceded that NewSouth

⁹ As discussed in detail in Mr. Milner's Rebuttal Affidavit, in the period spanning roughly November 1, 2000 to December 20, 2000, trunk volumes for the trunk group referenced by Mr. Fury in Baton Rouge averaged around 500 call seconds ("CCS") in the busy hour. The volume in the busy hour increased to between about 1200 CCS to 1600 CCS in the period from December 20, 2000 to January 31, 2001. NewSouth did not give BellSouth any advance notice of this spike in traffic, and thus BellSouth was unable to plan for it. Despite that fact, BellSouth implemented an overflow routing pattern within 48 hours of the blocking problem, a fact that Mr. Fury fails to mention. *Tr. Vol. IX, pp. 1206-08 (Milner)*.

¹⁰ In addition, in NewSouth's situation in Baton Rouge, the trunk augmentation was delayed because NewSouth did not have any equipment in the collocation site it identified for trunk augmentation. NewSouth's other possible point of interconnection was unavailable because it did not have adequate capacity. Such factors, which are beyond BellSouth's control, also contributed to NewSouth's trunking issues. *Tr. Vol. VIII, pp. 1049-52 (Fury)*.

was responsible for the trunk blocking that occurred in Baton Rouge despite the allegation in his prefiled testimony that the situation was BellSouth's fault. *Tr. Vol. VIII, pp. 1051-52 (Fury)*.

Regarding NewSouth's complaint about blocking in Macon, the data demonstrated that the actual blocking took place for a total of two hours on one day out of eight months. Furthermore, during that two hour period, only three out of 707 calls were blocked. *Tr. Vol. VIII, pp. 1056-58 (Fury)*. Network design principles prescribe trunk augmentation once blocking on a trunk reaches 1%. Although the blocking in Macon did not reach that point, to allay NewSouth's concerns BellSouth ultimately agreed to add the requested trunks. As predicted by standard network design principles, these additional trunks were, and remain, underutilized. *Tr. Vol. VIII, pp. 1318-21 (Milner)*.

Complaints such as those of NewSouth must be taken in context. For example, trunk forecasting involves a dialogue meant to foster a common understanding of, and expectations for, planned servicing of trunks – a dialogue in which many ALECs have declined to participate, thereby causing trunk blockage on BellSouth/ALEC trunks. *Tr. Vol. IX, pp. 1201-04, 1208-10 (Milner)*. ALEC-caused trunk blockage does not constitute noncompliance by BellSouth with checklist item 1.

Pricing of Interconnection

Rates for interconnection and collocation must be consistent with the requirements of Sections 251(c)(2)(D) and 252(d)(1). *Verizon-MA Order*, ¶¶ 198-200. The Commission first established cost-based interconnection rates in Docket Nos. 960833-TP, 960846-TP, and 960916-TP in 1996. In 1998, the Commission consolidated Docket Nos. 960575-TP, 960833-TP, and 960846-TP to address permanent rates that had not previously been established. BellSouth's interconnection rates are being updated in Docket No. 990649-TP. BellSouth's

collocation rates are based on rulings of this Commission and are consistent with the FCC's TELRIC methodology. Thus, BellSouth's rates satisfy the requirements of Sections 251(c)(2) and 252(d)(1).

FCCA's argues that local competition is being impeded by BellSouth's UNE rates, which FCCA contends are not cost-based. *Tr. Vol. XII, p. 1811 (Gillan)*. This Commission has spent a great deal of time and effort setting UNE rates at appropriate, cost-based levels in the extensive UNE cost dockets. *Tr. Vol. II, p. 203 (Cox)*. The Commission's cost proceedings are currently ongoing. It is thus neither necessary nor appropriate to raise general questions about the rates in this proceeding. Moreover, FCCA bases its contention on a simplistic and unsupported hypothetical. *Tr. Vol. VII, p. 901 (Taylor)*. In order to make its point, FCCA simply took the balance sheet for BellSouth and replaced the depreciation and plant-related operating expenses with a calculation of what BellSouth UNE lease payments might be to serve its customer base. *Tr. Vol. XII, p. 1811 (Gillan)*. Importantly, FCCA provides no explanation for the assumptions about average usage that it used in developing this hypothetical, nor does it attempt to illustrate how the UNE lease payments were calculated. *Tr. Vol. VII, p. 901 (Taylor)*. It is thus impossible to verify FCCA's calculations. However, even if FCCA's calculations are correct, all that this example would demonstrate is that forward-looking costs such as TELRIC differ from embedded costs. Because ALECs compete with BellSouth on the basis of forward-looking costs, FCCA's hypothetical says nothing about the ability of ALECs to compete with BellSouth on a going-forward basis. *Id., pp. 901-02*. In addition, the FCC has consistently "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 [the FCC] review whether the rates are cost-based, not

whether a competitor can make a profit by entering the market,” and that “[q]uestions of profitability are independent of this determination.” *Verizon-PA Order*, ¶ 70.

Checklist Item 2: Unbundled Network Elements

Issue 3: Does BellSouth currently provide nondiscriminatory access to all required network elements, with the exception of OSS which will be handled in the third party OSS test, in accordance with Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC? Does BellSouth currently provide all required unbundled network elements at TELRIC-based prices? Has BellSouth satisfied other associated requirements, if any, for this item?

****Position:** BellSouth complies with the checklist item 2 requirements in accordance with Sections 251(c)(3) and 252(d)(1). In particular, BellSouth has shown that it complies with the pricing and combination obligations contained in the Act and the FCC’s rules.**

UNE Combinations

BellSouth provides access to UNE combinations in compliance with the FCC’s rules and the FPSC orders. Specifically, as detailed by Ms. Cox, BellSouth provides access to UNE combinations where the network elements are already combined at that particular location, in accordance with 47 C.F.R. § 51.315(b). *Tr. Vol. II, p. 106 (Cox)*. These UNE combinations are offered at the TELRIC-based rates contained in Attachment A to BellSouth’s SGAT. *Cox Exh.* Where elements are not already combined, BellSouth will combine the elements for a requesting ALEC for a negotiated “glue charge.” *Tr. Vol. II, p. 206 (Cox)*. Alternatively, the ALEC may choose to combine UNEs using virtual or physical collocation or an assembly point arrangement. *Tr. Vol. II, p. 105 (Cox)*.

AT&T erroneously contends that BellSouth is not fulfilling its obligation to provide UNE combinations because it imposes an additional charge for combining UNEs that are not already combined. According to AT&T, BellSouth’s imposition of a “glue charge” is discriminatory and anticompetitive. *Tr. Vol. X, p. 1456 (Guepe)*; *see also Tr. Vol. XII, pp. 1857-*

58 (*Gillan*). AT&T is incorrect on all counts. BellSouth has no legal obligation to combine UNEs that are not already combined, let alone to do so at TELRIC-based rates. *Tr. Vol. III, p. 343 (Cox)*.

This Commission has previously determined in a number of arbitration proceedings that “it is not the duty of BellSouth to ‘perform the functions necessary to combine unbundled network elements in any manner.’” *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252, Final Order On Arbitration, Order No. PSC-01-1402-FOF-TP, Docket No. 000731-TP, 23, (June 28, 2001); Tr. Vol. II, p. 207 (Cox)*. The FPSC has further concluded that the imposition of the “glue charge” is appropriate because BellSouth should be compensated for fulfilling ALEC requests to combine elements that are not otherwise combined. *Tr. Vol. II, pp. 206-7 (Cox)*.

This Commission has specifically requested that the parties include in their briefs the decisions of any state commissions in BellSouth’s region that have required BellSouth to combine currently uncombined elements, and note the type of proceedings the Commissions imposed such requirements (i.e., 271 proceeding, arbitration, rulemaking). *Tr. Vol. XII, p. 1872 (Gillan)*. Five state commissions, Georgia, Tennessee, Kentucky, Louisiana and Mississippi, however, have required BellSouth to combine UNEs if such combinations currently exist anywhere in BellSouth’s network. *Tr. Vol. X, pp. 1459-61(Guepe); Tr. Vol. III, pp. 345-346 (Cox)*.

