ORIGINAL

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September 23, 1997

Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mrs. Bayo:

Re: **DOCKET NO. 960786-TL**

You will find enclosed an original and fifteen (15) copies of AT&T's Post-Hearing Brief for filing in the above-referenced docket.

Copies of the foregoing are being served on the parties of record in accordance with the attached certificate of service.

Yours truly,

Marsha E. Rule

mr
Enclosures
cc: Parties of Record

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CERTIFICATE OF SERVICE

DOCKET NO. 960786-TL

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties of record this 23rd day of September, 1997:

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth Telecommunications, Inc.'s entry into InterLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996	Docket No: 960786-TL Filed: September 23, 1997

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S POST-HEARING BRIEF

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth Telecommunications, Inc.'s entry into InterLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996	Docket No: 960786-TL Filed: September 23, 1997

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S POST-HEARING BRIEF

AT&T Communications of the Southern States, Inc. ("AT&T") submits this post-hearing brief to the Florida Public Service Commission ("Commission") in Docket No. 960786-TL.

INTRODUCTION

The scope of this proceeding is set by the terms of section 271(c) of the Telecommunications Act of 1996, under which this Commission must formulate a recommendation to the FCC regarding BellSouth's eventual application to provide in-region, interLATA services originating in Florida ("BellSouth's 271 application"). At the time BellSouth files its application, the FCC is required pursuant to section 271(d)(2) to consult with this Commission "in order to verify the compliance of the Bell operating company with the requirements of subsection [271](c). "

The specific measures BellSouth must take to comply with section 271(c) – and the specific determinations to be made by the Commission – are found in section 271(c)(2). In addition to the other requirements set forth in section 271(d)(3), a Bell operating company ("BOC") must meet the following two conditions of section 271(d)(2), before it can enter into the in-region long distance market:

1. It must EITHER:

   a) be "providing" access and interconnection pursuant to approved interconnection agreements [Track A]

   OR

   b) be "offering" access and interconnection pursuant to an approved statement of generally available terms ("SGAT");

2. AND such access and interconnection – whether "provided" under Track A or "offered" under Track B – must meet the Competitive Checklist.

BellSouth has filed a series of draft and "final" SGATS in this proceeding, insisting that it is entitled to rely upon an SGAT to fulfill Track A requirements. Although this stance clearly contravenes section 271(c) and the FCC's recent decision rejecting Ameritech's 271 application ("the Ameritech order"), the Commission elected not to strike or sever the SGAT from this proceeding. Therefore, in addition to making findings regarding BellSouth's compliance with section 271, the Commission should also reject BellSouth's SGAT because it does not comply with the requirements of section 252.

SUMMARY OF ARGUMENT

BellSouth has not met Track A requirements for entry into the interLATA market and it does not qualify for Track B entry. Further, BellSouth's proffered SGAT does not meet the requirements of section 252 and must be rejected by this Commission.

BellSouth bears the burden of proof in this case, and has not come close to meeting it. Although BellSouth has entered into one or more binding interconnection agreements approved under section 252, it cannot meet the requirements of section 271(c)(1)(A) because it has not shown that it is providing access and interconnection to a competing facilities-based provider of residential service. Further, the access and interconnection provided pursuant to its interconnection agreements does not meet the requirements of the Competitive Checklist; the checklist items ordered by competitors have not been furnished in a nondiscriminatory fashion,

nor has BellSouth presented operational evidence to demonstrate that it is presently capable of providing the remaining checklist items in a nondiscriminatory fashion, in quantities that competitors may reasonably demand and at an acceptable level of quality, pursuant to interconnection agreements.

BellSouth's performance regarding unbundled local switching is particularly instructive: BellSouth asserts that it provides local switching in compliance with this item, but in practice, cannot provide a bill for switch usage and has refused to accept AT&T's right to order switching in combination with other unbundled network elements. Further, Mr. Scheye's testimony, although artfully unclear, can lead only to the conclusion that BellSouth believes it can meet its obligation to provide billing detail for the local switch by selling competitors a data tape at a price yet to be named. Although he attempted to avoid a direct response to questions regarding competitors' ability to assess access charges to IXCs originating or terminating calls on a unbundled switch purchased by an ALEC, it appears that BellSouth intends to charge access charges in every situation except that in which BellSouth physically disconnects local switching from other network elements and requires the ALEC to reassemble a network – in violation of FCC rules. The Commission must judge BellSouth's assertions of compliance against BellSouth's blatant disregard of the requirements in section 271 and the FCC's rules, as upheld by the Eighth Circuit.

Further, BellSouth has fallen woefully short of meeting its burden of proof regarding access to its operations support systems ("OSS"). The duty to provide nondiscriminatory access to OSS is not a separate checklist item, but is instead required in order to "provide" other checklist items. Until BellSouth can provide competing carriers with access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing that is equivalent to that which it provides to itself, its customers, and other carriers, it cannot satisfy the checklist items concerning resale or network elements. BellSouth relies upon assertions of compliance, but the small amount of data found in the record belies its assertions.

Finally, BellSouth also failed to prove that it has implemented nondiscriminatory methods and procedures for provisioning service, or that it is able to measure such performance against its own internal processes. Without such data, neither this Commission nor competitors can determine on an empirical basis whether BellSouth actually provides nondiscriminatory access and interconnection as required by the Telecommunications Act and the FCC's rules. Without such proof, competitors – and this Commission – are left with paper promises of compliance.

BellSouth says its network is open to competitors, but the real world facts before the Commission contradict BellSouth's paper promises. The Act requires BellSouth to prove – not just promise – that it can provide all checklist items. The record in this proceeding demonstrates that BellSouth has not come close to meeting this burden of proof.

EFFECT OF THE AMERITECH ORDER

On August 19, 1997, the FCC issued its Memorandum Opinion and Order denying Ameritech Michigan's 271 application in CC Docket No. 97-137[1] (the "Ameritech Order"). In its Ameritech Order, the FCC set forth the standards it applied to Ameritech's 271 application for Michigan, and which it will apply to future 271 applications by Ameritech and other BOCs. The Order goes beyond those issues necessary for rejecting the Ameritech application, for the expressed purpose of providing "guidance" to BOCs and others regarding the type of showing that will be expected in future 271 applications. Ameritech Order ¶¶ 6, 196, 128, 214, 281, 403. Additionally, Chairman Hundt explained that the Order is a "detailed, comprehensive roadmap that makes clear what Bell Operating Companies (BOCs) must do in order to satisfy the open market checklist", and each of the other Commissioners stated that the Order provides

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1 In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan.

"guidance" for future 271 applications. Separate Statements of Chairman Hundt, Quello, Ness, and Chong.

During this Commission's 271 hearing, BellSouth's attorneys and witnesses attempted to downplay the importance of the Ameritech Order by suggesting that it was "poor public policy" (Varner, Tr. 282), not binding upon BellSouth or this Commission, or that it was procedurally inapplicable because it was not a rulemaking proceeding or other statement of general applicability. Such arguments mistake the import of the Order. It does not purport to direct state Commissions how to conduct their proceedings nor does it require BOCs to undertake any particular course of action. Rather, it sets forth very clearly the type of proof and standards of performance which it believes the Act requires for entry into a BOC's in-region interLATA market, and which the FCC will require in future proceedings. The Commission thus can offer the most meaningful consultation and fulfill its role as effectively as possible by providing, at a minimum, the information sought by the FCC, based on the type of proof and standards of performance which the FCC will apply to BellSouth.

In order to provide the most meaningful consultation possible, this Commission should extract from the Ameritech Order two types of information. First, the Commission should note the FCC's requests for certain information from state Commissions so that it may provide such information. For example, the FCC clearly wishes state Commissions to develop a detailed factual record, which should include an analysis of the state of local competition. Ameritech Order ¶¶ 30,34. Additionally, the FCC requested state Commissions to analyze applicants' compliance with each item of the Competitive Checklist (¶116), urged Commissions to address BOC showings on pricing of checklist items (¶¶ 281, 288), and encouraged state Commissions to identify other factors that should be addressed by the FCC, including the weight to be attached to such factors (¶398).

Next, this Commission should examine the FCC's interpretation of 271 standards and requirements, in order to provide a meaningful and effective consultation as to whether BellSouth has met such standards or implemented such requirements. For example, the FCC

noted (among other things) that "the ultimate burden of proof with respect to factual issues remains at all times with the BOC" (¶43), announced that promises of future performance "have no probative value" regarding checklist compliance (¶55), defined the obligation to "provide" a checklist item under Track A to require the BOC either to actually furnish an item or demonstrate, pursuant to an approved interconnection agreement and via operational evidence, its ability to furnish the item (¶110), stated that it would require empirical data regarding a BOC's provision of access to OSS functions to support provision of network elements, including combinations of network elements (¶¶ 128, 138,161), and announced the type of empirical evidence it would expect in order to determine whether the BOC was providing nondiscriminatory access to OSS functions (¶212). The Commission should determine whether BellSouth meets these and other standards announced in the Ameritech Order, so that it may include such findings in its consultation to the FCC.

The FCC characterized the state Commissions' 271(d)(2) consultation as "an opportunity to present their views regarding the opening of the BOCs' local network to competition", and explained that state Commissions enjoyed a "unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition." Ameritech Order ¶30. The FCC made clear, however, that the deference it would accord to a state Commission's consultation would depend on the underlying record developed by each Commission:

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

Ameritech Order at ¶ 30. This Commission should ensure that its consultation is as meaningful and effective as possible by providing, at a minimum, the type of information sought by the FCC, according to the standards and requirements that the FCC will apply to BellSouth's 271 application.

ARGUMENT

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

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AT&T's Position: No. Although Section 271(c)(1)(A) (Track A) is the appropriate avenue under which BellSouth must apply for interLATA authority, it cannot meet Track A requirements at this time because it is not providing access and interconnection to "one or more unaffiliated competing providers of telephone exchange service . . . to residential and business subscribers" who provide service to both residential and business subscribers exclusively or predominantly over their own facilities.

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In order to enter the interLATA market, BellSouth must meet the requirements of Track A. BellSouth has agreed and testified that it is proceeding under Track A, not Track B. In order to meet the requirements of section 271(c)(1)(A), BellSouth must prove that it has met every element found in that paragraph. Section 271(c)(1)(A) specifies that a Bell operating company meets the requirements of this subparagraph if it:

- has entered into one or more binding agreements
- that have been approved under section 252, specifying the terms and conditions under which
- the company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service

- to residential and business subscribers, and
- which service is offered either exclusively over the competitors' own telephone exchange service facilities OR predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

BellSouth has entered into binding agreements approved under section 252, and is providing limited access and interconnection to some carriers, but such carriers are not "competitive providers" because the level of competition is *de minimus.* Further, BellSouth has failed to demonstrate that any potential competitor is providing telephone exchange service to residential subscribers on other than a retail basis.

Issue 1.A(a): **Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?**

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AT&T's Position: Yes. BellSouth has entered into arbitrated agreements with AT&T and MCI, among others. Thus, Track A is the appropriate avenue for BellSouth's eventual 271 application, and Track B is closed to BellSouth.

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There is no dispute in the record regarding this issue. All parties agree that BellSouth has entered into one or more binding agreements with competing providers that have been approved under Section 252. In its Ameritech Order, the FCC concluded that "binding agreements" specify rates, terms and conditions under which the BOC will provide access and interconnection, but that such agreements need not include final cost-based rates or all terms of the Competitive Checklist. (Ameritech Order ¶72). BellSouth has not, however, specified the agreements upon which it relies to meet this requirement, which greatly restricts the Commission's ability to test its compliance with other requirements of section 271(c)(1)(A).

Issue 1.A(b):	**Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?**
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AT&T's Position:	No. BellSouth is providing very limited access and interconnection to some carriers with whom it has interconnection and resale agreements, but such providers are not "competing providers" as defined in the Ameritech Order because there is no "actual commercial alternative" to BellSouth. Further, by failing to state with specificity the agreements upon which it relies to meet this requirement, BellSouth has failed to meet its burden of proving compliance with this requirement.
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It is clear from the record that BellSouth is providing some form of access and interconnection to some carriers. While AT&T and others took the prehearing position that BellSouth could not meet this requirement of 271(c)(1)(A) unless it provided access and interconnection sufficient to satisfy the requirements of the Competitive Checklist, it appears that the FCC has not interpreted this requirement quite so broadly in the Ameritech Order. Instead, the FCC's analysis focused on the nature and level of competition rather than the quality of interconnection. Under this analysis, BellSouth is not "providing access and interconnection to its network facilities for the network facilities of such competing providers" in Florida because the nature and level of competition is insufficient.

It is difficult to conduct an analysis upon BellSouth's case similar to that conducted by the FCC in the Ameritech case because BellSouth has not specified the interconnection agreements upon which it relies to meet this requirement. As with much of BellSouth's case, this leaves parties – and the Commission – with little alternative than to guess what BellSouth may eventually assert and attempt to address those as-yet unstated assertions. Rather than state its arguments and supporting evidence with specificity, BellSouth has chosen to engage in a game of hide-and-seek. This Commission should find that BellSouth cannot meet its burden of

proof in the absence of clearly stated evidence and arguments upon which it intends to rely. Such clear statements are sadly lacking in this record.

The FCC stated that while section 271(c)(1)(A) requires no specified level of geographic penetration or market share for a new entrant to be considered a "competing provider", it recognized that there is some threshold below which the new entrant is not a competitor for purposes of the Act:

> [T]here may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a "competing provider".

Ameritech Order ¶76, 77. The FCC made no such determination with regard to Ameritech's application because Ameritech relied on three operational carriers to meet this requirement, each of which was serving "thousands" of customers, accepting service requests and providing service to end-users for a fee. (Id. ¶78). For instance, Brooks Fiber, one of those carriers, served almost 16,000 business access lines and almost 6,000 residential access lines in one city alone. In contrast, the record in this case reveals no actual commercial alternative to BellSouth and as yet, no true "competing providers" in Florida.

Issue 1.A(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?**

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AT&T's Position: No. The record shows that no ALECs are providing telephone exchange service to residential customers exclusively or predominantly over their own telephone exchange service, although some ALECs provide residential service via resale and some ALECs provide service to business customers exclusively or predominantly over their own facilities.

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Here again the parties and the Commission are hampered by BellSouth's failure to clearly state the agreements upon which it relies to fulfill this requirement. BellSouth makes the claim that "at least" one and possibly two ALECs are providing facilities-based service over their own networks to both residential and business subscribers. (Tr. 128) Mr. Varner, however, neither named the alleged providers, nor gave any details regarding the access and interconnection to its network facilities it allegedly is providing to the network facilities of these providers. Later, he testified that TCG and MediaOne may be providing service to residential customers, (Tr. 292) There is simply no evidence in the record to support Mr. Varner's assertion.

First, TCG's witness, Mr, Kouroupas, testified that TCG does not provide residential service, and BellSouth made no attempt to rebut this evidence. Second, there are two fatal flaws with regard to BellSouth's apparent reliance on MediaOne to fulfill this requirement. Although Mr. Varner asserts MediaOne's provision of residential service, the record evidence wholly fails to establish that MediaOne provides residential service on a commercial test basis. To the contrary, the only record evidence establishes that MediaOne is providing services to 25 or fewer residences and has not been paid for telephone service provided to residences. (Ex. No. 85 – Florida Cable Telecommunications Association Response to BellSouth's First Interrogatories, Tr. 294). Further, the interconnection agreement between BellSouth and MediaOne was negotiated and approved prior to the enactment of the Telecommunications Act, was not approved pursuant to section 252 of the Act, and simply is not a binding agreement upon which BellSouth may rely in order to satisfy section 271(c)(1)(A).