BellSouth is confident that these four states will revisit their opinions at the conclusion of litigation regarding the FCC’s applicable rules. *Tr. Vol. III, p. 345 (Cox)*. The FCC rule that would have required BellSouth to combine UNEs that are not already combined (47 C.F.R. §

51.315(c)) was vacated by the Eighth Circuit in a decision that is currently before the Supreme Court. *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *Iowa Util. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) (declining to reinstate Rule 51.315(c), *cert. granted*, *Verizon Comm., Inc. v. FCC*, 121 S. Ct. 877 (2001) *et al.*); *Tr. Vol. II, pp. 106-7 (Cox)*.

BellSouth, in sum, is complying with its obligation under Section 271 to provide access to combinations of unbundled network elements. Any other issues regarding combinations should be addressed independent of this Commission's Section 271 determination.

UNE Pricing

BellSouth provides access to interconnection and unbundled network elements in accordance with the pricing standards in Section 252(d)(1), which states that the rates for interconnection and network elements be based on cost and may include a reasonable profit. *Tr. Vol. II, p. 240 (Cox)*. The FCC's pricing rules require that rates for interconnection and network elements be based on the total element long run incremental cost ("TELRIC") methodology. The rates currently in effect in Florida are cost-based. *Tr. Vol. IV, p. 543 (Caldwell)*.

This Commission has recently issued an order in Docket No. 990649-TP reexamining UNE rates and establishing cost-based rates for the additional network elements and combinations required by the FCC. *Tr. Vol. IV, pp. 400-1 (Caldwell)*; *Tr. Vol. II, p. 203 (Cox)*. BellSouth has committed to update the rates in its SGAT in accordance with the Commission's final decision in this and other relevant dockets. *Tr. Vol. II, pp. 202, 240 (Cox)*; *Tr. Vol. IV, p. 475 (Caldwell)*.

Rates for collocation, line sharing, and nondesigned unbundled copper loop ("UCL-ND") were not evaluated as part of the Docket No. 990649-TP. *Tr. Vol. IV, p. 401 (Caldwell)*; *Tr. Vol. III, p. 254 (Cox)*. These rates were not included because the Commission decided to consider

collocation and line sharing rates in a different proceeding and UCL-ND had not been developed at that time. *Tr. Vol. IV, pp. 401, 447 (Caldwell); Tr. Vol. III, p. 369 (Cox)*. After BellSouth submitted its testimony in this docket, the Commission established cost-based rates for collocation and line sharing in the Covad Arbitration. *Tr. Vol. III, pp. 257-59; 319 (Cox)*. The Commission will adopt these rates as soon as BellSouth submits its cost study. *Tr. Vol. III, p. 320 (Cox); Tr. Vol. IV, p. 540 (Caldwell)*. When those rates are approved, BellSouth will update its SGAT. *Tr. Vol. IV, p. 539-40 (Caldwell)*.

The establishment of cost-based rates in the Covad Arbitration obviates the need for the Commission to set interim rates in this docket for collocation and line sharing. BellSouth does, however, request that the Commission in this proceeding set interim cost-based rates for UCL-ND based on the cost study submitted as Exhibit DDC-1. *Tr. Vol. IV, pp. 464, 475 (Caldwell); Tr. Vol. III, pp. 252, 256 (Cox)*. As Commission Jaber stated in the hearing, nothing prohibits the Commission from revisiting these rates at a later time as part of a generic pricing proceeding. *Tr. Vol. XII, pp. 1856 (Jaber/Gillan)*.

WorldCom seeks to re-litigate additional issues from the generic pricing docket that the Commission has already addressed and rejected, including multiple scenarios, double inflation, and shared costs. *Tr. Vol. IV, p. 476 (Caldwell); Tr. Vol. II, p. 203 (Cox)*. WorldCom participated in each stage of the cost hearings, and its views were repeatedly rejected in favor of BellSouth's. *Tr. Vol. IV, pp. 455, 476 (Caldwell); Tr. Vol. XII, pp. 1764, 1781 (Darnell)*. Further consideration of these issues would be duplicative and wasteful of the Commission's time and resources since WorldCom has offered no new evidence to support its positions. *Tr. Vol. IV, p. 476 (Caldwell)*.

FCCA suggests that BellSouth's UNE rates cannot currently be cost based since BellSouth could not operate in Florida if it were forced to lease its existing network at the current rates. *Tr. Vol. XII, pp. 1844-45 (Gillan); Tr. Vol. XII, pp. 1811-12 (Gillan)*. The FCC has "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." *Tr. Vol. II, p. 204 (Cox); Verizon-MA Order, ¶ 41 (footnotes omitted)*.

FCCA also contends that BellSouth's Daily Usage File ("DUF") rate is excessive and not TELRIC-compliant since it is higher than the rates charged by Qwest or Ameritech for the same element. *Tr. Vol. XII, pp. 1812-13 (Gillan)*. FCCA's analysis of the cost of the DUF rate is flawed because it is unclear how FCCA computes its calculation and compares its calculation to other carriers' rates. *Tr. Vol. II, pp. 205-6 (Cox)*. Furthermore, FCCA fails to demonstrate that BellSouth is not in compliance with the FCC's pricing rules because rate differences between BOCs do not prevent rates from being cost based; rather, they reflect differences in underlying costs. *Id.*

BellSouth has, in fact, submitted in its September 24th filing in Docket No. 990649-TP an updated cost study and reduction in rate for this element due to a change in demand. *Tr. Vol. IV, p. 514 (Caldwell)*. This filing does not call into question the validity of the current TELRIC-based rate because it was established based on the best available data at the time. BellSouth's recent filing shows that BellSouth remains fully committed to working with the FPSC to ensure its rates remain cost-based. *Tr. Vol. IV, p. 516 (Caldwell)*.

For all of these reasons, the Commission should find BellSouth in compliance with checklist item 2.

Checklist Item 3: Access to Poles, Ducts, Rights of Way

Issue 4: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission 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). Does BellSouth currently provide nondiscriminatory access to the poles, ducts, and conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to Section 271 (c) (2) (B) (iii) and applicable rules promulgated by the FCC?

****Position:** BellSouth continues to offer through its interconnection agreements, and through its SGAT, nondiscriminatory access to poles, ducts, conduits and rights-of-way at rates that are just and reasonable. *Tr. Vol. II, p. 112 (Cox)*. No ALEC has filed comments questioning BellSouth's compliance with this checklist item.**

Checklist Item 4: Unbundled Local Loops

Issue 5: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996. Does BellSouth currently provide unbundled local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules and orders promulgated by the FCC?

****Position:** BellSouth provides unbundled access to local loops on a nondiscriminatory basis as required by Sections 251(c)(3) and 271(c)(2)(B)(iv). *Tr. Vol. VIII, p. 1126 (Milner)*. BellSouth has demonstrated that it satisfies the standard of providing ALECs with a "meaningful opportunity to compete."**

Local Loops

- (a) Does BellSouth currently provide all currently required forms of unbundled loops?*
- (b) Has BellSouth satisfied other associated requirements, if any, for this item?*

****Position:** BellSouth provides ALECs with access to all currently required forms of unbundled loops. BellSouth has satisfied all requirements for the provision of local loops,

including performing hot cuts and providing xDSL capable loops, line sharing, and line splitting in compliance with the FCC's rules.**

BellSouth makes several loop types available to ALECs (e.g., SL1 and SL2 voice grade loops; 2-wire ISDN digital grade loops; 2-wire ADSL loops). *Tr. Vol. VIII, pp. 1127-28 (Milner)*. In addition, BellSouth provides ALECs with unbundled loops served by Integrated Digital Loop Carrier ("IDLC") technology. *Id., pp. 1128-31*. BellSouth also allows ALECs to purchase additional loop types through the bona fide request ("BFR") process. *Id., p. 1127*. BellSouth permits ALECs to access unbundled loops at any technically feasible point, provides local loop transmission of the same quality as it provides to itself, and uses the same equipment and technical specifications that BellSouth uses to serve its own customers. *Id., pp. 1126-28*. As of March 31, 2001, BellSouth had provided 116,845 unbundled local loops to ALECs in Florida and over 353,992 unbundled local loops to ALECs in BellSouth's nine-state region. *Id., p. 1128*.

KMC claims that four large customers in Pensacola lose their T-1 service almost every time it rains. *Tr. Vol. X, pp. 1403-4 (Sfakianos)*. As KMC witness Mr. Sfakianos concedes, both BellSouth customers and ALEC customers are affected by weather-related outages, such as those due to tropical storms and other rainstorms. T-1 circuits also are more complex than voice grade circuits, making them potentially more susceptible to problems. Further, KMC has not raised these problems during its weekly meetings with BellSouth. *Tr. Vol. X, pp. 1419-26 (Sfakianos)*. The isolated difficulties cited by KMC do not warrant a finding of noncompliance with this checklist item.

Hot Cuts

There is no question that BellSouth is meeting the FCC's requirements regarding the quality of hot cut performance, notwithstanding ALEC claims to the contrary. The only

complaint about BellSouth's hot cuts was raised by KMC, which expressed concern about BellSouth technicians' adherence to hot-cut procedures. *Tr. Vol. IX, p. 1341 (Milner)*.

BellSouth's impressive hot-cut performance indicates that BellSouth technicians are following the hot-cut procedures necessary to achieve this high level of performance. BellSouth also received ISO 9002 certification that its technicians were following established procedures. *Tr. Vol. IX, pp. 1341-44 (Milner)*. BellSouth has demonstrated that it "provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption." *BA-NY Order*, 4104-05; *see also, Verizon-MA Order*, ¶ 152; *SWBT-KS/OK Order*, ¶ 204.

Access to xDSL-Capable Loops

BellSouth is meeting its obligation to provide xDSL-capable loops. Commissioner Palecki expressed concern that ALECs have access to information about which customers are served by a particular remote terminal. The Commissioner questioned whether disparate access to customer information would place ALECs at a competitive disadvantage in deciding whether to provide xDSL through collocation in a remote terminal. *Tr. Vol. III, pp. 291-93 (Cox)*. As an initial matter, ALECs have access to a variety of publicly-available information, such as population density. *Id.* In addition, at the request of ALECs, BellSouth will provide information regarding the remote terminals, end-user telephone numbers and addresses, and other data relevant to a particular central office. ALECs can use this information to make business decisions whether to offer xDSL through collocation in particular remote terminals. *Tr. Vol. V, pp. 733-35 (Williams)*.

Line Sharing

BellSouth provides access to the high-frequency portion of the loop as an unbundled network element. BellSouth developed the line sharing product in a collaborative effort with

ALECs and is continuing to work cooperatively with the ALECs on an ongoing basis to resolve issues as they arise. BellSouth has complied fully with the requirements of the FCC's *Line Sharing Order* and the *Line Sharing Reconsideration Order*.¹¹ *Tr. Vol. X, pp. 629-33 (Williams)*.

BellSouth developed and tested its line sharing procedures through collaborative meetings with ALECs, including Covad, DuroCommunications, NewEdge, Rhythms, and NorthPoint. BellSouth also 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 in the BellSouth region. BellSouth has provisioned line-sharing on 780 lines in Florida and 2,542 lines region-wide. *Tr. Vol. X, pp. 630-32, 636 (Williams)*.

AT&T and FDN seek to require BellSouth to offer an integrated splitter Digital Subscriber Line Access Multiplexer ("DSLAM") line card at DSLAM-capable BellSouth remote terminals. *Tr. Vol. X, pp. 1505-07 (Turner)*; *Tr. Vol. XI, p. 1622 (Gallagher)*. AT&T and FDN are really seeking to require BellSouth to provide unbundled packet switching. The FCC has already addressed the question of whether ILECs should unbundled packet switching and declined to impose such a duty except in limited circumstances, none of which exist in Florida. Verizon did not allow such an arrangement in Massachusetts, and its application was approved. Moreover, the FCC is explicitly considering this issue in its Advanced Services docket, thereby confirming that there is no current obligation for BellSouth to allow ALECs to collocate line cards. *Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 16 FCC Rcd. 2101, 2109 (2001) ("*Local Competition, Third FNPRM*").

¹¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd. 20912 (1999) ("*Line Sharing Order*"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd. 385 (1999) ("*Line Sharing Reconsideration Order*").

As a separate matter, the dual-purpose line card is installed only in Next Generation Digital Loop Carrier (“NGDLC”) remote terminals, and with the exception of a small number of test systems, none of the NGDLC remote terminals has been equipped with the capability to make use of the card. In addition, if the ALEC were responsible for installing the dual-purpose card instead of the ILEC, this would be neither collocation nor interconnection. This would amount to joint operation of equipment, which would raise countless network operation, performance, reliability, and security issues. *Tr. Vol. IX, pp. 1213-14 (Milner)*. Further, this Commission ruled that packet switching capabilities are not UNEs in Docket No. 990691-TP. Subsequently, in Docket No. 991854-TP, the Commission expressly concluded that “BellSouth shall only be required to unbundle its packet switching capabilities under the limited circumstances identified in FCC Rule 51.319 (c)(5).” *Id., p. 1214*

There are sound policy reasons underlying the FCC’s position that BellSouth is not required to unbundle packet switching or allow ALEC line cards in the BellSouth DSLAMs. First, BellSouth has no competitive advantage in the DSL market, which itself is a mere 26% of the total broadband marketplace. *Tr. Vol. V, p. 654 (Williams)*. Second, the cost to deploy DSLAMS and other DSL equipment are the same as those for both BellSouth and ALECs. *Tr. Vol. X, p. 1555 (Turner)*. Third, as even FDN recognized, there are serious network security concerns associated with allowing ALECs to replace line cards in BellSouth’s DSLAMs. *Tr. Vol. XI, p. 1654 (Gallagher)*.

AT&T incorrectly alleges that BellSouth’s position on NGDLC means that BellSouth will permit ALECs to line share only over copper facilities. *Tr. Vol. X, pp. 1507-17 (Turner)*. This allegation is false. AT&T has a number of options by which it may serve its customers. For example, AT&T can self-provision its own fiber optic cable, install its DSLAM in its own

cabinetry rather than the remote terminal, and acquire only the unbundled loop distribution sub-loop element to serve its customers. AT&T is in no way foreclosed from serving its customers regardless of whether those customers are served over copper loops. *Tr. Vol. IX, pp. 1213-14 (Milner)*.

Line Splitting

BellSouth complies with the FCC requirement to make line splitting generally available in satisfaction of the unbundling requirements of the Act. AT&T's assertion that BellSouth only provides line splitting in limited circumstances is incorrect. *Tr. Vol. X, p. 1489 (Turner)*.

BellSouth offers the same line splitting arrangement to ALECs as approved by the FCC in both the *Southwestern Bell-Texas Order* and the *Line Sharing Reconsideration Order*. BellSouth has been holding line splitting collaboratives to further improve its line splitting procedures. *Tr. Vol. V, pp. 647-48(Williams)*. In addition, BellSouth's SGAT evidences its legally binding obligation to provide line splitting.

AT&T alleges that BellSouth fails to provide operational processes for ALECs to engage in line splitting. *Tr. Vol. X, pp. 1490-91 (Turner)*. BellSouth has provided several notices to ALECs of the process for ordering line splitting. BellSouth also voluntarily hosts a weekly line splitting industry collaborative, where it works with ALECs to refine and enhance the operational processes relating to line splitting. *Tr. Vol. V, pp. 648-49 (Williams)*.

Several ALECs challenge BellSouth's decision not to permit line splitting between BellSouth and an ALEC providing voice services, so that an ALEC voice customer cannot obtain BellSouth DSL service. *Tr. Vol. XI, pp. 1740-42 (Darnell)*; *Tr. Vol. X, p. 1504 (Turner)*; *Tr. Vol. XI, p. 1626 (Gallagher)*; *Tr. Vol. XII, p. 1858 (Gillan)*. BellSouth is not required to provide DSL services on ALEC loops. *Tr. Vol. V, pp. 644-46 (Williams)*. The FCC has clearly and repeatedly

rejected ALEC arguments on this point.¹² *Line Sharing Reconsideration Order*, 397-398; *SWBT-TX Order*, 18517-18 (“we note that under the Line Sharing Order, the obligation of an incumbent LEC to make the high frequency portion of the loop separately available is limited to those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access.”). In the *Line Sharing Reconsideration Order*, the FCC expressly held that the *Line Sharing Order* does not require that LECs provide xDSL service when they are no longer the voice provider. *Line Sharing Reconsideration Order*, 397-398. Even FCCA witness Mr. Gillan concedes that provision of xDSL over ALEC voice loops is not required by Section 271. *Tr. Vol. XII, pp. 1855-56 (Gillan)*. The policy reasons for the FCC’s position are clear – BellSouth has no market power for broadband services and customers have other choices for DSL. While the Commission is free to examine this issue in a separate proceeding, it is not a factor in evaluating BellSouth’s compliance with this checklist item.