The Telecommunications Act clearly places upon BellSouth the burden of proving its compliance with the requirements of Track A. BellSouth has elected to obscure its case with vague declarations of compliance rather than explain to the Commission and the parties exactly why it believes it meets the Track A requirements for interLATA market entry and what facts and data it relies upon to prove such compliance. The Commission should refuse to engage further in this shell game and should find that BellSouth has not met its burden of proving compliance with section 271(c)(1)(A).

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

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AT&T's Position: No. Track B provides a limited avenue for entry under circumstances which are not present in this case. BellSouth is precluded from Track B because competing providers, including AT&T, have made qualifying requests for the access and interconnection described in Section 271(c)(1)(A).

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BellSouth cannot proceed under Track B because potential facilities-based competitors have requested access and interconnection from BellSouth in Florida. Despite its claims that a failure to meet the requirements of Track A somehow makes Track B a viable option[2], Track B is closed to BellSouth.

At present, BellSouth has no SGAT: the Commission has neither approved nor allowed one to go into affect. Further, the Commission should reject the SGAT proffered in this docket. As shown below, BellSouth has offered no proof that it complies with the requirements of section 252, nor has it met its burden of proof that it meets the requirements of the Competitive Checklist.

Issue 1.B(a): **Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?**

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AT&T's Position: Yes. A number of such providers, including AT&T, have timely requested access and interconnection with BellSouth pursuant to Section 271(c)(1)(A). Track B therefore is unavailable to BellSouth in Florida.

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2 According to Mr. Carver, a BellSouth attorney, "our position is that if we haven't met Track A, then Track B should be looked at." (Tr. 2060)

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As specified in section 271(c)(1)(B), BellSouth could meet the requirements of Track B only if no competing provider had requested "the access and interconnection described in subparagraph [271(c)(1)] (A)" in a timely fashion. BellSouth admits, and the parties agree, that a number of competing providers have timely requested access and interconnection with BellSouth, and have entered into Commission-approved interconnection agreements that were negotiated or arbitrated pursuant to section 252 of the Act. Track B therefore is unavailable to BellSouth in Florida.

BellSouth Witness Varner admitted at the hearing that BellSouth does not satisfy the prerequisites of Track B. (Varner, Tr. 276; see also Varner deposition at page 24 and Scheye deposition at page 114). The FCC, the U.S. Attorney General, the Attorney Generals from thirteen states, and several State Commissions all have concluded that Track B is not available to BOCs that have received requests for interconnection and access from potential facilities-based competitors. See FCC Order, Application of SBC Communications, Inc., Pursuant to section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma (CC Docket No. 97-121, June 26, 1997) at ¶ 54; DOJ SBC Brief, at 8-10; Reply Comments of the Attorneys General, FCC Docket No. 97-121, at 6-7 (May 27, 1991); see also Order, Kentucky Public Service Commission, (Case No. 96-608, Aug. 21, 1997), at 2. After this Commission has conducted numerous arbitrations and approved numerous negotiated and arbitrated interconnection agreements, it would be ludicrous for BellSouth to argue that no potential facilities-based providers have requested access in Florida.

Although section 271(c)(1)(B) leaves Track B open if a state Commission certified that competitors negotiated in bad faith or violated an implementation schedule set forth in an interconnection agreement, BellSouth has proposed no issue and proffered no evidence attempting to demonstrate that any new entrant negotiated in bad faith or violated any implementation schedule. Moreover, BellSouth has admitted that none of the interconnection agreements its has entered have implementation schedules (Varner, Tr. 303), so there are no

implementation schedules that could be violated. Therefore, this limited Track B exception also is unavailable to BellSouth.

Issue 1.B(b):	**Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?**
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AT&T's Position:	No. No such statement has been approved or permitted to take effect under section 252(f) to date, and the Commission should reject the statement proffered by BellSouth after the close of the hearing in this docket because it does not comply with the requirements of Section 252(f).
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The requirements for state Commission review of a BOC SGAT are set forth in section 252(f)(2), which specifies that a state Commission is prohibited from approving an SGAT unless it finds that the SGAT meets two specific criteria:

- it must comply with section 252(d), which requires nondiscriminatory cost-based prices, and regulations implementing this section; and
- must further comply with section 251, which defines duties of interconnection, unbundled access, and resale, among other things, as well as regulations implementing this provision.

Section 252(f)(2) further allows, but does not require, state Commissions to establish or enforce other requirements of state law in its review of an SGAT, "including compliance with intrastate telecommunications service quality standards or requirements", unless prohibited by section 253 (which discusses state rights to perform certain regulatory functions).

The record in this proceeding is devoid of evidence that would enable the Commission to make the requisite findings or allow the Commission to establish or enforce the permissive service quality standards: BellSouth failed to request issues appropriate to such findings, failed file cost studies or other information in support of its SGAT prices, failed to indicate how it

believes its SGAT complies with any of the requirements of section 251, and generally failed to meet its burden of proof under section 271(2)(B) that the access that will be offered pursuant to the SGAT meets the requirements of the Competitive Checklist.

In addition to being unsubstantiated, BellSouth's proposed SGAT also is irrelevant to this Track A proceeding, as will be more fully discussed in Issue I.C., below. Thus, even if BellSouth already had an approved SGAT, it could not rely upon its provisions to how that it meets any item of the Competitive Checklist.

The course of conduct chosen and followed by BellSouth in this proceeding was designed to elude the Commission's consideration of an SGAT, rather than aid it. The Commission and the parties have no obligation to state or prove BellSouth's case, yet BellSouth attempts to place them in this position by forcing them to chase after vague assertions of compliance with the Act. The Commission should refuse to engage in BellSouth's game of hide and seek, and should reject its SGAT for lack of proof that it meets the standards of section 252(f) or 272(c)(2)(B).

A. BellSouth Failed to Establish That Its Proposed SGAT Rates Comply With The Pricing Provisions Of Section 252(d) Of The Telecommunications Act

Section 252(d) of the Act requires that BellSouth's proposed SGAT rates for interconnection and network elements be cost-based and nondiscriminatory. BellSouth has not made even a minimal showing that its proposed prices for interconnection and unbundled network elements are nondiscriminatory and cost-based as required by this section of the Act. To date, this Commission has made no finding that the proposed SGAT rates are either nondiscriminatory or cost-based, and the record in this case is insufficient to allow the Commission to make such a finding herein. BellSouth has provided absolutely no cost support or cost studies whatsoever for its proposed prices. (Varner, Tr. 312) The company has taken the position that it need not do so because "the prices in our SGAT come from the arbitration proceedings, and the cost studies were filed in that docket." (Tr. 312)

Like much of BellSouth's case, this assertion doesn't hold up upon inspection. As shown below, on cross-examination Mr. Scheye identified a number of prices that were not arbitrated,

but were instead either negotiated, imposed on an interim basis pending cost determinations, developed in other states, created on some other basis, or even left for future determination. There is no record evidence that any of these prices meet the requirement of section 252(d) that SGAT prices be nondiscriminatory and cost-based - and the Commission is prohibited by section 252(f) from approving an SGAT unless the prices comply with this standard.

In keeping with its pattern of providing as little information as possible on its positions and evidence, BellSouth failed to provide a clear statement of the source of its SGAT prices. The most complete evidence in the record regarding the source of SGAT prices therefore results from cross examination of Mr. Scheye and Mr. Varner.

Arbitrated prices: Mr. Scheye stated that "the vast majority" of the prices in the SGAT price list were taken from arbitration agreements. (Tr. 575) However, Mr. Scheye did not identify those source of each price, so it is impossible to determine exactly which prices were taken from arbitrated agreements. In any event, the fact that the Commission arbitrated a price does not automatically qualify it as either nondiscriminatory or cost-based.

Arbitrated prices were intended to apply only to the parties to the arbitration. In fact, the Commission specifically excluded intervenors from arbitration proceedings on the grounds that the arbitrated rates would apply only to the LEC and the competitor. The Commission recognized that this decision could produce discriminatory pricing, but stated that "persons that cannot reach their own agreements with BellSouth or believe the results of this proceeding are discriminatory may file appropriate petitions or complaints after this proceeding." Orders No. PSC-96-0918-PCO-TP and PSC-96-9664-TP. Further, even in arbitration proceedings parties were able to agree upon some prices. Thus, the Commission cannot assume that every price found in an arbitrated agreement received the type of cost scrutiny contemplated under section 252(f).

Interim prices: Interim prices resulting from arbitration proceedings share the same infirmity discussed above regarding possible discriminatory effect. They additionally fail to pass muster because they have not been the subject of a cost determination, but instead have been

applied before the Commission has had the opportunity to determine whether they are cost-based. It is impossible to tell from the record how many SGAT prices were drawn from interim prices found in arbitration proceedings, but Mr. Scheye stated that the per-line charge for loop distribution, the network interface device, "and a number of the other rates" were "good examples" of such interim rates. (Tr. 576)

Negotiated prices: Neither do negotiated prices enjoy a presumption that they are either nondiscriminatory or cost-based. In fact, not only were negotiated prices developed in a proceeding specifically applicable only to the parties, but negotiated agreements are subject to lesser level of scrutiny than arbitrated agreements.

By the terms of section 252(f), the Commission may only approve an SGAT if it complies with the pricing standards of section 252(d), among other things. Arbitrated agreements must comply with these pricing standards - but negotiated agreements are instead held to a lesser standard under section 252(e)(2)(A), which does not require a cost basis for prices. Negotiated rates mentioned by Mr. Scheye include the per message rates for the advanced intelligent network. (Tr. 580) Mr. Scheye was unclear regarding the source of prices for physical collocation, but thought that BellSouth and MCI "may have agreed" to the rates. (Tr. 578)

Prices developed in other states or drawn from other sources: Mr. Scheye also stated that some prices, such as the price for selective routing (also known a customized call routing), were taken from some unspecified interconnection agreements in Alabama and Kentucky. There is no record evidence whether such agreements were arbitrated or negotiated, whether they were entered into under state law of federal law, or whether they were subjected to any cost scrutiny whatsoever. In fact, Mr. Scheye agreed that there was "no cost documentation for those prices filed in Florida." (Tr. 576)

Similarly, prices for poles, ducts and conduits were taken from unspecified "existing license agreements" (Tr. 579); the third-line, intermediary tandem switching per-minute price was drawn from an order which Mr. Scheye was unable to identify clearly, but stated was not an

arbitration order (Tr. 580); and the non-sent paid report system and OLEC daily usage file rates were not arbitrated, but are "regionally developed rates" contained in unspecified negotiated contracts (Tr. 580)

No set price: Finally, BellSouth did not propose a price for some charges, electing instead to rely upon the bona fide request process. For example, Mr. Scheye testified that the non-recurring charge associated with loop distribution would be set upon bona fide request. (Tr. 581) Mr. Varner testified that the bona fide request process is sufficient to meet the requirement that prices for an element be cost-based "because the bona fide request process requires that the price be cost-based." (Tr. 324) In other words, BellSouth believes that its paper promise to set a cost-based rate in the future via a time-consuming and one-sided process, is sufficient to meet the requirements of sections 252(f) and 252(d). This position simply defies belief.

Overstated Prices: In addition to the procedural problems with BellSouth's SGAT prices noted above, it is apparent from this record that at least some of BellSouth's UNE prices are overstated. (Wood 1940, 1952-1956, 1964-1969). BellSouth's loop price, in particular, is dramatically overstated, as shown between the ESSX loop cost produced by a Florida Commission audit and the price for an unbundled loop claimed by BellSouth in its arbitration with AT&T.

The Florida Commission audited BellSouth's cost of providing ESSX service to several prison facilities in order to determine whether BellSouth was fully recovering its costs under a competitive contract known as a Contract Service Arrangement. The audit report, dated February 16, 1996 and shown in Exhibit No. 26, verified BellSouth's claimed cost of $5.68 per loop. This is substantially less than the $17 cost of an unbundled loop claimed by BellSouth – and upheld by the Commission – in its arbitration with AT&T.

At hearing, Mr. Scheye advanced several conflicting theories for the different costs, stating that the ESSX study was a LRIC study rather than a TSLRIC study; the ESSX study was based on data that was ten years old; the ESSX study is distinguishable because at least one of the four correctional facilities had a fiber ring within a quarter mile of the facility which would have caused the costs to be less; and finally, that ESSX service being provided was for high loop density locations, which would lower costs. (Scheye 747-749) These unsupported theories do not explain the large difference in loop "costs", as shown below.

At hearing Mr. Scheye argued that a LRIC study would produce a lower cost than a TSLRIC study because a TSLRIC study includes additional loading which would inflate a LRIC cost by approximately 20%. This testimony directly contradicts his deposition testimony, where he explained that there was not much difference between LRIC and TSLRIC study results (Ex. 21, p. 215). It also contradicts the Commission's finding in the BellSouth/AT&T arbitration proceeding that BellSouth's LRIC studies produced results sufficiently similar to TSLRIC studies to meet the Commission's TSLRIC standard for establishing prices. Order No. PSC-96-1579-FOF-TP at 24. Additionally, Mr. Scheye conceded that TSLRIC loadings would not increase the cost of a loop from $5.00 to $17.00. (Scheye Tr. 753)

When questioned about his attempt to distinguish the ESSX costs study based on the age of its underlying data, Mr. Scheye suggested that he hadn't meant that costs, presumably for ESSX service, had increased during the last 10 years. (Tr. 751) Instead, he stated that a bigger difference in the cost between a $5 ESSX loop and a $17 unbundled loop is that the unbundled loop cost is based on all manner of different loops, including "loops all over the state, single line loops, multiline loops, etc. They would tend to have longer length, they would tend to be less efficient in the sense that providing a single loop is less efficient than providing than [an ESSX

loop] providing the installations that have 500-plus." (Tr. 755) As Mr. Scheye noted, loop costs tend to increase with length – and since correctional facilities in Florida are typically built in rural areas with low population density, loops would tend to be longer, and therefore more costly, not less so. While there may be economies in trunking density that would tend to decrease cost per loop, such economies cannot explain the vast disparity in $5 ESSX loop costs verified by the Commission's audit and the $17 unbundled loop cost claimed by BellSouth.

Finally, Mr. Wood, after reviewing Exhibit 26, testified that ESSX loops may well have characteristics that cause them to cost less, that the ESSX loop cost in the audit report is probably a good number and that it should be considered as an indicator of unbundled loop costs. He explained that BellSouth's unbundled loop cost study used a sample of loops which excluded all ESSX loops were excluded. (Tr. 1980) Excluding the lower-cost ESSX loops artificially *inflates* the cost of unbundled loops produced by BellSouth's cost study. (Wood Tr. 1980). It is thus clear that BellSouth's unbundled loop price is dramatically overstated.

This record vividly underscores the role motivation plays in performing cost studies. When BellSouth seeks to win a bid to provide service, its loop cost is $5. But when it is required to sell that loop to its competitor at "cost-based" rates, the "cost" is $17.00. This evidence also casts significant doubt on the quality and efficacy of the cost studies that the Commission relied on when setting prices in its arbitration proceedings – and upon which BellSouth seeks to rely herein.

B. BellSouth Has Not Satisfied its Burden of Proving That It is Capable of Providing the Checklist Items it Claims to Offer in its SGAT

BellSouth has not demonstrated that the interconnection, resold services and unbundled network elements listed in its proposed SGAT comply with sections 251 and 252(d) and actually

are available and functioning if ordered now by a CLEC. Accordingly, the Commission should reject the SGAT under section 252(f).