AT&T also asserts that BellSouth should deploy splitters on a “line-at-a-time” basis. *Tr. Vol. X, pp. 1492-1500 (Turner)*. BellSouth has no legal obligation even to provide splitters for line splitting or line sharing. *See, e.g., SWBT-TX Order*, 18516. Consequently, there certainly is no obligation to provide a splitter one line at a time, as AT&T witness Mr. Turner conceded. *Tr. Vol. X, p. 1543 (Turner)*. When BellSouth voluntarily provides the splitter, which it will do in either a line splitting or line sharing arrangement, its equipment has either 96- or 144-ports. BellSouth allows ALECs to purchase a full 96-port splitter compliment, or 24- or 8-port increments. *Tr. Vol. V, p. 668 (Williams)*. AT&T’s request that BellSouth deploy an entire shelf

¹² The South Carolina Public Service Commission also rejected this argument in IDS Telecom’s arbitration with BellSouth. *Petition of IDS Telecom, LLC for Arbitration of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252(b)*, Order on Arbitration, Order No. 2001-286, 28-29 (April 3, 2001).

of 96- or 144-ports when an ALEC seeks a single port would be extremely inefficient and would increase the cost to the ALEC. It also would inequitably shift the risks of utilization from the ALEC who requested the equipment to BellSouth.

AT&T's complaint is particularly unreasonable in light of the fact that BellSouth's 8-port option is the result of a settlement between BellSouth and the Data Coalition (an ALEC conglomerate consisting of the major DSL market players, such as Covad) that was reached in the Georgia xDSL proceeding and was extended by BellSouth on a region-wide basis. AT&T's request for "line-at-a-time" line splitting is unreasonable when the ALECs that actually plan to use line splitting to provide service to local customers are satisfied with 8 ports. *Tr. Vol. V, pp. 656-57 (Williams)*.

AT&T also complains that line splitter installations will result in a disruption of service to the customer. *Tr. Vol. X, pp. 1499-1500 (Turner)*. Wiring a loop to a splitter – regardless of who owns the splitter – will always require a minimal disruption of service. *Tr. Vol. V, pp. 651-52 (Williams)*. Disruption of service only can be avoided when there are no wiring changes. AT&T's claim does not demonstrate BellSouth's noncompliance with this checklist item.

AT&T's assertion that BellSouth will not charge ALECs UNE-P rates for a line splitting arrangement again ignores FCC decisions. *Tr. Vol. X, p. 1503 (Turner)*. The FCC repeatedly has held that "if a competing carrier is providing voice service using the UNE-platform, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to *replace its existing UNE-platform arrangement with a configuration that allows provisioning of both data and voice services.*" *Local Competition, Third FNPRM*, 2111 (emphasis added); *see also Verizon-PA Order*, ¶ 197; *Verizon-CT Order*, ¶ 53; *SWBT-KS/OK Order*, ¶ 225; *SWBT-TX Order*, 18515-16.

Thus, the FCC recognized that once the loop and port are used to provide line splitting, as opposed to a simple voice arrangement, the “UNE-P” no longer exists. No wiring changes or testing are required for a conversion from BellSouth retail voice service to UNE-P. In contrast, line splitting requires collocation cross-connections between the loop and the collocated splitter and DSLAM. Another cross-connection is required to carry the voice signal from the collocation space to the voice port. *Tr. Vol. V, pp. 670-71 (Williams)*. The arrangements are fundamentally different. It would, therefore, be unreasonable of BellSouth to charge the same rate for line splitting that it charges for a UNE-P for voice service.

Checklist Item 5: Unbundled Local Transport

Issue 6: Does BellSouth currently provide 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?

(a) Does BellSouth currently provide billing for usage-sensitive UNEs?

(b) Has BellSouth satisfied all other associated requirements, if any, for this item?

****Position:** BellSouth provides unbundled local transport in compliance with Section 271(c)(2)(B)(B)(v) and the FCC’s rules. In addition, BellSouth now provides billing for usage-sensitive UNEs.**

In its 1997 Order, this Commission found that because BellSouth was not able to bill usage sensitive UNEs, BellSouth had not met the requirements of this checklist item. *Final Order on BellSouth Telecommunication, Inc.’s Petition Filed Pursuant to Section 271(c) of the Telecommunications Act of 1996 and Proposed Agency Action Order on Statement of Generally Available Terms and Conditions*, Order No. PSC-97-1459-FOF-TL, FPSC, 107 (Nov. 19, 1997) (“*FPSC Order*”). BellSouth began billing for usage sensitive based UNEs in August, 1997. *Tr. Vol. VII, p. 991 (Scollard)*. No ALEC has challenged BellSouth’s compliance with this obligation.

Only one party raises any concerns with BellSouth's unbundled local transport. WorldCom alleges that BellSouth does not provide, as a UNE, dedicated transport that: (1) connects two points on a ALEC's network (e.g., two switches, two network nodes, or a network node and a switch), or (2) connects a point on a ALEC's network to a point on the network of a different ALEC where the facilities to provide such UNEs are currently in place. *Tr. Vol. XII, pp. 1893-94 (Argenbright)*. While the FCC has required ILECs to provide unbundled transport in the ILEC's existing network, it has specifically excluded transport between other carriers' locations. *Tr. Vol. II, p. 209 (Cox)*. This Commission has previously addressed this issue and reached the same conclusion. *Petition by MCI Metro 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*. Docket No. 00649-TP, Order No. PSC-01-0824-FOF-TP, FPSC (Mar. 30, 2001). ILECs are not required to offer, and are not required to construct, dedicated transport facilities between ALEC network locations where such facilities do not currently exist. *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 15718 (1996) ("Local Competition Order"). *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, ("UNE Remand Order"); *Tr. Vol. II, p. 209 (Cox)*. Thus, BellSouth is in compliance with Checklist Item 5.

Checklist Item 6: Unbundled Local Switching

Issue 7: Does BellSouth currently provide 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?

(a) Does BellSouth bill for unbundled local switching on a usage-sensitive basis?

(b) Does BellSouth currently provide unbundled local switching on both the line-side and the trunk-side of the switch?

(c) Has BellSouth satisfied other associated requirements, if any, for this item?

****Position:** BellSouth provides local switching unbundled from transport, local loop transmission, or other services on both the line-side and the trunk-side of the switch. BellSouth bills for unbundled local switching on a usage-sensitive basis.**

As required by the FCC, BellSouth provides: (1) line-side and trunk-side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared trunk ports; (6) unbundled tandem switching; (7) usage information for billing exchange access and (8) usage information for billing for reciprocal compensation. *BA-NY Order*, 4128-29 (footnotes omitted). In the *Second Louisiana Order*, the FCC concluded that BellSouth proved that it provides, or can provide, the line-side and trunk-side facilities of the switch, the basic switching function, trunk ports on a shared basis, and unbundled tandem switching. *See Second Louisiana Order*, 20724-26, 20732-33. BellSouth continues to provide unbundled switching in accordance with the FCC's requirements. BellSouth provides ALECs unbundled switching capability with the same features and functionality available to BellSouth's own retail operations, in a nondiscriminatory manner. *Tr. Vol. II, pp. 129-34 (Cox)*.

Despite finding that BellSouth provided the basic switching functionality on an unbundled basis, the FCC concluded in the *Second Louisiana Order* that BellSouth failed to meet its burden of proof with respect to access to vertical features, customized routing, usage information for billing exchange access, and usage information necessary for billing for reciprocal compensation. BellSouth's testimony in this proceeding demonstrates that it has remedied the FCC's concerns. *Tr. Vol. II, p. 128 (Cox)*. BellSouth provides all vertical features that the switch is capable of providing whether or not BellSouth offers a particular feature on a retail basis. *Tr. Vol. VIII, p. 1143 (Milner)*. Moreover, BellSouth offers two methods of

customized routing: Advanced Intelligent Network (“AIN”) and Line Class Codes (“LCC”). *Id.*, p. 1146. Finally, BellSouth currently provides usage information via the Access Daily Usage File (“ADUF”), which gives ALECs records for billing interstate and intrastate access charges (whether the call was handled by BellSouth or an interexchange carrier) or reciprocal compensation charges to other LECs and interexchange carriers for calls originating from and terminating to unbundled ports. *Tr. Vol. VII, pp. 991-93 (Scollard)*.

In its 1997 Order, this Commission found that it could not affirmatively conclude BellSouth was provisioning unbundled local switching in compliance with checklist item 6. *FPSC Order*, 111. This finding was based on concerns with: BellSouth’s ability to bill for unbundled switching on a usage-sensitive basis; BellSouth’s inability to provide CABS or CABS-formatted billing; and the lack of availability for ALECs of both the line side and trunk side of the switch. BellSouth’s testimony in this proceeding demonstrates that it has remedied these issues. *Tr. Vol. II, p. 128 (Cox)*. BellSouth has been billing ALECs for usage sensitive based UNEs since August, 1997. *Tr. Vol. VII, p. 991 (Scollard)*. In addition, BellSouth provides CABS-formatted bills for all UNEs provided to ALECs. *Id.*, pp. 991-92. Finally, BellSouth makes both sides of the switch available to ALECs. *Tr. Vol. VIII, p. 1142 (Milner)*. No ALEC has disputed BellSouth’s compliance with these specific obligations.

AT&T states that BellSouth “fails to provide appropriate access to UNEs for customers located within Density Zone 1 in the top 50 MSAs.” *Tr. Vol. X, p. 1472 (Guepe)*. BellSouth has elected to be exempt from providing access to unbundled local switching to serve customers with four or more lines in Density Zone 1 of the Miami, Orlando, and Ft. Lauderdale MSAs. To avail itself of this exemption, the FCC requires BellSouth to combine loop and transport UNEs (also known as the “Enhanced Extended Link” or “EEL”) in the geographic area where the exemption

applies, and to provide such combinations at cost-based rates. *UNE Remand Order*, ¶¶ 3826-28. BellSouth provides new EEL combinations at cost-based prices throughout Density Zone 1 in these three MSAs; therefore, pursuant to the FCC's *UNE Remand Order*, BellSouth is not required to provide local circuit switching on an unbundled basis in these areas. *Tr. Vol. II, pp. 130, 211 (Cox)*.

BellSouth has demonstrated that it provides ALECs with local circuit switching on an unbundled network element basis in compliance with checklist item 6.

Checklist Item 7: 911, Directory Assistance, Operator Services

Issue 8: Does BellSouth currently provide nondiscriminatory access to the following, pursuant to Section 271 (c) (2) (B) (vii) and applicable rules promulgated by the FCC: (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?

(a) Does BellSouth currently provide ALECs access to all information contained in BellSouth's directory listing database?

(b) Does BellSouth currently provide selective routing in Florida?

(c) Has BellSouth satisfied other associated requirements, if any, for this item?

****Position:** BellSouth provides 911 and E911 services, directory assistance, and operator services in compliance with Section 271(c)(2)(B)(vii). BellSouth also provides ALECs with all information in BellSouth's directory listing database and selective routing. BellSouth meets all of the requirements for this checklist item.**

911 and E911 Services

Checklist item 7 requires a BOC to provide nondiscriminatory access to 911 and E911 services. *Second Louisiana Order*, 20737. Both the FCC and this Commission have concluded that BellSouth satisfies this requirement. *Second Louisiana Order*, 20742; *FPSC Order*, 116. BellSouth continues to provide access to 911 and E911 services in a manner consistent with that previously presented to this Commission and the FCC, and no ALEC has filed comments questioning BellSouth's compliance. *Tr. Vol. II, p. 140 (Cox)*.

Directory Assistance/Operator Services

To comply with checklist item 7, BellSouth must also provide access to directory assistance (“DA”) and operator services (“OS”) so that ALECs’ customers can obtain telephone numbers and operator call completion services on a nondiscriminatory basis. 47 U.S.C. § 271(c)(2)(B)(vii). BellSouth provides ALECs access to directory assistance services and operator call completion services at a level of quality and performance that is at least equal to that which BellSouth provides to itself. *Tr. Vol. VIII, p. 1153 (Milner)*.

In its 1997 Order, this Commission found that BellSouth provides nondiscriminatory access to operator call completion services as long as customized routing is available. *FPSC Order*, 113. The Commission concluded, however, that BellSouth was not providing all directory listings to requesting carriers because BellSouth was not giving out ALEC or Independent Company (“ICO”) customer information without permission from the ALEC or ICO because of agreements BellSouth had entered into with them. For this reason, the Commission found that BellSouth was not in compliance with sub-item 2 of checklist item 7. *FPSC Order*, 117-19. Today, BellSouth makes all information contained in BellSouth’s listing database for its own end users, ALECs’ end users, and ICO’s end users available to ALECs in the same manner as it is available to BellSouth. *Tr. Vol. VIII, p. 1157 (Milner)*. No ALEC disputes BellSouth’s position on this issue.

This Commission recently concluded that BellSouth “offers varied choices of customized routing.” *Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 252, Docket No. 000731-TP*, Order No. PSC-01-1402-FOF-TP (June, 28, 2001). BellSouth provides customized routing via the LCC

and the AIN methods. *Tr. Vol. VII, p. 1146 (Milner)*. AT&T asserts that BellSouth has never provided methods and procedures necessary to order customized OS/DA routing for particular customers, and criticizes the BellSouth document that details the procedures for establishing a default customized routing plan as “confusing, inadequate, and impossible to implement.” *Tr. Vol. XI, p. 1598 (Bradbury)*. AT&T is the only party that has complained about customized routing. *Tr. Vol. IX, p. 1214 (Milner)*. Moreover, AT&T’s concerns have been addressed by BellSouth, both through direct negotiations with AT&T and in multiple arbitration proceedings. *Id.* BellSouth has developed detailed ordering procedures, with which AT&T concurred during the above-referenced negotiations, and provided them to ALECs. *Id.* These procedures include several methods and technologies by which ALECs can order and obtain customized routing. Ironically, therefore, the procedures that Mr. Bradbury labels as “confusing, inadequate, and impossible to implement” are the same procedures resulting from the collaboration in which Mr. Bradbury participated. *Id.* AT&T also complains about customized OS/DA routing patterns, but begrudgingly admits that AT&T and BellSouth have agreed to use a selective routing code (“SRC”) as a single field identifier designating customized routing options for individual customers. *Tr. Vol. XI, pp. 1608-10 (Bradbury)*.

AT&T claims that BellSouth does not provide branded or unbranded call routing options that are equivalent to those provided to BellSouth’s retail customers. *Tr. Vol. XI, p. 1600 (Bradbury)*. AT&T asserts that AT&T customers that dial “0” are not provided the option of having their calls automatically routed to AT&T’s service and repair centers. Contrary to AT&T assertions, BellSouth did not cause a “defect” in the Originating Line Number Screening (“OLNS”), but did exactly what AT&T had demanded in prior proceedings and removed any reference to “BellSouth” from the 0- call processing. *Tr. Vol. XI, p. 1217 (Milner)*. Modifying

the OLSN functionality to provide automatic routing would require a substantial monetary investment. Moreover, both the LCC and AIN methods of customized routing offer ALECs the opportunity to direct calls to their own work centers. *Id.* BellSouth is willing to modify the OLSN functionality to provide this service, provided AT&T is willing to pay the costs. *Id.*

BellSouth has addressed the concerns raised by AT&T and provides all ALECs, including those in Florida, with nondiscriminatory access to 911/E911 services, directory assistance services, and operator call completion services at a level of quality and performance that is at least equal to that which BellSouth provides to itself, thereby satisfying the requirements of checklist item 7.

Checklist Item 8: White Pages Directory Listings

Issue 9: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(viii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

****Position:** BellSouth provides nondiscriminatory access to its white pages directory listings in compliance with Section 271(c)(2)(B)(viii). Specifically, BellSouth provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers. No party has presented evidence to the contrary.**

Checklist Item 9: Numbering Administration

Issue 10: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(ix) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?