BellSouth maintains that its SGAT should be approved because BellSouth generally offers the items listed in the SGAT, and upon request would provide the items "within a reasonable period of time." (Varner, Tr. 146, 195.) This bare promise to meet the statutory requirements at some unspecified time is insufficient to meet the requirements of the Act. In order for BellSouth to meet its burden under sections 251 and 252, it must demonstrate that it *currently* is able and prepared to provide or make available, access and interconnection in a manner that is just, reasonable, and nondiscriminatory, and at cost-based rates. BellSouth cannot do so.

Before approving BellSouth's SGAT, this Commission should determine that each and every standard and requirement of sections 251 and 252(d) is actually addressed and that the SGAT's provisions can actually be implemented in a realistic way. (See "Evaluation of the United States Department of Justice, SBC Communications-Oklahoma, FCC Docket No. 97-121 at 2-4 (May 16, 1997) ("DOJ SBC Brief"); see also Order Regarding Statement, Georgia Public Service Commission, Docket No. 7253-U at 7 (March 21, 1997).) This determination requires a three part analysis.

First, the Commission must determine whether BellSouth in fact is offering access to *all* required elements. 47 U.S.C.A. section 252(f). This is not the standard applied in the arbitrations conducted pursuant to section 252(b)(1). There, this Commission focused on resolution of a limited number of disputed issues in a manner consistent with the Act. Here, the Commission must determine whether BellSouth is offering statutorily compliant access to *all* the items in section 251: interconnection; access to unbundled network elements; resale; collocation; number portability; dialing parity and nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings; access to poles, ducts, and rights-of-way; and reciprocal compensation arrangements for the transport and termination of telecommunications.

Second, the Commission must find that BellSouth can provide access to all required elements in a manner that is *just, reasonable and nondiscriminatory* , and that complies with the pricing provisions in section 252(d). Id. section 251(b), (c). In other words, competing providers must have the same access to the elements or components in BellSouth's network as BellSouth enjoys itself, and the access provided must be equal. FCC Order No. 96-325 ¶¶ 268-70. Only then can BellSouth be found to have complied with the competitive checklist.[3]

Third, the Commission must determine that BellSouth is capable of providing such access. If BellSouth does not have the *actual capability to provide* the access it claims to offer, the SGAT is meaningless. Approval of the SGAT effectively certifies that the SGAT represents a comprehensive offering that is available to CLECs in compliance with sections 251 and 252(d). If BellSouth is unable to demonstrate that it has methods and procedures in place to provide each element listed in the SGAT, and that those methods and procedures have been tested to ensure that new entrants will be able to provide the same quality of service to their customers that BellSouth is able to provide to its customers, the Commission should not approve the SGAT.

BellSouth's SGAT does not offer statutorily compliant access and interconnection as required by the Act. Further, the SGAT lacks the necessary specificity to demonstrate to the Commission that BellSouth currently is able and prepared to provide the items listed in the SGAT. BellSouth has set forth no adequate methods and procedures for the ordering, provisioning, maintenance, or billing of these items. In addition, BellSouth has offered no mechanism for testing whether it is capable of providing nondiscriminatory access to the features, functions, and capabilities of its network. Moreover, BellSouth has not demonstrated

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3 Mr. Milner uses the phrase "functionally available" repeatedly in his testimony. (See Milner, Tr. 765, 76, 770, 773, 776, 777, 780, 782, 784, 786, 787, 792-794, 801) BellSouth uses the phrase as if it were the appropriate standard for determining whether it has met the checklist requirements. While it is important that the items in the SGAT be functionally available, compliance with the checklist requires that BellSouth be providing "just, reasonable and nondiscriminatory" access.

through operational experience that it actually can provide the SGAT items. (Hamman, Tr. 2679, 2682) Absent methods and procedures to offer the items in the SGAT, a mechanism for measuring whether these methods and procedures work, and actual operational experience, BellSouth's SGAT is nothing more than a naked promise to offer the items at some undetermined future date. (Hamman, Tr. 2680)

BellSouth attempted to convince this Commission that it has detailed ordering and provisioning methods and procedures in place by filing 86 binders with Mr. Milner's testimony. The 86 binders are merely a repetitious collection of BellSouth's internal operating documents along with some information regarding internal testing conducted by BellSouth in March of this year. (Hamman, Tr. 2682) The fact that BellSouth has produced these documents (some of which were copied, verbatim, from BellSouth's access department and thus have no proven application to unbundled network elements) does not prove that BellSouth actually can provide resale and access to UNEs under the terms and conditions required by the Act. Mr. Milner admitted that there is extensive repetition in the binders. (Milner, Tr. 935-36) In addition, he confirmed that the testing referenced in the binders was internal testing with no connection to live activity, and did not involve third parties. (Milner, Tr. 766, 826) Instead the orders were simulated. Further, once a "correct" order was produced, BellSouth stopped the test. No one actually attempted to test the service to see if it would work as ordered. (Milner, Tr. 766-67) In some cases, the test results acknowledge that not enough time was allotted for the testing, or that billing was not yet possible for the service in question. (Milner, Tr. 888-89) In other cases, the testing performed identified problems, yet there is no indication in the binders that the problems were corrected or even addressed. (Milner, Tr. 902-07) Moreover, the binders do not even address ordering procedures, electronic interfaces or performance measurements. Furthermore, actual or test bills rendered by BellSouth to ALECs have revealed billing problems that the end-to-end testing in Florida did not reveal. (Milner, Tr. 908-12, 941-42) Thus, the Commission should not rely on these binders as proof that BellSouth has complied with the checklist.

The simple fact is that BellSouth is not yet able to provide the items in its SGAT. Indeed,

AT&T has a signed interconnection agreement with BellSouth and has been unable to obtain access to the items in that agreement. If BellSouth cannot provide a checklist item pursuant to an interconnection agreement, there is no reason to believe it could provide that item pursuant to an SGAT.

A number of important technical issues must be resolved before BellSouth can comply with its interconnection agreement, all of which are equally applicable to SGAT provisions. These include: development of electronic interfaces; written business processes for access to UNEs, interconnection, and collocation; development of performance measurements; cooperative testing processes; and interface agreements. (Hamman, Tr. 2638) This work is necessary to document the business processes and develop the methods and procedures used to provide the promised access and interconnection. BellSouth's ability to provide the SGAT items cannot be confirmed until these methods and procedures are established, tested and implemented. To date, this has not been completed. (Hamman, Tr. 2631, 2633, 2640)

Meaningful evaluation of the access BellSouth will provide to its network elements under its SGAT should await a real test of that access. Tests must demonstrate that BellSouth actually can provide the items it offers in its SGAT. At the very least, BellSouth must develop methods and procedures to ensure that its offerings are nondiscriminatory, and have been tested to verify that they actually work.

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

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AT&T's Position: No. Section 271(c)(1) specifies that a BOC may attempt to show checklist compliance through one or more interconnection agreements [Track A] or an SGAT [Track B]. Track A and Track B are mutually exclusive; the existence of qualifying interconnection requests under Track A rules out Track B. BellSouth, however, has attempted to comply with section 271(c) by showing that it has "provided" some checklist items pursuant to

> Track A interconnection agreements and has "offered" to provide other checklist items in a Track B SGAT.

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BellSouth's argument that it can pick and choose between interconnection agreements and SGAT provisions to satisfy the Competitive Checklist is wholly unsupported by the terms of section 271 and has been rejected by the FCC. The Act clearly provides that BellSouth must proceed under Track A once it has received qualifying interconnection requests. The Act is equally clear that a Track A applicant must show compliance with interconnection agreements in order to meet the Competitive Checklist, while a Track B applicant must show that its SGAT complies with the Competitive Checklist. AT&T 's position on this issue is more fully set forth in its argument on the Joint Motion to Strike or Sever BellSouth's SGAT, found in the transcript of this hearing at pages 2001 - 2015, and incorporated herein by reference.

Track A and Track B are mutually exclusive avenues for entry into a BOC's in-region interLATA market. The FCC made this clear in its order denying Southwestern Bell's Track B 271 application, released on June 26, 1996 in CC Docket No. 97-121 (the "SBC Order"). In this order, the FCC explained that Track B was available only to applicants who had not received a qualifying interconnection request:

> We conclude that Congress intended to preclude a BOC from proceeding under Track B when the BOC receives a request for access and interconnection from a prospective competing provider of telephone exchange service.

SBC Order ¶39. The FCC also concluded that "Congress intended Track A to be the primary vehicle for BOC entry in section 271." SBC Order ¶ 41.

Further, as an acknowledged Track A applicant, BellSouth cannot use a Track B SGAT to show compliance with the Competitive Checklist. In its Ameritech Order, the FCC confirmed that Track A applicants must show that they meet the Competitive Checklist through state approved interconnection agreements - not SGATs. The FCC noted that a Track A applicant need not "actually furnish" each checklist item, but may, with regard to items not

actually used by a competitor, demonstrate that it is presently able to furnish such items upon request pursuant to state-approved interconnection agreements. Ameritech Order ¶110. The FCC specifically found that "*the mere fact that a BOC has 'offered' to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance* ." (Id., emphasis supplied) In other words, BellSouth's proffered SGAT cannot be used to establish checklist compliance because BellSouth is proceeding (and must proceed) under Track A.

BellSouth has been remarkably difficult to pin down on the issue of exactly how it intended to proceed in this case. In June of this year, during oral argument on a Motion to Dismiss, its counsel refused to acknowledge to the Commission whether it intended to proceed under Track A or Track B; its petition in this case failed to state whether it was attempting to prove a Track A or Track B case and its direct testimony failed to state whether the basis of its case was Track A or Track B, despite clear instructions to do so in Order No.PSC-97-xxxx-PCO-TL.

Mr. Varner's deposition on August 12, 1997 marks the first time BellSouth confessed which Track it was attempting to follow and the way in which it would attempt to prove its case. Even then, staff counsel was able to obtain this information only after a series of pointed questions which Mr. Varner attempted to evade. Finally, however, BellSouth has been forced to concede that this is a Track A case, and that it is attempting to meet its Track A obligations through an SGAT:

> To certify checklist compliance under Track A, the Act says that the Bell Operating Companies met [sic] the requirements with respect to access and interconnection provided pursuant to (c)(1)(A), Track A, has fully implement the competitive checklist. *Fully implemented obviously means that we have either provided or generally offered the items.*

(Varner, Tr. 310, emphasis supplied) Neither the Act nor the FCC's orders allow this approach.

BellSouth doubtless with now quarrel with the wording of this issue and suggest that it is

not really attempting to meet the checklist through a combination of Track A and Track B. The Commission should call an end to this game of cat and mouse, look at the substance of BellSouth's position, and reject it.

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

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AT&T's Position: BellSouth has not provided such interconnection to AT&T.

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BellSouth is in a competitive market today with all local providers and its treatment of incumbent-to-incumbent traffic may be one of the most definitive tests of whether or not its is meeting the nondiscriminatory interconnection standard of the checklist. BellSouth currently exchanges local traffic with every ILEC in Florida except GTE Florida Incorporated. This exchange of traffic is pursuant to interconnection agreements BellSouth has with theses ILECs. (Ex. 66) In addition to the exchange of local traffic, these agreements also provide for the joint provision of numerous other services and cooperative arrangements with BellSouth. The specific provisions of these agreements are being claimed confidential and so cannot be stated here. A review of the provisions of the various agreements shows clearly that the terms and conditions under which BellSouth exchanges local traffic as well as provides other services to and with other ILECs are generally more favorable than those that BellSouth provides its ALEC competitors through arbitrated or negotiated agreements. (See Ex. 66) For example, noticeable by its absence are provisions such as the endlessly time consuming bona fide requests for every detail of the joint provision of service that BellSouth imposes on the ALECs. This disparate

treatment is discriminatory and contrary to the requirements Section 251(c)(2) and, hence demonstrates that BellSouth has not satisfied the requirements of Section 271(c)(2)(B)(i).

BellSouth has consistently argued that the provisions of its interconnection agreements with the small LECs are not relevant to the Commission's determination under Section 271. BellSouth's arguments were overruled twice by the Commission, once in upholding the Chairman's decision to compel production of these documents and a second time prior to the admission of the documents to the evidentiary record. It is anticipated that BellSouth will argue again in its brief that the documents are irrelevant the proceeding or entitled to little or no weight. The fact that the bulk of the agreements were entered into before competition was legally permissible is of no consequence. It is undisputed that BellSouth is today in competition with each of the other ILECs. These agreements are operating today to govern BellSouth's behavior with its ILEC competitors. Any noncompetitive assurances of the past are left to the dust of history. To comply with the nondiscriminatory provisions of the Act, BellSouth must treat all its competitors in a nondiscriminatory fashion, a fashion illustrated by the agreements themselves. These agreements are the perfect illustration of how BellSouth should be acting toward the ALECs. They show how BellSouth can exchange traffic and jointly provide service in an efficient and cooperative manner without using its de facto monopoly status to extract every modicum of competitive advantage over an ALEC. The disparate treatment accorded BellSouth's ALEC competitors as compared to its ILEC competitors underscores BellSouth's failure to comply with the nondiscriminatory provisions of the Act and the requirements of Section 271.

See also discussion above under Issue 1.A(b).

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

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AT&T's Position: No. In order to meet this checklist item, BellSouth must prove that it actually has provided or presently is capable of providing network elements not yet requested access to all requested network elements at parity and on a nondiscriminatory basis. BellSouth has not done so. Among other things, BellSouth has not yet implemented nondiscriminatory access to its OSS to order network elements. Further, BellSouth cannot render a bill for usage sensitive elements of the local switch as required by the Act. 47 U.S.C.A. sections 251(c)(3), 153(29), and 153(45).

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A. BellSouth Has Not Yet Implemented Nondiscriminatory Access to its OSS

BellSouth has not yet implemented nondiscriminatory access to its OSS. This failure makes it impossible for BellSouth to provide network elements or service for resale to AT&T and other potential new competitors at parity and on a nondiscriminatory basis. See FCC Ameritech Order ¶ 131 ("Because the duty to provide access to network elements under section 251(c)(3) . . . include[s] the duty to provide nondiscriminatory access to OSS functions, an examination of a BOC's OSS performance is necessary to evaluate compliance with section 271(c)(2)(B)(ii)"). The FCC emphasized that it is critical that a BOC prove that it provides nondiscriminatory access to ordering and provisioning of unbundled network elements by establishing that it offers an efficient competitor a meaningful opportunity to compete. Id. ¶¶ 139-140; see also id. ¶ 161 (providing nondiscriminatory OSS functions of ordering and provisioning of network elements and combinations of network elements is "critical").

A prerequisite to satisfying the individual requirements of section 251, as well as various items in the competitive checklist, is the development of electronic interfaces that will provide new entrants with nondiscriminatory access to BellSouth's Operations Support Systems. See FCC Ameritech Order ¶ 132 ("an examination of a BOC's OSS performance is integral to our

determination whether a BOC is 'providing' all the items contained in the competitive checklist."). Operations Support Systems ("OSS") are computer-based systems and databases used by telecommunications carriers to perform critical customer and business support functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. Electronic interfaces between a new entrant's OSS and the incumbent LEC's OSS should enable both parties to transmit and receive data efficiently and effectively to perform these critical customer and business support functions. Without electronic interfaces that provide nondiscriminatory access to critical OSS functions, new entrants will not have a meaningful opportunity to compete in the local telecommunications market.

The FCC requires incumbent LECs to provide nondiscriminatory access to OSS. In its First Report and Order, the FCC concluded that OSS were network elements that must be unbundled upon request under section 251(c)(3) of the Act. FCC Order No. 96-325 ¶ 525.[2/] The FCC also concluded that OSS functions are subject to the duty imposed under section 251(c)(3) to provide nondiscriminatory access to network elements, and the duty imposed by section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory conditions. FCC Order No. 96-325 ¶ 517; see also FCC Ameritech Order ¶ 131.