****Position:** BellSouth currently provides nondiscriminatory access to telephone numbers for assignment to other telecommunications carrier's telephone exchange service customers in compliance with Section (c)(2)(B)(ix) and the FCC's rules. BellSouth offers nondiscriminatory access to telephone numbers and complies with all industry guidelines.**

The FCC has previously concluded that BellSouth met this requirement, *Second Louisiana Order*, 20751, and no ALEC has filed comments questioning BellSouth's compliance. Since that time, NeuStar has assumed all the responsibilities of the North American Numbering Plan Administrator ("NANPA"). *Tr. Vol. VIII, p. 1168 (Milner)*. BellSouth no longer has any responsibility for the assignment of central office codes (NXXs) or for NPA relief planning. *Id., p. 1172*. The FCC now requires that a BOC demonstrate that it adheres to the industry numbering administration guidelines, and the FCC's rules, including accurate reporting of data, to be compliant with this checklist item. *BA-NY Order*, 4136; *SWBT-TX*, 18531. BellSouth offers through its agreements, as well as its SGAT, nondiscriminatory access to telephone numbers. *Tr. Vol. II, p. 147 (Cox)*. BellSouth also adheres to all relevant industry guidelines and FCC rules, including those provisions requiring accurate reporting of data to the Code Administrator. *Id.; SWBT-TX Order*, 18531. For these reasons, the Commission should again conclude that BellSouth complies with this checklist item.

Checklist Item 10: Access to Databases and Signaling

Issue 11: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(x) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?

****Position:** "BellSouth's agreements, as well as its SGAT, provide for nondiscriminatory access to BellSouth's signaling networks and call-related databases used for

call routing and completion.” *Tr. Vol. II, p. 149 (Cox)*. No ALEC has filed comments questioning BellSouth’s compliance.**

Checklist Item 11: Number Portability

Issue 12: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xi) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?

****Position:** BellSouth has implemented a comprehensive process to provide local number portability in conformance with Section 271(c)(2)(B)(xi) and the FCC’s regulations; it provides both interim and permanent number portability to competing carriers through remote call forwarding, direct inward dialing, and directory number routing indexing. *Tr. Vol. VIII, pp. 1186-87 (Milner)***

BellSouth provides local number portability to enable customers of facilities-based ALECs to retain existing telephone numbers “without impairment of quality, reliability, or convenience,” 47 U.S.C. § 153(30). Thus, BellSouth is in compliance with this checklist item.

Reassigned Numbers

Although BellSouth complies fully with checklist item 11, AT&T complains that when a telephone number is ported to AT&T, the number is sometimes erroneously reassigned to a new BellSouth line. *Tr. Vol. XI, p. 1670 (Berger)*. Because this is not a widespread problem, BellSouth did not discover this issue in its current form until the last quarter of 2000. Determined to resolve this issue quickly, BellSouth devised an interim manual solution by January 2001. *Tr. Vol. V, p. 553 (Ainsworth)*. BellSouth is currently pursuing a permanent software solution, and to ensure that ported numbers will not be mistakenly reassigned, this manual workaround will continue until a software solution has been implemented. *Id.*

Additionally, BellSouth began working with ALECs to verify all numbers that have been ported

since January 2000. The review for AT&T was completed on May 23, 2001, and BellSouth does not expect that this problem will reoccur. *Id.*, p. 554. Because the evidence shows that BellSouth was committed to resolving the problem of reassigned numbers as soon as BellSouth was notified, this issue is not a basis on which the Commission should find noncompliance.

Moreover, some porting problems are caused by ALECs. For example, BellSouth recently uncovered a problem with certain telephone numbers that AT&T had ported in Kentucky. *Tr. Vol. IX, p. 1223 (Milner)*. Upon investigation, BellSouth found that AT&T had sent Local Service Requests (“LSRs”) to BellSouth using a valid Company Code. However, when AT&T submitted the Create SV messages to the Number Portability Administration Control (“NPAC”), AT&T used a different Company Code. *Id.* Despite receiving a conflict message from NPAC, AT&T further submitted Activate SV messages to complete the ports. The use of the incorrect code by AT&T prevented BellSouth from recognizing that the numbers had been ported, and billing therefore continued to these end users until BellSouth was able to issue disconnect orders. *Id.* This Commission should not hold BellSouth responsible for ALEC-caused problems.

Incoming Calls

AT&T maintains that some business customers occasionally lose the ability to receive calls from BellSouth customers. According to AT&T, the problem occurs because BellSouth does not perform translation work on switches that cannot implement an automatic “trigger” at the time the number is ported from BellSouth. *Tr. Vol. XI, pp. 1667-68 (Berger)*. To ensure efficient number portability, BellSouth utilizes triggers for the majority of port orders. For some directory numbers that cannot be handled mechanically (*i.e.*, using a trigger order), such as the Direct Inward Dialing (“DID”) to a Private Branch Exchange (“PBX”) referenced by Ms.

Berger, BellSouth has in place a process that calls for the formation of a Project Team to handle the conversion. *Tr. Vol. IX, p. 1218 (Milner)*. BellSouth also has established specific Project Managers to address those orders that are large and complex in order to ensure accurate, timely conversion. *Id.* The Project Team and Managers ensure that complex orders are worked properly and that conversions are accurately handled for all ALECs, including AT&T. *Id., p. 1219.*¹³

Partial Ports

According to AT&T, when a customer chooses to migrate only some of its lines to an ALEC, BellSouth does not properly port the customer's number, especially if it happens to be the main number used by BellSouth for billing. *Tr. Vol. XI, p. 1672 (Berger)*. In these situations, if the customer later wants to change features or call in a repair, AT&T maintains that BellSouth may not be able to process the request. *Id., p. 1673*. Because AT&T fails to provide any concrete examples in support of these allegations, BellSouth cannot specifically address the concerns other than to say that BellSouth successfully conducts partial migrations for ALECs without any interruption to the end user's service every day. *Tr. Vol. V, p. 555 (Ainsworth)*.

ALECs carrying out a partial port must inform BellSouth on the LSR which billing number will be ported and which telephone number the customer wishes to use as BellSouth's new billing number. *Id., pp. 555-56*. If this information is not provided by the ALEC, the efficiency of the partial port process will be affected. *Id., p. 556*. BellSouth cannot be blamed

¹³ While BellSouth takes seriously all customer complaints, whether retail or ALEC, AT&T's assertions must be regarded with skepticism. In response to the AT&T complaints, BellSouth sent a letter to AT&T on August 25, 2000, in which it explained its policy of handling DID conversions and requested a list of the Purchase Order Numbers ("PONs") in question to enable the project team to investigate the issues and work through the resolution of the problems. *Tr. Vol. IX, p. 1220 (Milner)*. To date, AT&T has not responded to this request and has not provided BellSouth with any additional information. Notably, although AT&T chose to raise the issue with the Commission, it did not provide the Commission any specific information that would be useful in making a factual determination. *Id.*

for problems caused by ALECs, and AT&T's complaints are therefore not a basis on which the Commission should find noncompliance.

Snap-Back Services

Despite claiming in her prefiled testimony that a snap-back applied when customers change their minds about switching local service providers from BellSouth to an ALEC, Ms. Berger of AT&T changed her position on the stand and defined a snap-back as the situation in which something "unusual that happens at the time of the port," and specifically stated that this does not include when a customer changes his or her mind about leaving BellSouth prior to the port. *Compare Tr. Vol. XI, p. 1677 (Berger) with Tr. Vol. XI, pp. 1705-06 (Berger)*. Contrary to AT&T's assertions, the snap-back process is not an efficient means for assuring the continuity of service. *Tr. Vol. V, p. 556 (Ainsworth)*. The most efficient process is for an ALEC to perform adequate pretesting prior to number porting to eliminate any ALEC facility issues. *Id.* Additionally, BellSouth works with ALECs to resolve any post-port service issues at the time of the conversion. *Id., pp. 565-66*. BellSouth's joint resolution process for conversion issues minimizes end user service impacts, additional customer inconvenience, and unnecessary work. *Id., p. 566*. In the case of post-port problems, where the problems were not identified and resolved pre-port, an ALEC can request the immediate return of the customer to Bellsouth. *Id., p. 579-81*. BellSouth will then work with the LCSC to provide new orders and reestablish those orders in an expeditious matter. *Id.*

ZipCONNECT or "Oddball" Code Numbers

AT&T alleges that ZipCONNECT service and the assignment of oddball codes to BellSouth retail customers and customer service centers serve as a barrier to competition for ALECs. AT&T claims that ALEC customers cannot complete calls to these numbers and that ALECs cannot port oddball codes because they are internal to BellSouth. *Tr. Vol. XI, p. 1672*

(Berger). AT&T misunderstands the nature of both the ZipCONNECT service and oddball codes.