The FCC clarified in its recent Ameritech Order that for OSS functions needed by CLECs that are analogous to OSS functions that a BOC provides to itself in connection with retail service offerings, the BOC must provide access to CLECs that is equal to the level of access that the BOC provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness. FCC Ameritech Order ¶¶ 139-40. The FCC determined that OSS functions associated with pre-ordering, ordering and provisioning for resale services, and repair and maintenance for both resale services and unbundled network elements all have retail analogs. Id.

2/ The United States Court of Appeals for the Eighth Circuit recently found the FCC's conclusion with regard to OSS to be reasonable, in Iowa Util. Bd. v. FCC, Nos. 96-3321, *et al.*, 1997 WL 403401, at *20 (8th Cir., July 18, 1997)

For those OSS functions that have no retail analog such as ordering and provisioning of unbundled network elements, the BOC must demonstrate that the access it provides to CLECs satisfies its duty of nondiscrimination because it offers an efficient competitor a meaningful opportunity to compete. Id.

In its Ameritech Order, the FCC formulated a two part inquiry for assessing OSS compliance. First, has the BOC deployed the necessary systems and personnel, and is the BOC adequately assisting competing carriers to understand how to implement and use all of the OSS functions. Second, are the OSS functions that the BOC has deployed operationally ready as a practical matter. FCC Ameritech Order ¶ 136. Under the first inquiry, the BOC must demonstrate that it has developed sufficient nondiscriminatory interfaces. Id. ¶ 137. Under the second inquiry, the BOC's must provide evidence that the OSS functions they are proposing are handling current demand and will be able to handle foreseeable demand. Id. ¶ 138.

An incumbent LEC, therefore, must provide nondiscriminatory access to the full range of functions needed for pre-ordering, ordering, provisioning, maintenance and repair, and billing of network elements and resold services. The Florida Commission already has required similar access, ordering BellSouth to provide AT&T with the electronic interfaces requested by AT&T. Florida PSC Order No. PSC-96-1579-FOF-TP (December 31, 1996), at Part V.E, *as amended* Order No. PSC-97-0298-FOF-TP (March 19, 1997), at 31-32.

Five characteristics are inherent in electronic interfaces that provide nondiscriminatory access to OSS functions: electronic, standards, capacity, functionality, and advance documentation. (Bradbury, Tr. 2810-12) A nondiscriminatory interface must: (1) provide fully *electronic* interaction, machine-to-machine, between the incumbent LEC's OSS and the new entrant's OSS; (2) adhere to industry *standards* for what is to be communicated (transaction sets), the specific information to be communicated (data elements), and language and rules for communication (protocols); (3) provide sufficient *capacity* to meet combined market volumes of all new entrants and provide response times that are equivalent to that which the incumbent LEC enjoys itself; (4) provide all new entrants requesting access to the incumbent LEC's OSS with

functionality that is at least equal in quality to that which the incumbent LEC provides to other new entrants and that it enjoys itself in servicing customers; and (5) be sufficiently *documented* by specifications, methods and procedures, and other means, in advance of availability, in order to provide new entrants with a reasonable opportunity to develop and deploy necessary systems and processes to use the interface. (Bradbury, Tr. 2810-12)

Internally, BellSouth uses integrated systems to perform pre-ordering, ordering and provisioning functions to support its retail operations. Information is entered and it flows to each of the systems without further human intervention. In contrast, BellSouth relies on one system for pre-ordering and a different system for ordering and provisioning to satisfy the Act's requirement that it provide nondiscriminatory access to its OSS functions. As the FCC recently ruled when rejecting Ameritech's section 271 application in part for its failure to provide electronic interfaces, "[f]or those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers." FCC Ameritech Order ¶ 137. Nevertheless, BellSouth offers it competitors inferior OSS functions that require manual processes for pre-ordering, ordering and provisioning despite providing fully electronic interfaces to itself.

For access to pre-ordering functions, BellSouth relies exclusively on its Local Exchange Navigation System (LENS). For access to ordering and provisioning functions, BellSouth relies primarily on its Electronic Data Interchange (EDI) Ordering interface. BellSouth also relies on the EXACT system for the ordering and provisioning of infrastructure network elements such as trunking, and manual processes like fax machines for complex resold services. Currently, there are deficiencies in all of these systems which must be corrected before BellSouth will be able to offer nondiscriminatory access to its OSS functions for pre-ordering, ordering, and provisioning.

The FCC recently found that the interface developed by Ameritech is discriminatory because it would require a new entrant to enter data manually for various operations once into the interface and a second time into the new entrant's own OSS. FCC Ameritech Order ¶¶ 172-199. The FCC criticized various aspects of Ameritech's proposed interface caused by manual

processing, such as: (a) rejection of orders transmitted electronically but that nevertheless were stopped by Ameritech's interface for manual check and intervention; (b) modifications of due dates in a significant number of instances; (c) untimely firm order confirmation notices and order rejection notices; and (d) OSS capacity constraints in response to increased demand. Id. BellSouth's proposed interface will suffer all of these ills noted by the FCC in rejecting Ameritech's section 271 application. BellSouth acknowledges that the interfaces it has in place at this time for use by CLECs use manual processing in a variety of similar circumstances. For example, BellSouth representatives at the Local Carrier Service Center receive mostly all CLEC orders that are "rejected" and then must manually key information that the system requires before the order can "flow through" BellSouth's electronic ordering systems. (Calhoun, Tr. 1255-56) Meanwhile, BellSouth's internal OSS electronically validates such information, such as addresses and telephone number assignments, on a real-time basis. (Id.) The FCC criticized similar manual processes in its rejection of Ameritech's application for interLATA authority. See, e.g., FCC Ameritech Order ¶ 186-88. For this reason alone, the Commission should rule that BellSouth's OSS interfaces are deficient; therefore, the Commission should reject BellSouth's request for approval of its SGAT, as well as its attempts to satisfy the fourteen point Checklist through either Track A or Track B.

Before its interfaces can be considered "provided" by making them available as a practical matter, BellSouth must demonstrate that its interfaces have been fully implemented and adequately tested. (See FCC Ameritech Order ¶ 138; see also DOJ SBC Brief, Appendix A, at 80-89; see also Georgia SGAT Order at 28-30) BellSouth cannot make that claim. For example, BellSouth has acknowledged that the design of one its primary interfaces (LENS) is not stable and will not be stable for six to nine months. (Bradbury, Ex. JB-3) BellSouth, moreover, has not tested that same interface with the participation of other carriers. (Calhoun, Tr. 1101)

The FCC indicated in its Ameritech Order that section 271 applications should at least provide the following empirical evidence regarding the access provided to OSS functions: (1) average installation intervals for resale; (2) average installation intervals for loops; (3)

comparative performance information for unbundled network elements; (4) service order accuracy and percent flow through; (5) held orders and provisioning accuracy; (6) bill quality and accuracy; and (7) repeat trouble reports for unbundled network elements. FCC Ameritech Order ¶ 212. As was demonstrated throughout the hearing, BellSouth has woefully failed to provide such empirical evidence regarding the functioning of the OSS functions it is providing to CLECs.

The inadequacy of BellSouth's OSS interfaces also defeats BellSouth's ability to claim that its SGAT generally offers interconnection, access to network elements, or resale that meets the requirements of section 251. Absent adequate OSS interfaces, BellSouth's provisioning of interconnection, network elements, and resale is necessarily discriminatory. As discussed below, BellSouth's proposed OSS interfaces do not meet the five characteristics of a nondiscriminatory interface.

1. Pre-Ordering

Pre-ordering is the exchange of information necessary to prepare an order. It usually takes place while a new entrant is on the phone with its customer. Pre-ordering functions include: (1) determining the customer's existing services; (2) determining the services and features available to that customer; (3) validating the customer's address; (4) assigning a telephone number; and (5) scheduling an appointment for required site visits and the commencement of services. (Bradbury, Tr. 2839)

BellSouth proposes to use LENS to provide access to pre-ordering functions. LENS is a web-based system that does not have the characteristics of a nondiscriminatory interface.

a) Lens Is Not A Fully Electronic Interface

LENS is a human-to-machine interface. (Bradbury, Tr. 2820) In other words, a new entrant's service representative communicates with BellSouth's OSS through LENS, instead of a new entrant's OSS communicating with BellSouth's OSS through an electronic interface. Because LENS is a human-to-machine interface, a new entrant's service representative must

input data manually into BellSouth's OSS through LENS, and then manually input that same data into the new entrant's own OSS. (Bradbury, Tr. 2822) By inputting this data in the two systems, the service representative becomes the interface between the two OSS systems, increasing the risk of errors, the transaction time required to process a new customer, and the new entrant's costs. (Id.)

As discussed above, the FCC rejected Ameritech's section 271 application in part because its proposed interface required various manual operations. The Department of Justice ("DOJ") also recently found that the interface developed by SBC Communications ("SBC") is discriminatory because it required manual operations. Essentially, DOJ concluded that the SBC interface was a human-to-machine interface. While DOJ found that such an interface may be suitable for small new entrants, DOJ concluded that such an interface:

> severely limits the ability of competing carriers to electronically transfer information transacted over these interfaces to the CLEC's OSSs, impeding the efficient flow-through of information from SBC OSSs to CLEC OSSs and the concomitant benefits of full automation, discussed above. Thus, unlike SBC's retail operations, a competing carrier with its own separate OSSs is forced to manually enter information twice -- once into the SBC interface and a second time into its own OSSs. For high volumes of orders, such double entry would place a competitor at a significant disadvantage by introducing additional costs, delays, and significant human error.

(DOJ SBC Brief, App. A at 75) LENS has the same deficiency as SBC's interface. This Commission likewise should find that LENS does not provide nondiscriminatory access to BellSouth's pre-ordering functions.

b) LENS Does Not Comply With Industry Standards and Is Not Adequately Documented

To meet the Act's requirements to provide nondiscriminatory access, BellSouth must offer a pre-ordering interface that is integrated with the industry-standard EDI interface because BellSouth has integrated its own internal pre-ordering and ordering functions. The only pre-ordering interface that BellSouth offers, however, is LENS, which is not integrated with the

industry standard EDI ordering interface and is not itself an industry standard. (Calhoun, Tr. 1218)

BellSouth argues that new entrants can develop software to integrate the pre-ordering functions of LENS with the EDI ordering interface and the new entrant's own internal OSS. Such integration, however, is commercially impracticable for several reasons. First, LENS is a proprietary system. Proprietary interfaces like LENS increase costs and decrease efficiency for new entrants that operate nationally because the new entrant must develop systems that are compatible with each incumbent LEC's unique OSS interface. (Bradbury, Tr. 2825) BellSouth, moreover, controls the system's design and has no contractual obligation under its proposed SGAT to conform LENS to industry standards. (Id.) BellSouth's ability to change LENS unilaterally makes it commercially impracticable for new entrants to undertake the develop software and systems to integrate LENS, particularly since the LENS design is not yet stable. (Id. at 2825-39; Bradbury, Ex. JB-3) Second, even if the new entrant could develop such systems, BellSouth has not provided the necessary technical information to enable new entrants to develop systems that could integrate LENS with the EDI interface and the new entrant's own OSS. (Bradbury, Tr. 2825-29)

c) LENS Does Not Provide Equivalent Functionality

LENS currently is unable to provide equivalent pre-ordering functionality to that of BellSouth's internal OSS. In a May 19, 1997 letter to AT&T, the BellSouth project manager for LENS conceded that LENS required additional enhancements to provide equivalent functionality. In addition, the testimony of AT&T Witness Bradbury identify numerous deficiencies in LENS. (Bradbury, Tr. 2841-51, 2858-61) Some of the most problematic of the LENS deficiencies are those associated with the fact that LENS operates in two different modes.

LENS operates in two modes: "Inquiry" and "Firm Order." The Inquiry mode performs various pre-ordering functions independently. The Firm Order mode, on the other hand, performs pre-ordering and ordering functions in a set, integrated process. New entrants must use

the Firm Order mode to submit service orders through LENS, and the Inquiry mode to support the submission of service orders through a means other than LENS (e.g., EDI, PC EDI, or fax). Since BellSouth expects that 80 percent of all new entrant service orders will be EDI orders, most new entrants will use the Inquiry mode of LENS. As explained below, however, the Inquiry mode offers different and generally inferior functionality than is available in the Firm Order for pre-ordering functions.

Address Validation -- New entrants must validate a customer's address repeatedly in the Inquiry Mode in order to obtain telephone numbers, view available features and services, or view the installation calendar. While the Firm Order mode requires only one address validation, it presents other deficiencies.

Telephone Numbers --In the Inquiry mode, LENS limits new entrants to 100 reserved telephone numbers, or 5 percent of the available numbers for any given central office. While that limitation does not apply to the Firm Order mode, a new entrant cannot use the Firm Order mode to reserve a number for an order that will be submitted via EDI, PC EDI, or fax: the selected telephone number is released as soon as the new entrant aborts a particular LENS order. Therefore, as a practical matter, new entrants must use the Inquiry mode of LENS to select telephone numbers for EDI, PC EDI, or faxed orders.

Features and Services -- In the Firm Order mode, a new entrant must perform an address validation and select a telephone number before selecting features and services. Once at the Features and Services section of the Firm Order mode, a new entrant cannot view all of the features and services available at a particular central office. Instead, the new entrant can view only those limited features and services that can be ordered via LENS. That limitation does not apply in the Inquiry mode. Therefore, as a practical matter, new entrants are forced to use LENS in the Inquiry mode to view feature and services information for EDI, PC EDI, and faxed orders. In fact, a new entrant using LENS to submit orders would have to access LENS in the Inquiry mode as well as the Firm Order mode if a customer wanted information about a service that

could not be ordered through LENS. In other words, neither mode by itself allows a complete inquiry at all, let alone on a parity basis.

Due Dates -- In the Inquiry mode, new entrants do not have access to the essential functionality of BellSouth's Direct Order Entry Support Applications Program ("DSAP"). (Tr. 2848) According to BellSouth, DSAP calculates due dates based on an intricate logic incorporating all variables that can influence due dates. Instead of providing access to DSAP's intricate logic, the Inquiry Mode of LENS provides new entrants with an installation calendar that contains only some of the information that may affect due dates. It does not calculate the due date or allow a new entrant to reserve a due date. In contrast, new entrants operating LENS in the Firm Order mode have access to DSAP, as BellSouth also does when using its OSS. As a practical matter, however, new entrants cannot use LENS in the Firm Order mode to obtain due dates for EDI, PC EDI, or faxed orders. That is because a new entrant must go through dozens of steps in order to obtain access to DSAP, which is the last step before submitting a LENS order to BellSouth. Furthermore, there is no guarantee that a new entrant will be able to obtain the same due date when submitting an EDI, PC EDI or faxed service order because a new entrant must actually place an order to reserve the due date or appointment.

BellSouth currently does not offer a pre-ordering interface that is integrated with the EDI ordering interface. BellSouth touts the industry standard EDI as its primary ordering interface through which 80 percent of all service orders will flow, yet new entrants must sacrifice pre-ordering functionality for the ability to submit orders via the EDI ordering interface. Consequently, LENS' dual mode design fails to provide nondiscriminatory access to BellSouth's pre-ordering functions for new entrants using the industry EDI ordering interface (an estimated 80 percent of all orders), new entrants using the PC EDI ordering interface, or new entrants faxing orders by choice or by necessity (i.e., where neither LENS nor EDI supports a particular service or network element).

d) LENS Does Not Have Sufficient Capacity.