ZipCONNECT (sm) service uses BellSouth's AIN platform to perform specialized routing of calls, allowing a subscriber with multiple locations to advertise one number for its service and route calls to different locations depending upon criteria such as the time of day or the calling party's location. *Tr. Vol. IX, pp. 1260-61 (Milner)*. However, this service is unrelated to oddball codes and, in any event, is no longer offered to new customers. *Tr. Vol. IX, pp. 1223-24 (Milner)*. Pursuant to this Commission's Order in WorldCom's arbitration with BellSouth, BellSouth has developed a means for routing calls from WorldCom's POI to BellSouth's AIN platform. *Tr. Vol. IX, p. 1262-63. (Milner)*. Thus, despite AT&T's arguments to the contrary, AT&T could allow its end users to dial ZipCONNECT numbers by obtaining the correct routing information from BellSouth. *Id., p. 1224*.

The term "oddball" codes refers to NXX codes considered by the industry as special use codes. *Id.* There are two categories of oddball codes. One category of oddball code in Florida, the 780 NXX code, is used by BellSouth for its end users' access to support services, such as BellSouth's business offices and repair services. *Id.* BellSouth does not allow use of this Florida oddball code for retail purposes. *Id.* A limited number of special use codes, 203 and 204, have been in use for many years and are used with retail customers. *Tr. Vol. IX, p. 1259 (Milner)*. These special use codes serve the public interest by providing special telephone numbers to ensure that end users know the types of services associated with that number. *Id.* BellSouth provides access to these special use codes pursuant to a recent order of this Commission. *Tr. Vol. IX, pp. 1231, 1269-70 (Milner)*, and has been ordered to return these codes by March 31, 2003. Contrary to AT&T's argument, AT&T could allow its end users to dial the oddball codes

and reach BellSouth support center numbers by obtaining the appropriate routing information from BellSouth. *Id.*

Additionally, AT&T confuses the term “oddball” code with what is known as a “choke” network code, making AT&T’s argument that excessive trunking is necessary for porting oddball codes unpersuasive. *Tr. Vol. XI, p. 1671 (Berger)*. “Choke” codes are used for reducing excessive loads on the Public Switched Network, such as when radio stations broadcast a contest call-in number. *Tr. Vol. IX, p. 1225 (Milner)*. The “choke” codes themselves are not portable, as agreed to by the Southeast Operations Team (of which AT&T was a member) during the initial joint planning of Service Provider Local Number Portability. *Id.* However, the actual numbers behind them however, are portable. *Tr. Vol. XI, p. 1267 (Milner)*. By not actually porting the “choke” code itself, large quantities of queries to the LNP database by all carriers are eliminated, and the ability to maintain the choke aspect of the code is maintained. *Id.* If 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. *Id.*

Caller ID For ALEC Customers

AT&T contends that its customers have experienced problems with their Caller ID because BellSouth has not implemented appropriate capabilities in its Signaling System 7 network. *Tr. Vol. XI, p. 1673 (Berger)*. This issue has been resolved. BellSouth has been in the process of implementing ten-digit Global Title Translation (“GTT”) since March, 2001. *Tr. Vol. IX, p. 1225 (Milner)*. GTT is a technology that allows a carrier to handle calls involving advanced telecommunications services, such as Automatic Callback and Caller Name Delivery. The southeast Florida area was completed in May, 2001, the 904 Numbering Plan Area (“NPA”)

will be completed in August 2001, and the remaining NPAs in Florida were completed by November 2, 2001. *Id.*, pp. 1225-26.

In the interim, BellSouth offered AT&T two interim solutions to update BellSouth's CNAM database, both of which are electronic. The first solution uses the same methodology that BellSouth uses to update the database for its own end users. *Id.*, p. 1226. To accommodate AT&T further, BellSouth developed a second solution that enabled AT&T to pass a simple text file to BellSouth so that it can then update the database. *Id.*, p. 1227. AT&T, however, has only loaded *five* customer names in Florida using this process even though it earlier insisted that BellSouth develop and implement such a process for AT&T's use and even though AT&T chose not to 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. *Id.*, pp. 1227-28. Therefore, AT&T is not at a competitive disadvantage.

Checklist Item 12: Local Dialing Parity

Issue 13: In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide 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?

****Position:** BellSouth provides local dialing parity in compliance with Section 271(c)(2)(b)(xii) and the FCC's rules. No ALEC has filed comments questioning BellSouth's compliance.**

Issue 16: By what date does BellSouth propose to provide intraLATA toll dialing parity throughout Florida pursuant to Section 271(e)(2)(A) of the Telecommunications Act of 1996?

****Position:** BellSouth has been providing intraLATA toll dialing parity throughout Florida since 1997.**

Checklist Item 13: Reciprocal Compensation

Issue 14: In Order PSC-97-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xiii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?

****Position:** BellSouth provides reciprocal compensation arrangements as required by Section 252(d)(2) and the FCC's rules.**

In the *Bell Atlantic-NY Order*, the FCC found that an ILEC complies with checklist item 13 when “it (1) has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and (2) is making all required payments in a timely fashion.” *Bell Atlantic-NY Order*, 4141 (footnotes omitted). BellSouth has in place reciprocal compensation arrangements set forth in its binding interconnection agreements, and BellSouth thereby complies fully with section 252(d)(2). Also, BellSouth makes timely payments pursuant to these compensation arrangements. *Tr. Vol. II, p. 215 (Cox)*. Consequently, not one ALEC in this proceeding contends that BellSouth fails to satisfy the test set forth by the FCC. Additionally, BellSouth has revised the local traffic definition and the reciprocal compensation language contained in the terms and conditions portion of the SGAT that was attached to Ms. Cox's direct testimony in this proceeding, as Exhibit CKC-5, to comply with the FCC's recent Order on Remand, dated April 27, 2001, in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151 (2001) (“*Local Competition Order on Remand and R&O*”).

WorldCom is the only entity that challenges any aspect of BellSouth's compliance with checklist item 13. It insists that Foreign Exchange (“FX”) traffic must be treated as local traffic subject to the payment of reciprocal compensation in order for BellSouth to satisfy checklist item

13. *Tr. Vol. XII, pp. 1906-17 (Argenbright)*. This Commission is addressing the FX issue in the generic proceeding in Docket No. 000075-TP (Phase II). *Tr. Vol. II, p. 216 (Cox)*. Thus, this is not the correct proceeding in which to litigate WorldCom's complaints.

Moreover, reciprocal compensation, which is required by section 251(b)(5), is appropriate only for local traffic. *Id., p. 218*. Both BellSouth and ALECs agree that carriers are permitted to assign NPA/NXX codes in any manner desired, including outside the local calling area or rate center with which the codes are associated. *Id., p. 216*. However, contrary to WorldCom's assertions, the determination of whether a call is local depends on the physical location of the calling and called parties; that is, the end points of a call determine the jurisdiction of the call, not the NPA/NXX dialed. *Tr. Vol. II, p. 218 (Cox)*. If WorldCom chooses to provide its numbers outside the local calling area, calls originated by BellSouth end-users to those numbers are not local calls, and no reciprocal compensation applies. *Id.* BellSouth's position has been approved by several public service commissions, including Kentucky and North Carolina.¹⁴ *Id., pp. 216-17*.

Relying heavily upon an order issued by the California Public Utilities Commission ("PUC"),¹⁵ WorldCom argues that the costs associated with BellSouth's classification of ALEC FX services as toll services effectively bars ALECs from providing such services. *Tr. Vol. XII, pp. 1914-15 (Argenbright)*. The California PUC, however, did not address this issue; rather, it decided only that the ILEC could not restrict the assignment of the ALEC's NXXs. As noted

¹⁴ BellSouth offers in its Standard Interconnection Agreement an option for the parties to treat all calls within a LATA as local calls for purposes of reciprocal compensation. This option is consistent with the Kentucky and North Carolina Commissions' rulings on FX traffic. Likewise, BellSouth's settlements with Level 3 and Adelphia provide that each party will receive reciprocal compensation for terminating all intraLATA traffic. In contrast, WorldCom has not agreed to the same terms in its negotiations with BellSouth in other states. *Tr. Vol. II, pp. 217-18 (Cox)*.

¹⁵ *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, Rulemaking 95-04-043, 26 (California PUC, Sept. 2, 1999).

above, BellSouth is not attempting to restrict a ALEC's ability to assign its NXXs. Rather, the FX issue pertains to whether such calls should be treated as local or long distance for intercarrier billing purposes.

WorldCom also argues that BellSouth does not comply with checklist item 13 because BellSouth insists that an ALEC must provide both geographic comparability and similar functionality in order to be entitled to compensation at the tandem interconnection rate. *Id.*, pp. 1901-06. WorldCom believes that ALECs qualify for the higher tandem interconnection rate by showing only geographic comparability. *Id.*, p. 1905.

WorldCom incorrectly describes BellSouth's position. BellSouth agrees with WorldCom that the test for determining whether an ALEC is eligible to receive the tandem interconnection rate for reciprocal compensation is the single-pronged "comparable geographic coverage" test. *Tr. Vol. II, pp. 212-13, 215 (Cox)*. Nevertheless, under this test, WorldCom still has the burden of proving that it is entitled to the tandem switching rate in every instance based on the geographic coverage of its switch. *Id.*, p. 213.

Furthermore, in its April 27, 2001 Notice of Proposed Rule Making ("NPRM"), which accompanied an *Order on Remand*,¹⁶ the FCC allowed ILECs to exchange all Section 251(b)(5) traffic at the FCC-designated ISP compensation rates rather than at state-approved or state-negotiated rates. *Tr. Vol. II, p. 214 (Cox)*. BellSouth has chosen to exchange all traffic that falls under Section 251(b)(5) at the FCC rates for ISP traffic and therefore offers to pay for all Section 251(b)(5) traffic at the designated ISP compensation rates. *Id.* Thus, the issue of whether WorldCom's switch serves a geographic area comparable to BellSouth's tandem switch is

¹⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order*, (rel. Apr. 27, 2001).

relevant only to the extent that WorldCom, which does not yet provide Section 251(b)(5) traffic in Florida, declines BellSouth's offer to exchange Section 251(b)(5) traffic at the same rate as ISP traffic. *Id.*

Checklist Item 14: Resale

Issue 15: Does BellSouth currently provide telecommunications services available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

****Position:** BellSouth provides resale as required by Sections 251(c)(4) and 252(d)(3) and the FCC's rules.**

Even though the evidence is clear that BellSouth provides a nondiscriminatory opportunity to resell its services, FCCA claims that no meaningful competition has emerged for resale because of unattractive economics and because resale does not permit a carrier to innovate or to offer integrated local/long-distance packages. *Tr. Vol. XII, pp. 1800-01 (Gillan)*. These allegations are based on mistaken assumptions and erroneous data comparisons. To satisfy checklist item 14, BellSouth must demonstrate only that it offers services for resale in compliance with Sections 251(c)(4) and 252(d)(3). Thus, whether resale permits a carrier to innovate or to offer integrated packages is irrelevant to a determination of BellSouth's compliance with checklist item 14. *Tr. Vol. II, p. 219 (Cox)*.

In any event, resale is only one of the three avenues envisioned by Congress for competitive entry. *Id.* ALECs also may seek to compete by purchasing facilities as unbundled network elements from BellSouth or constructing their own facilities. *Id.*, p. 220. In fact, Congress did not view resale as a long-term entry method, and a decline in resale has been expected as ALECs move towards facilities-based competition. *Id.*, pp. 185, 220. Thus, any decline in resale has been expected as local market competition matures and is not evidence of

noncompliance. *Id.*, p. 185. The recent decline in resold lines and the corresponding increase in facilities-based UNE-P offerings support this view. *Id.*

FCCA and FDN argue that this Commission must ensure that BellSouth makes available for resale at a wholesale discount its xDSL services, as per the order issued by the Court of Appeals for the District of Columbia in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (“*Ascent I*”). *Tr. Vol. XI, p. 1626 (Gallagher)*. Their assertions are based upon flawed analyses and statements taken out of context. *Tr. Vol. II, p. 220 (Cox)*.

This Commission asked the parties during the hearing to brief the Commission on the *Ascent I* case and a subsequent case involving the same parties before the same court. Both cases concerned factually distinct situations in which the D.C. Circuit Court of Appeals ruled on the issue of whether an ILEC must provide its xDSL services to ALECs at a wholesale discount. Even a cursory analysis shows that BellSouth does not have to provide such services at a discount in order to satisfy checklist item 14.

Section 251(c)(4) requires only that BellSouth “offer for resale at wholesale rates any telecommunications service that [it] provides *at retail* . . .” 47 U.S.C. § 251(c)(4) (emphasis added). The case upon which FDN and FCCA rely, *Ascent I*, arose from the 1998 merger between Ameritech and SBC. The FCC approved the merger and permitted the new company to offer advanced services through a wholly-owned affiliate separated from the ILEC operations without provisioning advanced services at a wholesale discount. On appeal, the D.C. Court of Appeals essentially held that the advanced services sold through the wholly-owned affiliate were “at retail.” The court ruled that an ILEC may not “sideslip § 251(c)’s requirements by simply offering telecommunications services through a wholly owned affiliate.” *Tr. Vol. II, pp. 220-21 (Cox)*. *Ascent I* does not support FCCA’s and FDN’s arguments. Unlike SBC, BellSouth does

not provide xDSL through a wholly-owned affiliate and does not provide advanced services at retail. Rather, BellSouth only provides these services to telecommunications carriers. *Id.* Thus, Section 251(c)(4) does not apply. *Id.*

Subsequent to the *Ascent I* case, the D.C. Court of Appeals issued another ruling in a case that affected the same parties. *Association of Communications Enterprises v. FCC*, 253 F.3d 29 (D.C. Cir. 2001) (“*Ascent II*”). This case involved an order issued by the FCC in which the agency ruled that the discount-for-resale provision applies when an ILEC offers advanced services to an end-user, but not when it offers such services to an ISP. The FCC reasoned that the latter is not made “at retail” because the ISP packages and ultimately resells the services to end users. The Association of Communications Enterprises (“Ascent”) appealed the FCC’s ruling. The D.C. Court of Appeals stated that Ascent’s claims were meritless. *Ascent II*, 30-31.

After a thorough analysis of the FCC order, the court confirmed the FCC’s position that xDSL services provided to ISPs are not offered “at retail” and do not trigger the discount requirements. Thus, such services need not be offered for resale at a wholesale discount. *Id.*, 33.

Despite the determination by both the FCC and the D.C. Circuit that xDSL services not provided to retail customers are not subject to Section 251(c)(4), FDN argues its position is supported by an Indiana Utility Regulatory Commission (“IURC”) ruling from June 27, 2001. The IURC’s position is based on an indefensible reading of *Ascent II*. The court’s conclusion that the DSL transport service was not offered “at retail” and, thus, was not subject to wholesale discounting under Section 251(c)(4)(A) turned on the fact that the ISP performed retail functions. Deferring to the FCC’s definition, the court used the following meaning of “at retail”: “retail transactions involving *direct sales of a product or service to the ultimate consumer* for her own personal use or consumption.” *Ascent* at 31-32 (emphasis added). Under this definition,

BellSouth undeniably offers its xDSL Internet access service, FastAccess, at retail. However, FastAccess is an information service, not a telecommunications service; thus, it remains outside the scope of § 251(c)(4)(A) even though it is offered at retail. As noted above, the *Ascent* court simply agreed with the FCC that DSL transport provided to end-users was a retail telecommunications service. In no way did the court suggest that an ILEC was required to break apart its DSL-based Internet access offering to create such a service.

This Commission has already found BellSouth in compliance with checklist item 14. Because BellSouth continues to meet the requirements of this checklist item, the Commission should find again that BellSouth satisfies checklist item 14.

Conclusion

Issue 17: If the answers to issues 2 through 15 are "yes," have those requirements been met in a single agreement or through a combination of agreements?

****Position:** BellSouth has a legal obligation to provide each of the checklist items in its interconnection agreements and in its SGAT. *Tr. Vol. II, p. 174 (Cox).***

Issue 18: Should this docket be closed?

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

BellSouth has irreversibly opened the local market in Florida to competition and has provided ALECs with products and services satisfying all 14 points of the Act's competitive checklist. In both their major premises and specific complaints, BellSouth's opponents fail to raise a single valid reason for further delaying BellSouth's Section 271 authority. The time has come to bring the benefits of competition in the interLATA market to Florida consumers. BellSouth is in compliance with the requirements of the Act and applicable FCC orders. BellSouth requests that the Commission order, as follows:

- (1) Find BellSouth is in compliance with Track A;
- (2) Find BellSouth is in compliance with the portions of the competitive checklist at issue in this phase of the proceeding; and
- (3) Approve BellSouth's SGAT.

This 6th day of November 2001.

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