BellSouth estimated that it would receive 5000 orders per day on a region-wide basis -- 4000 EDI orders and 1000 LENS orders. (Calhoun, Tr. 1101; Calhoun, Ex. GC-27) BellSouth, however, did not explain the basis for its estimate. Assuming arguendo that BellSouth's estimate was reasonable, BellSouth has not demonstrated that LENS has sufficient capacity to perform the pre-ordering functions for all 5000 orders in addition to performing the ordering and provisioning functions for 1000 LENS orders. BellSouth's claim that LENS has sufficient capacity rests solely upon the unsupported and self-serving testimony of BellSouth Witness Calhoun. BellSouth has not provided the Commission with any test plans or test data for its internal capacity testing, and has not conducted any joint testing to verify the capacity of LENS. Absent any reliable empirical data, BellSouth has not met its burden to demonstrate that LENS has the capacity to support the combined operational requirements of all new entrants.

2. Ordering And Provisioning

Ordering is the process of placing a request into the incumbent LEC's OSS for particular products and services or unbundled network elements or combinations thereof. Provisioning is the process of implementing the order for service. BellSouth stated at the hearing that it is now relying solely on its EDI ordering interface to meet the Act's requirements to provide a nondiscriminatory interface for the ordering and provisioning of resale services and certain telephone-number related network elements (i.e., the NID, loop, switch and interim number portability.) (Calhoun, Tr. 1078-79, 1111, 1163-64, 1198, 1327, 1355) BellSouth's EDI ordering interface, however, has severe limitations and fails to allow new entrants nondiscriminatory access to BellSouth's OSS interfaces.

a) BellSouth's EDI Ordering Interface Is Not Fully Automated

BellSouth's EDI ordering interface is not fully automated and, therefore, requires additional human intervention on the part of new entrants and BellSouth. Ordering through the EDI interface requires additional human intervention on the part of new entrants, (see Calhoun, Tr. 1255, 1266, 1281, 1283, 1293, 1337, 1346-47), because the pre-ordering interface of LENS is

not integrated with the EDI ordering interface. (Bradbury, Tr. 2863, 2918) Consequently, new entrants must manually input the LENS pre-ordering information into the EDI order. (Id.) In contrast, BellSouth's internal systems -- RNS and DOE -- are integrated systems that electronically populate service orders with pre-ordering information. (Calhoun, Tr. 1439, 1443) Because BellSouth does not provide access to an interface that integrates pre-ordering and ordering functions like its own internal gateway system, BellSouth is not providing nondiscriminatory access to ordering functions.

The EDI ordering interface also requires additional human intervention on the part of BellSouth. BellSouth uses its Local Exchange Service Order Generation ("LESOG") system to generate service orders electronically based on data received from new entrants. (Bradbury, Tr. 2863) Although BellSouth asserted that LESOG was fully operational to allow the processing of EDI orders, BellSouth has inputted orders manually into its OSS during joint testing of the EDI interfaces with AT&T rather than use LESOG. This suggests that LESOG is not yet available. (Id.) Moreover, BellSouth has not provided data from its joint EDI testing with AT&T to demonstrate the extent to which EDI orders are being processed electronically through LESOG. Absent reliable empirical data, BellSouth cannot demonstrate that it can provide nondiscriminatory access to its OSS for ordering and provisioning.

b) BellSouth's EDI Ordering Interface Does Not Provide Equivalent Functionality

BellSouth's EDI ordering interface does not provide a new entrant the functionality to order electronically the full range of services that BellSouth enjoys, such as various complex services. (Calhoun, Tr. 1163-64) For those services that cannot be ordered using LENS, the new entrant must use manual processes, thereby increasing the new entrant's expenses and rate of errors. (Bradbury, Tr. 2862) In addition, EDI does not provide new entrants with Firm Order Confirmations ("FOCs") or Completion Notices ("CNs") that have the same level of detail as BellSouth's internal functional equivalents. (Bradbury, Tr. 2864)

EDI also lacks real-time or near real-time functionality. (Bradbury, Tr. 2865) BellSouth's Ordering Guides allow new entrants to reach the EDI interface by sending messages through one of three delivery methods. (Id.) Each method involves a batch process, which prevents BellSouth from processing the order for up to 30 minutes after the new entrant's orders are transmitted. (Id.)

In addition, BellSouth's proposed ordering interfaces do not provide CLECs with tax (Bradbury, Tr. 2931) or pricing information for desired services, or with credit histories on proposed customers, whereas BellSouth representatives have access to such information. (Calhoun, Tr. 1272, 1447) Likewise, a CLEC ordering representative cannot, like a BellSouth representative (see Calhoun, Tr. 1447), view all available telephone numbers (NXXs) for a particular address while pre-ordering or ordering, but instead must enter numbers individually to determine whether they are available. (Calhoun, Tr. 1455-56, 1462-63) Another disadvantage is that a CLEC can only reserve six telephone numbers per order, whereas BellSouth representatives are not so limited. (Calhoun, Tr. 1351, 1355) Similarly, a CLEC cannot, like BellSouth, view a summary of an order and go over the order with a customer before submitting the order. (Calhoun, Tr. 1320, 1441) In addition, a CLEC cannot, like BellSouth, access or change pending orders. (Calhoun, Tr. 1320, 1439, 1443) Another disadvantage is that when a CLEC orders service for a former BellSouth customer and changes only one feature or service, the CLEC must reenter all requested services or features, whereas a BellSouth representative need only click on the additional service or feature. (Calhoun, Tr. 1261-63)

The testimony of BellSouth Witness Calhoun also revealed certain systemic differences between how information in CLEC orders is checked that significantly increase error rates and the time it takes for BellSouth to complete an order. The BellSouth ordering processes contains more edit checks than the interfaces with the CLECs. (Calhoun, Tr. 1267-68) For this reason, it is much more likely that a BellSouth customer representative will verify and correct information while the customer is still on the telephone. In contrast, because the CLEC ordering interfaces permit CLECs to key in various types of incorrect information that is not checked until after the

order has been submitted to BellSouth, numerous CLEC orders must be "rejected" and forwarded to the Local Carrier Service Center ("LCSC") where they will either be manually corrected by BellSouth or referred back to the CLEC, by facsimile or telephone, for "clarification." (Calhoun, Tr. 1317-1319) In many instances, it has taken days before a request for clarification has reached a CLEC, whereas BellSouth internal "rejections" are electronically sent for correction to BellSouth representatives within thirty minutes. (Calhoun, Tr. 1440) Finally, BellSouth Witness Calhoun admitted that the EDI interface currently generates improper due dates when a CLEC orders a change "as is." (Calhoun, Tr. 1329)

Given all of the above, BellSouth simply is unable to provide nondiscriminatory access to ordering and provisioning at this time.

3. Maintenance and Repair

Maintenance and repair involve the monitoring and fault management activities that assure the proper functioning of local services. These activities include trouble reporting, and testing, monitoring and correction of reported problems. BellSouth witness Calhoun testified that BellSouth will offer new entrants two interfaces for access to maintenance and repair functions -- the Electronic Bonding Interface ("EBI") that BellSouth uses for access services, and the Trouble Analysis Facilities Interface ("TAFI") that BellSouth uses to handle most of its repair requests from residential customers. (Calhoun, Tr. 1090) At present, however, neither proposed interface will provide nondiscriminatory access to BellSouth's OSS for maintenance and repair functions.

a) BellSouth's Proposed Maintenance & Repair Interfaces Are Not Fully Electronic

Like LENS, TAFI is a human-to-machine interface that will require new entrants to input trouble reports manually once into TAFI and again into the new entrant's OSS. (Bradbury, Tr. 2877; Calhoun, Tr. 1225) TAFI does not yet provide new entrants with the electronic capability to transmit and receive status information on maintenance orders for local service or certain network elements. (Calhoun, Tr. 1225) BellSouth has not coded its systems to process

these types of maintenance orders without additional human intervention. (Bradbury, Tr. 2915) In contrast, BellSouth has the capability to submit maintenance and repair orders electronically for all types of service. (Bradbury, Tr. 2879-80) That is discriminatory.

b) BellSouth's Proposed TAFI Interface Lacks Sufficient Capacity

BellSouth has not provided adequate data to demonstrate that TAFI has sufficient capacity to handle the operational requirements of new entrants. BellSouth's claim that its TAFI interface has sufficient capacity rests solely on unsupported statements by BellSouth Witness Calhoun. BellSouth has not provided the Florida PSC with the test plan or test data from any internal capacity testing to support Ms. Calhoun's statement, and has not conducted any joint capacity testing. BellSouth's failure to provide supporting data to support BellSouth Witness Calhoun's conclusions do not satisfy BellSouth's burden of proving that TAFI has sufficient capacity.

Even if BellSouth's unsupported claim that TAFI can support 195 simultaneous users were true, that capacity is insufficient to meet the combined operational requirements of all new entrants. AT&T's local maintenance center alone has hundreds of customer service representatives, each of whom may need access to TAFI at any given time. (Tr. 2877) Obviously, other new entrants will have additional customer service representatives that will require access. TAFI's capacity, therefore, is insufficient to handle the combined requirements of all new entrants for access to maintenance and repair functions in substantially the same time and manner as it handles BellSouth's requirements.

Based on all of the above, the interfaces that BellSouth has agreed to, deployed or proposes to offer through its SGAT are inadequate and will not permit BellSouth to meet its obligations under section 251 to provide interconnection and access to unbundled network elements on a reasonable and nondiscriminatory basis as required by Checklist item 2.

B. BellSouth's Position On Combinations Of Unbundled Network Elements Is Contrary To The Law

BellSouth has long sought to evade its obligations under the Act to allow CLECs to purchase combinations of unbundled network elements at cost-based rates. BellSouth now seeks to derive support for its position from the recent decision of the United States Court of Appeals for the Eighth Circuit that reviewed the FCC's rules under section 251 of the Act.[3/] The Court, however, upheld all of the pertinent FCC unbundling rules, vacating only those rules that required incumbents to create wholly new network capabilities for new entrants. Nonetheless, BellSouth claims that the Eighth Circuit rejected the FCC regulations that provide that an incumbent LEC must permit a requesting carrier to provide telecommunications services through combinations of some or all of the incumbent's network element. Specifically, BellSouth contends that the Eighth Circuit held that a requesting carrier may not obtain access to multiple contiguous network elements -- such as the loop and the network interface device, or the switch and the loop -- in the combined form in which they exist in its network at cost-based rates. (Scheye 622-629). BellSouth's position is wrong as a matter of law.

The unbundled network platform is a combination of UNEs, consisting of the unbundled loop, network interface device, local switching, operator systems, common and dedicated transport, signaling and call-related databases, and tandem switching. Consistent with the Act and FCC regulations, the Commission has specifically required BellSouth to make UNEs available singly or in combination. Order No. PSC 96-1579-FOF-TL.. The Act specifically provides that "[a]n incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. section 251(c)(3). The Eighth Circuit affirmed that incumbent local exchange carriers must provide access to combinations of UNEs at

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3/ Iowa Util. Bd. v. FCC, No. 96-3321 et al., 1997 WL 403401 (8th Cir., July 18, 1997).

cost-based rates even if they duplicate services offered for resale. Iowa Util. Bd. v. FCC, Nos. 96-3321, *et al.*, 1997 WL 403401, at **25-26 (8th Cir., July 18, 1997).

BellSouth acknowledged at the hearing that the Court's decision requires BellSouth to make UNEs available at cost-based rates even if they will be combined to replicate an existing BellSouth service. (Varner, Tr. 317, 320) BellSouth, however, denies that it has an obligation to provide CLECs with network element combinations that already exist in its network at cost-based rates. First, BellSouth seems to suggest that when a CLEC orders multiple network elements, BellSouth has a right to break apart the requested elements and require the requesting carrier to incur the wasteful costs of reconnecting them for each end user customer. (Scheye, Tr. 622) This is flatly incorrect and blatantly anticompetitive. Permitting BellSouth to separate elements already connected and then require the CLEC to recombine those same elements would serve no legitimate purpose. Secondly, BellSouth's maintains that if it provides the elements to a CLEC in combination, then it can charge the wholesale rate as if BellSouth were reselling a service. (Scheye, Tr. 623) Both of these proposals -- separating already connected elements and selling combinations at wholesale rates -- violate the Act.

BellSouth should not be permitted to separate elements that are already connected in its network. When a competitor orders elements that are already combined within the ILEC's network, the incumbent need not undertake any physical disconnection/connection activities to provision the order. Under BellSouth's interpretation, however, the incumbent LEC would be permitted first to sever existing connections between the elements -- for example, to disconnect a port from a loop -- and then require the requesting carrier to undertake the pointless task of reconnecting those elements. That proposal not only would create enormous, wasteful and discriminatory inefficiencies, but it also has no other conceivable purpose than to increase substantially the costs of competitive entry, and ultimately, the costs consumers must pay for a competitor's services.

Nothing in the Eighth Circuit's opinion supports this absurd result. Contrary to BellSouth's claim, the Eighth Circuit established unequivocally that: (i) AT&T may order

combinations of BellSouth's network elements, including combinations consisting of all network elements, and (ii) unless requested to do so, BellSouth may not separate currently combined elements in provisioning AT&T's orders. The Eighth Circuit held that the "plain language" of the Act "expressly contemplate[s]" that a requesting carrier may provide services "*entirely* through an ILEC's network" without use of any additional requesting carrier facilities. Iowa Util. Bd., 1997 WL 403401, at **25-26 (emphasis added).[4/] Indeed, BellSouth has acknowledged that it cannot prohibit AT&T or other CLECs from combining elements in any manner they choose and that BellSouth must make those elements available at cost-based rates. (Varner, Tr. 317, 320)

BellSouth fails to acknowledge, however, that the FCC regulations, as recently affirmed in the FCC's Ameritech Order, explicitly prohibit incumbent LECs from separating network elements that are currently combined by the incumbent LEC unless a carrier specifically requests otherwise. 47 C.F.R. section 51.315(b); FCC Ameritech Order ¶ 336. Section 51.315(b) states plainly that "an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." See also FCC Ameritech Order ¶ 336. This section of the FCC regulations was *not* struck down by the Eighth Circuit. See Iowa Utilities Bd., 1997 WL 403401, at *32 n.38 (listing vacated unbundling rules); see also FCC Ameritech Order ¶ 336. The FCC has further explained that the incumbent LEC "must provide, as a single, combined element, facilities that could comprise more than one element." FCC Order No. 96-325 ¶ 295.

The Eighth Circuit similarly affirmed parallel FCC regulations that require incumbents to provide requesting carriers with combinations of network elements on the same terms that the

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4/ The Court held that "'inexpensive' rates" for network elements do not "violate the Act's purposes," for "facilities-based competition" was not "the Act's exclusive goal." Iowa Utilities Bd. at *28. The Court dismissed the incumbents' claims that purchasing access to the entire network would evade either the statutory pricing standard for resale or the Act's joint marketing restriction. Id. at *27. In addition, the Court held that "[s]imply because [an ILEC's] capabilities can be labeled as 'services' does not [mean] that they were not intended to be unbundled as network elements." Id. at *21.

incumbent provides combinations to itself and that bars the discriminatory costs that BellSouth seeks to impose. In particular, those regulations require the ILECs to provide access to "network elements" on terms "no less favorable" to the CLEC than those "under which the incumbent LEC" provides access to itself, 47 C.F.R. section 51.313(b), and makes clear that the duty to provide access to network elements cannot be conditioned on a competitive LEC's request to interconnect its facilities and equipment with those of the ILEC. 47 C.F.R. section 51.307(b); 47 C.F.R. section 51.309(a); FCC Order No. 96-325 ¶ 329. BellSouth's position thus independently violates each of these provisions. All of these regulations plainly describe BellSouth's obligations under section 251 to provide combinations of network elements. In short, BellSouth's position is foreclosed both by the terms of the Act and by four separate FCC regulations that bind the Commission in its resolution of this proceeding. See 47 U.S.C.A. section 252(c)(1). Therefore, BellSouth must make combinations available at cost-based rates in order to comply with the Act and the FCC regulations, and the Commission's Orders. Similarly, BellSouth's SGAT must also be rejected for failure to make UNE combinations available at cost based rates.

When a competitor orders elements that are already combined within the ILEC's network, the incumbent need not undertake any physical disconnection/connection activities to provision the order. BellSouth's refusal to provide network elements in the combined form in which they ordinarily are found in the network, and to require competitors to engage in the needless and wasteful task of "recombining" them, can only be designed for one purpose: to thwart altogether the ability of competitors to enter the market by purchasing network elements. That result would patently violate the terms and purposes of the Act, and, more fundamentally, would prevent Florida consumers from receiving the promised benefits of meaningful competition -- *i.e.*, choices of services from multiple providers at competitive prices.

The fact that the Eighth Circuit vacated *other* FCC rules -- *i.e.*, 47 C.F.R. section 315(c) - (f) does not dictate a contrary result. Apart from the fact that the Eighth Circuit vacated those provisions on exceedingly narrow grounds, those provisions address a situation entirely different

from the one in dispute here. They do not address the circumstance in which a CLEC orders network elements that are already combined within the ILEC's network. Instead, section 315(c)-(f) address the situation in which a requesting carrier seeks to order elements of an incumbent's network that are not currently combined in the ordinary course, or to combine the incumbent's elements with the requesting carrier's own facilities. An incumbent provisioning such an order could incur additional costs. Under such circumstances, the Eighth Circuit found that the requesting carrier rather than the ILEC must "do the work." Iowa Util. Bd., 1997 WL 403401, at *25. That holding has no application to the very different question at issue here.

BellSouth's SGAT is deficient because it does not permit CLECs to order combinations of UNEs at cost-based rates as required by section 252(d)(2) of the Act. Although BellSouth has removed the section of the SGAT which required a CLEC to pay BellSouth's retail price less the applicable wholesale discount, when purchasing network elements to create services identical to BellSouth's retail offerings (See SGAT section II(F)), the SGAT still is not in compliance with the Act. Mr. Scheye confirmed that BellSouth intends to charge resale prices when a CLEC orders UNEs which have been combined by BellSouth. (Scheye, Tr. 623) This requirement violates the Act.

There is absolutely no merit to BellSouth's tired claim that when it provides currently combined elements in combination it is reselling a service. As noted above, the Eighth Circuit expressly rejected that argument. As the Eighth Circuit explained, "carriers entering the local telecommunications markets by purchasing unbundled network elements face greater risks than those carriers that resell an incumbent LEC's services" and must incur certain flat-rated charges "without knowing whether consumer demand will be sufficient to cover such expenditures." Iowa Utilities, 1997 WL 403401, at *26. In addition, a competitor seeking to offer services by purchasing network elements must incur a host of costs not incurred by new entrants that engage in resale and that are in addition to the payments to ILECs for network elements. For example, users of unbundled elements must make internal investments and incur expenses to undertake the recording, billing, and other functions required to provide the access services that resellers cannot

offer.[5/] In light of these risks and costs, it is simply untrue that a requesting carrier purchasing access to the UNE platform thereby obtains the benefits of resale at a lesser cost.

In sum, BellSouth's claim that it may separate elements combined in its network and then pointlessly require requesting carriers to recombine them conflicts with the Act, the express terms of binding FCC regulations, the holding of the Eighth Circuit, and the FCC's recent Ameritech Order. Likewise, BellSouth cannot condition provision of elements in combination on the payment of retail rates. As clearly shows, BellSouth has failed to provide UNEs as required by the Act. Further, BellSouth's SGAT fails to permit CLECs to purchase existing combinations of network elements at cost-based rates. Therefore, the Commission should reject the SGAT.

C. BellSouth Does Not Currently Have The Capability To Provide Unbundled Network Elements In Accordance With The Act

Even if BellSouth were willing to provide the platform in accordance with the Act, BellSouth is not in a position to provide the unbundled platform now. Implementation of the unbundled platform has three prerequisites. First, fully tested OSS interfaces between BellSouth and CLECs must be in place. (Bradbury, Tr. 2806-16; Hamman, Tr. 2653) Second, the process by which the competitors will specify the particular features, functions and capabilities of the UNEs necessary to implement service for a customer on the UNE platform along with the internal methods and procedures BellSouth will use to implement other competitors requests

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5/ The forward-looking prices that the Act requires AT&T to pay for network elements *already* reflect the incidental costs associated with the incumbent's initial combination for itself of network elements that are currently combined in its network. In this regard, forward-looking cost estimates on which individual network element rates are based reflect not only the costs of an entire end-to-end network, but also operating and maintenance expenses that include the technicians and equipment used to connect facilities in the ordinary course of business. Thus, as the Eighth Circuit noted, a requesting carrier incurs "combination" costs even when it offers services entirely through network elements purchased from the incumbent that are not incurred when the requesting carrier simply resells an incumbent's services. Iowa Utilities Bd., 1997 WL 403401, at *26.

must be defined, in place, and tested. (Hamman, Tr. 2654) In its SGAT, BellSouth provides only a "switch as is" process in which BellSouth switches a customer based on information BellSouth has on the customer's existing service. BellSouth does not provide a process for a competitor to specify the UNEs required. This "switch as is" process is a "blind" process, and as a result, does not provide the CLEC with the information necessary to implement UNEs in their systems. (Id.) Finally, BellSouth must develop procedures for dealing with large scale transfers of customers to the unbundled platform on a bulk order basis that allows CLECs to specify the UNEs necessary to implement these customers in an efficient manner. If such procedures are not developed, delays in transferring customers will occur. AT&T and other CLECs offering the unbundled platform will suffer because their service will be viewed by customers as unreliable, even though BellSouth is responsible for the delay. (Id.)

In order to determine whether and how BellSouth would provide UNEs, AT&T and BellSouth agreed to jointly conduct a test of UNE combinations. Joint testing between AT&T and BellSouth demonstrates that BellSouth simply is not capable of providing the UNE platform at this time. In attempting to order the UNE platform in Florida on a test basis, AT&T communicated its requirements through a footprint order. (Hamman, Tr. 2652) A footprint order defines what capabilities AT&T requires with respect to UNEs in a particular geographic area. This assures that BellSouth will be ready to provide UNEs in that area. AT&T received no confirmation from BellSouth of its footprint order and no communication on methods and procedures for providing AT&T with the requested access. AT&T then placed four individual orders. BellSouth also failed to confirm individual orders when they were placed or to provide details on the methods and procedures for fulfilling those four orders. (Id.) Until AT&T knows what it is getting when it places orders for UNEs, it will not know (1) if they are available or (2) that BellSouth can provide nondiscriminatory access.

As was noted previously in regard to Mr. Scheye's testimony regarding BellSouth's capability to bill unbundled switching, the testimony is confusing at best. Mr. Scheye on cross examination

admitted several times that BellSouth could not bill for the usage sensitive portions of UNEs on a mechanized basis. (Scheye, Tr. 591, 659) Mr. Scheye's last word on the subject was that BellSouth had the capability of billing, as of August 14, 1997, to bill local switching and local transport usage on a mechanized basis. (LF Ex. 31) However, Exhibit 31 is nothing more than a bald assertion that is based on "new" information he obtained during the hearing from an employee of BellSouth who reportedly talked to some other person in BellSouth. The statement is unsupported by any other evidence in this proceeding.

The simple fact is in this case is that, despite its protestations, BellSouth has still not provided an accurate bill for AT&T's UNE test including the usage sensitive elements. More importantly, it is difficult to determine which statements Mr. Scheye makes are correct. For example, in Mr. Late-filed Deposition Exhibit No. 19 included in Composite Hearing Exhibit No. 21, Mr. Scheye states that "BellSouth has no bills for unbundled network element tests." Yet this statement is clearly contrary to the facts in the form of the actual bills rendered by BellSouth to AT&T in the course of AT&T's UNE platform test with BellSouth. (Ex. Nos. 27 and 94) Similarly, Mr. Scheye states that "Adequate detail is being provided to the carrier, in this case AT&T, for each individual account so that they can in turn bill their individual accounts as they see fit." (Tr. 726) Even a cursory examination of the UNE test bills (Ex. Nos. 27 and 94) rendered to AT&T by BellSouth shows this statement to be incorrect.

The evidence clearly shows that BellSouth cannot accurately bill combinations of UNEs. The bills received for the UNE test should reflect the prices paid for each of the elements ordered as part of the test. Examining the bills in Exhibits Nos. 27 and 94 shows that virtually nothing

on the bills is correct. The price of a loop/port combination is shown on Exhibit 27[6] as $17.00. Yet this is simply the loop rate alone. The bill shows a "1MR" at a rate of $2.00. First a "1MR" is not an unbundled network element (Ex. 21, p. 222) and was not ordered as part of the test. (Ex. 94) Second, the 1MR rate coincides with the port charge (Scheye, Tr. 656, 657) that otherwise should be shown separately or inconjunction with the loop. There is no switching cost shown or any other of the usage sensitive UNEs ordered as part of the test. (Scheye, Tr. 659) There is a "listing not in directory charge" of $1.44. This is not a UNE.(Tr. 658) There are numerous direct dialed long distance calls on the bill. These are not UNEs. (Ex. 21 p223) Further, there is no logical explanation of why BellSouth would bill long distance charges to AT&T on a UNE bill where AT&T is shown as the presubscribed carrier for both interLATA and intraLATA toll calls. (Ex. 27) Under these circumstances, AT&T would be the toll carrier and would bill these toll calls to its customers. There is a South Miami manhole charge of $0.11 which is not a UNE. (Scheye, Tr. 659) None of the other UNEs ordered as part of the test such as local switching, local transport, tandem switching, call completion or directory assistance databases, signaling system databases appears anywhere on the bill. (Scheye, Tr. 651-650; Ex.. 27 and Ex. 94)

UNE test bills are not the only billing problems that AT&T has experienced at the hands of BellSouth. AT&T has also had billing problems with N11 usage by information service providers, directory assistance calls, directory assistance call completion services, three-way

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[6] The UNE platform bills identified as exhibit 27 are duplicates of the bills that were included in Exhibit 94, Late-filed Deposition Exhibit No. 5 to Mr. Hamman's deposition, and Deposition Exhibit No. 19 to Mr. Scheye's Deposition.

calling services, return call services, and others. (See Ex. 94, LF Depo Ex. No. 5) Without accurate bills, BellSouth cannot claim that it has complied with the requirements of the competitive checklist to provide access to UNEs at cost-based rates on a nondiscriminatory basis. First, without usage data, there is no way for a CLEC to check the accuracy of the bill. Second, there is no way for a CLEC to track costs for purposes of creating its own pricing structure. Third, there is no way for a CLEC to monitor network usage to create more efficient networks and more efficient service plans for customers. Fourth, there is no way to bill access charges.

Even if a CLEC does not order the entire UNE platform, but seeks to order one or two elements to combine with its own facilities, at this point, BellSouth has not demonstrated its ability to provide usage sensitive billing. In addition, despite its arguments to the contrary, BellSouth also must develop the ability to bill for UNE combinations at UNE rates. As stated above, the Eighth Circuit found that incumbent LECs must make UNEs available at cost-based rates even if they are combined to replicate a service offered by the LEC. Iowa Utilities, 1997 WL 403401 at **25-26. Therefore, BellSouth must demonstrate the capability to bill for the UNE platform at accurate UNE rates in order to comply with section 251(c)(3) and checklist item 2. It has not done so here.

D. BellSouth's Refusal to Permit a CLEC to Become the Access Provider When it Purchases an Unbundled Switch In Combination with an Unbundled Loop is Discriminatory

When a CLEC purchases an unbundled loop in combination with an unbundled switch, it is undisputed that the CLEC becomes the access provider in terms of the right to bill access charges to interexchange or long-distance calls from other long-distance carriers that terminate on the CLEC's network. (Scheye, Tr. 1713) Despite reluctantly acknowledging this, a position that BellSouth vehemently has denied up until now, BellSouth nevertheless refuses to permit CLECs to recover the access charges that rightfully are theirs.

BellSouth Witness Scheye agreed at the hearing that the Act defines a network element as:

> a facility or equipment used in the provision of telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, *and information sufficient for billing and collection* or used in the transmission, routing, or other provision of a telecommunications service.

47 U.S.C. section 153(29) (emphasis added); (Scheye, Tr. 1720) BellSouth Witness Scheye also agreed that unbundled switching is a network element under the Act's definition, and that "features, functions and capabilities" includes information sufficient for billing and collection.[7/] (Id. at 1722.) Despite these admissions, BellSouth Witness Scheye asserts that the Act's definition of network element only applies to features, functions and capabilities of unbundled local switching sufficient for BellSouth to bill a CLEC for its use of the unbundled switch. (Scheye, Tr. 1723) BellSouth's self-serving interpretation, however, is refuted by the FCC and the language of the Act, both of which clearly include the software function of recording interexchange (long-distance) access usage of an unbundled switch within the Act's definition of the switch as a network element.

The FCC has determined that when a CLEC purchases the unbundled switch from the incumbent local exchange carrier, the CLEC becomes the subscriber's local telephone company with respect to local exchange and exchange access service. The FCC squarely addressed this issue:

> . . . a carrier that purchase the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions and capabilities of the switch,

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7/ The Act also defines telecommunications equipment as including "software integral to such equipment," a definition that also includes usage recording software as part of a switch. (47 U.S.C. section 153(45).)

> including switching for exchange access and local exchange service, for that end user.

Order on Reconsideration, FCC, CC Docket No. 96-98 (Sept. 27, 1996). In addition, three separate FCC regulations require that a new entrant purchasing a switch become the access provider. Under 47 C.F.R. section 51.307(c) BellSouth must provide local switching in a manner that permits a purchaser to provide any service that can be offered by means of that element. Section 51.309(a) prohibits BellSouth from imposing any limitations, restrictions, or requirements that would limit a new entrant's ability to use an unbundled network element to provide any service it chooses. In addition, 47 C.F.R. section 51.309(b) states that a carrier purchasing access to a network element may use that network element to provide exchange access services to itself. Thus, BellSouth's obligations are clear: when a new entrant purchases local switching, BellSouth must permit the new entrant to become the exchange access provider.

Despite the clear language of the Act and the FCC's rulings, BellSouth has taken various positions on this issue in this proceeding and in other proceedings in the region that all have one object -- deny CLECs revenue from long-distance or interexchange access charged for calls that are terminated on the CLECs unbundled switch that it has purchased from BellSouth. The essence of BellSouth's various stratagems is that BellSouth refuses to allow CLECs purchasing an unbundled switch combined with an unbundled loop to act as the access provider to its customers.

BellSouth's latest position, which first appeared late in the hearing during the cross-examination of BellSouth Witness Scheye, is that CLECs must negotiate to pay BellSouth additional money beyond the price of unbundled switching as arbitrated before this Commission to secure the billing detail needed for the CLEC to bill interexchange (long-distance) carriers access charges for terminating calls on the CLECs network.[8/] (Scheye, Tr. 1716) As explained

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8/ BellSouth Witnesses Scheye and Milner both originally asserted at the hearing that BellSouth would not or could not provide the billing usage detail -- from the unbundled switch that a CLEC purchases from BellSouth -- that the CLEC needs to bill access charges to
(Footnote continued on next page)

above, BellSouth has no right to assess additional charges for this usage billing detail beyond those arbitrated before this Commission for unbundled switching network element provided to CLECs.

BellSouth Witness Scheye attempts to characterize the issue of who becomes the access provider as one of "semantics." (Scheye, Tr. 1709) BellSouth knows full well that this is more than a quibble over words. The right to become the provider of exchange access services is a valuable one, permitting the provider to collect access fees. Thus, the FCC was straightforward in stating that the purchaser of unbundled local switching is entitled to the *exclusive* right to provide exchange access.

BellSouth also hangs its conclusion that a purchaser of a combined loop and switch does not have the right to provide exchange access on the thin threads of its argument that such a carrier is purchasing service for resale. (Scheye, Tr. 623) In light of the recent decision of the United States Court of Appeals for the Eighth Circuit, this argument is without merit. Iowa Utilities, 1997 WL 403401. As discussed in more detail above, the Court held that unbundled network elements must be made available at cost-based rates even when a CLEC will use them in combination to replicate a service provided by the incumbent. The Court rejected the contention that the CLEC in that situation has simply purchased service for resale. Thus, BellSouth's resale argument must fail in view of the plain meaning of the FCC's determination that the purchaser of unbundled local switching becomes the access provider.

BellSouth's SGAT regarding UNEs does not comply with FCC regulations. The SGAT should be rejected on that basis. Even if BellSouth were to acknowledge its obligation to permit

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(Footnote continued from previous page)
interexchange (IXC or long-distance) carriers. (Scheye, Tr. 659; Milner, Tr. 845.) BellSouth then filed Exhibit 31, which contradicted this testimony. Scheye explained during cross-examination that he had first discovered late in the hearing that BellSouth had the capability of providing such billing usage detail to CLECs. (Scheye, Tr. 1709.) Late filed Exhibit 31 should be given little or no weight in this proceeding because it constitutes nothing more than a bald unsupported assertion that is contrary to the evidence. As noted previously, BellSouth has yet to provide accurate bills.

a purchaser of a loop and switch combination to become an access provider without having to pay BellSouth fees in addition to the cost of the switch for the usage billing detail needed to bill interexchange (long-distance) access at this time, BellSouth has not put in place a system to support carrier-access billing by new entrants. (Scheye, Tr. 1709) Until such time as BellSouth amends its SGAT to comply with regulations and develops the systems required to support carrier-access billing, it is not in compliance with the Act.

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

AT&T's Position: No. The performance standards and measurements proposed by BellSouth are insufficient to demonstrate parity or nondiscriminatory access.

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A. The Performance Measurements Provided by BellSouth are Deficient

BellSouth's SGAT is deficient because it does not contain performance standards against which to measure the quality of service provided to new entrants. Performance measurements are necessary to determine whether the access BellSouth provides to its network is nondiscriminatory in accordance with sections 251 and 252 of the Act. The Act and its implementing regulations clearly require BellSouth to provide access "that is at least equal in quality to that provided by the [ILEC] to itself." 47 U.S.C.A. section 251(c)(2)-(4); FCC Order No. 96-325, ¶¶ 224, 313, 970 (see 61 Fed. Reg. 45505, 45513, 35570, at ¶¶ 168, 225, 644); 47 C.F.R. sections 51.305(a), 51.311(b). Without specific performance measurements, it will be impossible to determine if BellSouth actually is delivering access that meets these requirements.

Although BellSouth may intend to honor the terms of its SGAT, it has never provided the type of access it now is required to provide. BellSouth could encounter schedule and technical problems when it attempts to implement the SGAT. The only way to determine whether these difficulties are unique to CLECs or whether BellSouth retail customers have the same problems is to monitor performance measurements.

There are five key characteristics of an adequate performance measurement plan. First, the measurements must allow for direct comparison of performance of CLECs versus BellSouth. Second, each measure and applicable terms must be clearly defined. Third, comparisons must be accomplished through generally accepted and documented statistical tests of difference. Fourth, the data collection and reporting methods must permit disaggregation of results based on types of services or types of activities. Finally, results must be reported on a regular basis and made subject to independent validation through an auditing procedure. (Pfau, Tr. 2156-57) The measurements that some parties may have agreed to use as a starting point do not meet these standards. (Id. at 2159-60, 2176-77)

The SGAT does not contain *any* performance standards relating to electronic interfaces. This by itself requires that the SGAT be rejected. Moreover, there are no fully developed performance standards in any interconnection agreement that can be incorporated into the SGAT. BellSouth and AT&T have not negotiated performance measurements relating to electronic interfaces. (Tr. 2211) The system must operate for several months to collect data before such measurements can be established. At present, there is no statistically valid study comparing the performance of LENS to RNS or DOE. (Stacy, Tr. 1505-06, 1519)

BellSouth and AT&T have negotiated some high level performance measurements for some items, and included them in Attachment 12 to their Interconnection Agreement. These measures have been incorporated into the SGAT. As BellSouth witness, Mr. Stacy admitted, however, the measurements agreed to in Attachment 12 are just a "place to start." (Stacy, Tr. 1538) There are additional items that the parties should measure, data must be collected, and target performance levels must be established for all measurements. Indeed, negotiation of target levels will not even start until actual performance begins.

Although BellSouth sent a letter to CLECs proposing target intervals for UNEs, Mr. Stacy candidly admitted that those targets were set unilaterally. (Stacy, Tr. 1689-90) At this point there are neither benchmarks nor ranges of performance established against which performance provided to CLECs can be measured. (Stacy, Tr. 1499-1500, 1565-66)

The parties next must determine how to gather and analyze the appropriate data in order to measure performance against the established targets and determine whether new entrants are receiving service at parity with BellSouth.[9/] At present, although the parties have established basic measurements to get started, six months to a year will be required to determine how the measurements are working and whether additional measures are necessary. Once the data have been gathered and analyzed, identified problems must be addressed and corrected. All of these steps must be completed before BellSouth can establish that it is meeting the requirements of section 251.

In addition, the statistical process control method that BellSouth has proposed is inadequate to assure that CLECs receive nondiscriminatory service from BellSouth. Control limits typically are set so that only a 0.27% probability exists that a data point outside the control limits would erroneously identify unsatisfactory behavior (*e.g.* discrimination). If BellSouth proposes these traditional control limits, it certainly will be well protected from claims of discriminatory behavior. On the other hand, CLECs and the competitive marketplace will be left vulnerable to undetected discriminatory performance. (Pfau, Tr. 3184-85) This Commission should direct BellSouth to identify, document and incorporate clearly defined statistical tests to establish nondiscrimination into any measurement plan it institutes. Control Charts will not satisfy this requirement. On the other hand, appropriately defined and structured statistical tests will permit more relevant assessment of differences in both the average (mean) result for CLECs compared to BellSouth as well as for differences in variability of performance. By establishing a requirement for statistical testing of differences in both mean performance and performance variability, this Commission, will be in a position to draw fact-based conclusions, at a specified

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9/ The FCC noted in its Ameritech Order that measuring rates of completion within a target period of time, as BellSouth proposed at the hearing for measuring rejects (see Stacy, Tr. 1688), rather than determining actual average time to complete a task does not permit direct comparisons of a BOC's internal performance with how it treats a CLEC. FCC Ameritech Order ¶ 165.

level of confidence (*e.g.*, 95%), regarding whether the performance CLECs experience is equal in quality to the performance BellSouth delivers to its own local operations. (Pfau, Tr. 2169)

Therefore, while a starting point has been established for performance measurements, there is still a considerable amount of work to be done before an adequate set of measures is in place to allow monitoring of whether BellSouth is providing CLECs with nondiscriminatory access to its network. BellSouth will not even begin providing data promised to AT&T under their agreement until some time this month. (Stacy, Tr. 1500) Thus, at a minimum, several more months are required to collect data, analyze it, and determine if the established measures are adequate. Until those measures are in place, BellSouth has failed to meet the standard for InterLATA entry.

B. BellSouth Has Not Provided The Performance Measurements Required By the FCC

The FCC recently stated that "[c]lear and precise performance measurements are critical to ensuring that competing carriers are receiving the quality of access to which they are entitled." Id. ¶ 209. The FCC determined that Ameritech, in any future section 271 applications, should present empirical evidence in the form of the following performance measurements: (1) average installation intervals for ordering and provisioning of resale; (2) average installation intervals for loops; (3) comparative performance information for unbundled network elements;[10/] (4) service order accuracy and percent flow through; (5) held orders and provisioning accuracy; (6) bill quality and accuracy; and (7) repeat trouble reports for unbundled network elements. FCC Ameritech Order ¶ 212. In addition, the FCC stated that a BOC should ensure that its performance measurements are clearly defined, permit comparisons with the BOC's retail operations, and are sufficiently disaggregated to permit meaningful comparisons. Id. The FCC

10/ The FCC stated that for those performance measures for unbundled network elements that can be compared to the CLEC's retail operations, such as trouble report rate, receipt to restore, and out of service over 24 hours, the BOC's data should permit a direct comparison between the BOC and the CLECs. FCC Ameritech Order ¶ 212.

concluded that without such data, it could not make a reasoned decision on a section 271 application. Id. Because BellSouth has failed to provide much of the performance measurement data that the FCC has determined is essential in a section 271 application, this Commission should find that BellSouth at least has not satisfied checklist items 2 and 14.

BellSouth admitted at the hearing that it is not providing the following performance measurements proposed either by AT&T or the intervenors: (1) time to perform interim number portability cut overs (Stacy, Tr. 1549); (2) average installation intervals for loops (Id. at 1560); (3) average installation intervals for resale (Id.); (4) percentage of orders that require manual intervention (Id. at 1561); (5) average installation interval for unbundled local switching (Id. at 1562); (6) percentage of CLEC orders rejected as a percentage of total CLEC orders submitted (Id. at 1562-63); (7) number of jeopardies (order in which due date will not be met) versus total orders (Id. at 1563); (8) BellSouth network system downtime (Id. at 1564); (9) timeliness of notification by BellSouth to a CLEC that it has completed an order (Id. at 1564); (10) timeliness of BellSouth informing a CLEC that an order has been rejected (Id. at 1566-67); (11) timeliness of BellSouth sending Firm Order Confirmations to CLECs after receiving an order (Id. at 1570); (12) amount of time in which trunks are blocked for calls either originating from or terminating at CLEC (Id. at 1580); and (13) average installation intervals for purchase of combinations of unbundled network elements (Id. at 1584).

Because BellSouth has not provided appropriate performance measurements such as, for example, comparative performance information, it is impossible for this Commission to determine whether BellSouth is meeting the nondiscrimination requirements of the Act.

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

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AT&T's Position: BellSouth has not provided such access to AT&T and cannot demonstrate compliance with this checklist item until methods and procedures have been tested and implemented and it actually provides such access to competitors.

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Under Checklist Item 3, BellSouth must provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of 47 U.S.C.A. section 224. (Hamman, Tr. 2655-56)

BellSouth has provided the parties with an implementation guide regarding the process by which AT&T and other potential competitors can request access to poles, ducts, conduits and rights-of-way. However, until these methods and procedures have been tested and implemented, BellSouth cannot demonstrate its compliance with Checklist item 3. (Hamman, Tr. 2656) Little, if any, evidence was presented by BellSouth at the hearing to establish that it has fully implemented Checklist Item 3, and testimony indicated that BellSouth does not intend to provide nondiscriminatory access to poles, ducts and conduits. Under BellSouth's Statement, for example, CLECs must wait up to 20 days from submitting an order before BellSouth will confirm that the space is available and another 60 days before the CLEC will obtain a license from BellSouth or other owner of the pole or conduit, (Scheye, Tr. 421; SGAT, Att. D. ¶ 1.5.4.3), but if BellSouth determines there is insufficient capacity, BellSouth will deny the CLEC request. (Varner, Tr. 360) In contrast, BellSouth enjoys access to the same information and use of the right-of-way, conduit or pole for itself immediately. This clearly does not qualify as nondiscriminatory access.

Moreover, BellSouth is charging prices for access to poles, ducts and conduits that have not been approved by this Commission. (Scheye, Tr. 579) Until BellSouth's prices have been approved by this Commission, BellSouth is not providing this checklist item in accordance with the Act.

Additional problems with respect to these elements will likely surface once BellSouth resolves some of the other problems which have delayed facilities-based competitors from

entering the local market. Accordingly, the only rational conclusion to be drawn at this time is that BellSouth has failed to fully implement Checklist Item 3 of section271.

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

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AT&T's Position: No. The testimony of other carriers in Georgia and Louisiana reveals that the methods and procedures for a CLEC desiring to provide customers with local loop clearly are not in place, nor have they been tested to ensure that service changes will happen in a nondiscriminatory time frame. BellSouth's systems are the same throughout the region; there is no reason to expect that BellSouth has capabilities in Florida that it does not have in other states.

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BellSouth is not able at this time to implement fully the unbundling of loops either under the SGAT or its arbitrated agreements because it does not have an OSS to support nondiscriminatory provisioning and maintenance. Full implementation requires, at a minimum, a fully tested and functioning process for pre-ordering, ordering, provisioning, maintenance and billing. See FCC Order No. 96-325 ¶ 386. Section 271(c)(2)(B)(iv) of the Act requires BellSouth to provide local loop transmission unbundled from local switching and other services. BellSouth cannot comply with the requirements of sections 251 and 271 merely by signing a piece of paper with a CLEC. BellSouth must have a working process in place to provision and maintain loops, and the process must be tested adequately and demonstrated to work in a market environment. (Hamman, Tr. 2657) In order to provide nondiscriminatory access to unbundled loops, BellSouth's pre-ordering, ordering, provisioning, maintenance, and billing systems must ensure that CLECs can obtain loops at the same intervals that BellSouth obtains them for itself.

When existing customers desire to change from BellSouth to a CLEC and the CLEC intends to provide service with its own local switch and BellSouth's unbundled local loop, BellSouth and the CLEC must coordinate to ensure that the customer is not out of service during

the transition. First, BellSouth's loop must be physically disconnected from BellSouth's switch and extended to the CLEC's switch. (Hamman, Tr. 2658) This provides the "new" dialtone from the CLEC's switch. Second, BellSouth simultaneously must update the translations in its switch so that calls to this customer's number will be routed to the CLEC's switch and then to the customer. (Id.) If this is not done at the same time the loop is attached to the CLEC's switch, the customer will not be able to receive incoming calls. This transition involves several interim steps and communication between the old and new service provider. (Id.) BellSouth simply cannot provide access to unbundled loops in compliance with section 251 until these methods and procedures to make the change are in place and tested.

BellSouth has not provided intervals for provisioning unbundled loops. BellSouth has stated its intent to establish intervals for unbundled loops on a Customer Desired Due Date (CDDD) basis. (Hamman, Tr. 2660) BellSouth has not, however, committed to meeting these intervals. (Id.) Instead it has stated all intervals are subject to negotiation, and BellSouth promises only to provide the loops subject to projected workload, features and services requested, and equipment availability. It believes that these items can be determined only when the order is processed. (Id.) These discriminatory provisioning intervals give BellSouth the ability to determine unilaterally the rate at which its competitors can obtain new customers. Such power imposes intolerable burdens on CLECs, and is antithetical to the development of competition. (Id.)

In addition, although BellSouth has agreed to unbundle loops delivered by Integrated Digital Loop Carriers, no method for providing these loops has been established or tested. Until such a method is defined and tested there is no way to know whether BellSouth will be able to provide access to these loops. (Hamman, Tr. 2660-61)

BellSouth's attempts to provision loops to requesting CLECs have been fraught with problems. Most recently, in the Interface Readiness Test in Florida, AT&T encountered problems ordering unbundled loops. BellSouth failed to provide confirmation whether all of the

steps for loop provision had been completed. Therefore, even though customers received dial-tone, these customers did not know whether they could receive incoming calls.

Other carriers who have attempted to order unbundled loops from BellSouth also have encountered problems. ACSI filed a complaint with the Georgia Commission against BellSouth regarding problems with access to unbundled loops, the primary subject of ACSI's Interconnection Agreement. Complaint of American Communication Services of Columbus, Inc. Against BellSouth Telecommunications, Inc. Regarding Access to Unbundled Loops, Georgia Pub. Serv. Comm'n Docket 7253-U (Dec. 23, 1996). ACSI intended to combine the unbundled loops with other facilities to offer its own services. In the complaint, ACSI states it "has experienced delays in receiving unbundled loops from BellSouth and unreasonable service interruptions in switching customers to those loops." (Id.) Failures such as these jeopardize the ability of competing service providers to attract and retain customers.

In July, 1996, in Florida, Intermedia asked BellSouth for unbundled digital loops capable of transporting frame relay service. (Strow, Tr. 2368; Strow Ex. JS-6) As of January, 1997, BellSouth's position was that loops could not be provisioned because CABS billing on such loops was inappropriate and that it had to modify its CRIS system to generate billing data. (Id. at 2378.) BellSouth also advised Intermedia on two occasions that subloop unbundling was not technically feasible. (Id.) Intermedia sought electronic billing data, and was told by BellSouth that such data could not be provided because major changes needed to be made. (Id. at 2380)

The experiences of ACSI and Intermedia demonstrate that competition cannot be achieved simply through the execution and approval of interconnection agreements or paper SGAT promises. BellSouth must establish methods and procedures for nondiscriminatory access to unbundled loops and these methods and procedures must be validated through testing and actual operational experience. Until such methods and procedures are in place and tested, BellSouth cannot comply with section 251(c)(3) of the Act and checklist items two and four.

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

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AT&T's Position: No. BellSouth has provided common transport for IXCs but CLECs cannot utilize it without additional work by BellSouth. Further, BellSouth has not put in place the methods and procedures that provide certainty that common transport can be provided between end offices and billed on a nondiscriminatory basis. For example, in Florida, AT&T ordered four test loop combinations but cannot confirm receipt of shared transport or how BellSouth will render a usage sensitive bill for this shared transport. Therefore, BellSouth cannot claim that it has met the Act's requirement to provide unbundled local transport.

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Local transport is the pathway that connects the local network switches. Dedicated transport is for the exclusive use of one carrier's customers, and common transport is shared by all carriers. (Hamman, Tr. 2662) BellSouth has yet to demonstrate that it can provide local transport in accordance with the requirements of the Act. BellSouth must provide access to transport that is "nondiscriminatory" in accordance with the requirements of section 251(c)(3) and 252(d)(1). Section 271(c)(2)(B)(v) of the Act requires BellSouth to provide local transport unbundled from local switching or other services.

As described in regard to interconnection, AT&T has requested that it be permitted to service its Digital Link customers using existing dedicated transport now in use for the transport of long-distance calls. (Hamman, Tr. 2663) BellSouth has required AT&T to go through the BFR process before it will agree to this arrangement. BellSouth is unable to provide real time access to unbundled local transport at this time or it would have had the methods and procedures in place to handle AT&T's request. (Id. at 2664) BellSouth's SGAT provides that a CLEC may request additional transport options through the BFR process, indicating that BellSouth intends to force other CLECs through the same lengthy process if they request something different from the limited options proposed by BellSouth. SGAT section V(A)(4).

Another CLEC, Intermedia, reported that it had been unable to obtain local transport due to BellSouth delays. (Strow, Tr. 2384) To date, BellSouth has not met its burden to demonstrate that it can provide local transport. Therefore, BellSouth cannot claim to have met the requirements of section 251(c)(3) and 252(d)(1) and checklist items 2 and 5.

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

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AT&T's Position: No. BellSouth cannot provide local switching on a bundled or unbundled basis because it has not demonstrated that it can provide usage detail or billing information for such access -- information which is an essential component of local switching under 47 U.S.C. 153(45). Because this billing recording capability is a feature of the switch under the Act's definition of a network element, BellSouth must provide it at the cost arbitrated for a switch. See 45 U.S.C. section 153(29).

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Local switching is the network element that provides the connections between the customer's loops and other customers in the network. The local switch connects the customer to dial tone and features in the switch. It is the "brains" of the network. (Hamman, Tr. 2664-65) The only way that entry into the local market will occur on a broad scale is if multiple carriers can use the existing switches to provide their own individual services. (Gillan, Tr. 1779)

BellSouth is unable to provide access to unbundled local switching because it has not yet demonstrated that it is capable of meeting the Act's requirements related to direct routing and provision of vertical services in the switch.

a) Direct Routing

Direct routing involves directing certain classes of traffic to specified trunks. For example, direct routing over specially designated AT&T trunks permits access to AT&T's operator services and directory assistance platforms from unbundled local switching. (Hamman, Tr. 2666) BellSouth cannot provide access to unbundled local switching in accordance with

section 251 because it has not yet developed, tested and implemented methods and procedures for direct routing. Without direct routing of calls from AT&T customers to AT&T operators and directory assistance services, BellSouth has not met the requirements to provide nondiscriminatory access to AT&T operator services and directory assistance and to unbundle local switching from other services.

The FCC has ordered the incumbent LECs, "to the extent technically feasible, to provide customized routing, which would include such routing to a competitor's operator services and directory assistance platform." FCC Order No. 96-325 ¶ 536. Section 271(c)(2)(B)(iv) of the Act requires BellSouth to provide access to local switching unbundled from transport, local loop transmission, or other services.

Negotiation on this issue has progressed slowly. Current information suggests that BellSouth will not be able to perform direct routing until the end of September, a full seven months after the interconnection agreement between AT&T and BellSouth was signed. (Hamman, Tr. 2666-67) Part of the delay is attributable to BellSouth's insistence that AT&T utilize the BFR process to implement direct routing. (Hamman, Tr. 2666) This issue should not have been handled through the BFR process because the Florida Interconnection Agreement provides for direct routing of directory assistance calls. The method of routing requested is feasible and within the scope of the agreement. Moreover, the parties had already been discussing the issue for two months before BellSouth stated that the AT&T would have to use the BFR process. However, in the interest of time, AT&T has submitted the request.

Currently, there is no way to determine when BellSouth will be ready to offer direct routing for directory assistance services. The parties are planning to test BellSouth's direct routing capabilities in Florida. First, BellSouth must perform laboratory testing that will take approximately two weeks. Then BellSouth will implement line class codes ("LCCs") to permit direct routing in one switch of each switch type in Florida. Testing on each switch type will require approximately one week. BellSouth has declined to estimate the time required to implement direct routing in all switches in Florida following these initial testing phases. If

problems are encountered, implementation could be delayed. Until BellSouth can provide direct routing, it is unable to provide access to unbundled local switching in compliance with the requirements of section 251 and checklist items two and six.

b) Vertical Features

The vertical features of the switch are software-based features that include custom calling features such as call waiting, three-way calling and call forwarding, all of which are switch-based functions. In its recent opinion, the Eighth Circuit determined that vertical features are network elements and not finished services subject to the Act's resale requirements. Iowa Util., 1997 WL 403401 at *21. BellSouth's SGAT promises access to the vertical features of the switch, however BellSouth has not demonstrated its ability to provide these features. Statement at 13.

BellSouth must demonstrate that it can provide the full capability of the switch including: (1) the ability to activate and change features; (2) the ability to define the translations for AT&T customers; and (3) provision of usage billing which includes the identification code of the interexchange carrier. (Hamman, Tr. 2667) BellSouth has not yet demonstrated that it can meet these requirements. Creation of systems to place the purchaser of local switching in control of the features in subscribers' lines, to provide new entrants control over the routing of the subscribers' traffic, and to support proper billing will take some time. Further, as discussed above, in regard to reciprocal compensation, BellSouth has not yet demonstrated that it is capable of providing usage billing for unbundled local switching.

Until methods and procedures to provide new entrants the full capability of local switching are in place and they have been tested with operational experience, BellSouth cannot demonstrate its ability to provide access to unbundled local switching in compliance with section 251 and checklist item 6.

ISSUE 8: **Has BellSouth provided nondiscriminatory access to the following, pursuant to Section c)(2)(B)(vii) and applicable rules promulgated by the FCC?**

Issue 8(a): 911 and E911 services;

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AT&T's Position: BellSouth has not provided such access to AT&T.

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Issue 8(b) **directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and**

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AT&T's Position: No. Although nondiscriminatory access is technically feasible and can be provided by direct routing from the switch or other means, BellSouth continues to brand these services as its own even for AT&T customers.

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Issue 8(c) **operator call completion services?**

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AT&T's Position: No. Although nondiscriminatory access is technically feasible and can be provided by direct routing from the switch or other means, BellSouth continues to brand these services as its own even for AT&T customers.

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A. BellSouth has not provided nondiscriminatory access to 911 and E911 services.

Despite the deficiencies in BellSouth's OSS discussed above under Issue 3, BellSouth claims that it has satisfied checklist item 7. (Milner, Tr. 784) However, as admitted by BellSouth Witness Milner, BellSouth maintains 911 databases through mechanized telephone updates. (Id.) This unsupported assertion is insufficient proof that BellSouth has provided nondiscriminatory access to 911 and E911 services to AT&T as required by section 271(c)(2)(B)(vii). (Hamman, Tr. 2668-69) In addition, BellSouth Witness Milner could not answer whether BellSouth maintained any comparative data regarding the timeliness and

accuracy of entering updates to the 911 database for CLECs versus BellSouth's database. (Milner, Tr. 873)

The FCC recently rejected Ameritech's section 271 application in part because "Ameritech maintain[ed] entries in its 911 database for its own customers with greater accuracy and reliability than entries for the customers for competing LEC entries." FCC Ameritech Order ¶ 260. The FCC ruled that Ameritech must do what is necessary to "ensure that its 911 database is accurately populated, and that errors are detected and remedied quickly," for entries submitted by competing carriers as it is for its own entries." Id. ¶ 265. In addition, the FCC required that Ameritech, in any future section 271 application, prove that for facilities based carriers that physically interconnect with Ameritech, Ameritech has provided, or is then prepared to provide, nondiscriminatory access to the 911 database and 911 trunking. Id. ¶ 278. BellSouth has failed to satisfy any of these requirements.

BellSouth has provided no evidence to ensure that its 911 database is populated as accurately, and that errors are detected as quickly, for entries submitted by competing carriers as it is for its own entries. Id. ¶ 265. BellSouth has provided no evidence that its "mechanized" telephone updates are not as fraught with errors as the update system employed by Ameritech that the FCC recently rejected as discriminatory. Id. Moreover, BellSouth has not proven that it has provided, or is then prepared to provide, nondiscriminatory access to the 911 database and 911 trunking for facilities based carriers that physically interconnect with its network. Id. ¶ 278. For all of these reasons, BellSouth has failed to meet its burden of proving that it is providing, or presently is prepared to provide nondiscriminatory access to its 911 and E911 databases. Thus, BellSouth has failed to satisfy checklist item number 7. 47 U.S.C.A. section 271(c)(2)(B)(vii). Further, BellSouth's provisions for 911 are discriminatory against CLECs when compared with BellSouth's arrangements with other ILECs. (Ex. 66)

Testimony from intervenor Intermedia reflecting its operational experiences with BellSouth illustrates that BellSouth has not met the requirements of the Act that BellSouth provide CLECs with nondiscriminatory access to its 911 databases. Intermedia Witness Strow

testified that BellSouth has not provided access to these databases in relation to several unbundled network elements requested by Intermedia because BellSouth has not provided Intermedia with requested unbundled network elements. (Strow, Tr. 2385.) BellSouth has neither implemented, nor demonstrated a commitment to implement access to 911 databases for unbundled network elements. (Id.) Thus, BellSouth clearly has not adequately implemented, tested, and proven that it can provide nondiscriminatory access to 911 databases for service received by CLECs through unbundled network elements.

B. BellSouth has not provided nondiscriminatory access to directory assistance and call completion services.

BellSouth is unable to comply with the requirement to provide nondiscriminatory access to directory assistance and operator call completion services because it is not yet branding directory assistance and operator services as its competitors' services. Branding is important to consumers because it eliminates customer confusion. Accordingly, branding aids in achieving parity, making it possible for consumers to reap the benefits of effective competition. See 47 C.F.R. section 51.305(a), 51.311(b); FCC Order No. 96-325 ¶¶ 244, 313, 970. The FCC specifically noted that "brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize consumer confusion." FCC Order No. 96-325 ¶ 971.

Branding is technically feasible through direct routing or other means. *See* discussion above under Issue 7. When a customer dials "411" or "0", they hear the BellSouth brand. If BellSouth is unable to brand services as AT&T services for AT&T customers, then BellSouth should not brand services as BellSouth services. To do so is discriminatory. Therefore, BellSouth must resolve the branding issue before it can comply with the requirements of section 251(b)(3) and checklist item 7. Further, BellSouth's provisions for this checklist item are discriminatory against CLECs when compared to BellSouth's arrangements with other ILECs (Ex. 66)

Testimony from intervenors reflecting their operational experiences with BellSouth

illustrates that BellSouth has not met the requirements of the Act that BellSouth provide CLECs with nondiscriminatory access to directory assistance or call completion services. Intermedia Witness Strow testified that BellSouth has not provided nondiscriminatory access to these services in relation to several unbundled network elements requested by Intermedia because BellSouth has not provided Intermedia with requested unbundled network elements. (Strow, Tr. 2387-88.) BellSouth has neither implemented, or demonstrated a commitment to provide access to directory assistance and call completion services when Intermedia interconnects with BellSouth through the purchase of unbundled network elements. (Id.)

MCI Witness Gulino also testified that BellSouth has refused to provide MCI with access to the data contained in BellSouth's directory assistance database. (Gulino, Tr. 3150-51; Martinez, Tr. 3298.) These examples confirm that BellSouth has not adequately implemented, tested, and proven that it can provide nondiscriminatory access to directory assistance and call completion services in accordance with the Act.

ISSUE 9: **Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?**

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AT&T's Position: BellSouth has not provided such listings to AT&T. BellSouth cannot meet this requirement until it provides competitors the same capability to submit orders as BellSouth enjoys. This capability is not yet available.

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BellSouth is unable to comply with section 251(b)(3) and checklist item 8 because BellSouth does not currently have appropriate interfaces in place that would permit parity in white pages listings. BellSouth does not have adequate electronic interfaces to allow competitors to relay information for white pages listings to BellSouth at parity with the method BellSouth provides information to itself. (Tr. 2797 and 2860) BellSouth has required AT&T to submit the information through service orders. As discussed in regard to OSS, the use of these orders is

discriminatory because they require new entrants to use manual interfaces. Accordingly, BellSouth's access to its white pages listings is also discriminatory.

Testimony from intervenor Intermedia reflecting its operational experiences with BellSouth illustrates that BellSouth has not met the requirements of the Act with respect to receiving and updating its white pages. Intermedia Witness Strow testified that BellSouth has not demonstrated that it can receive and update white pages directory listings in relation to several unbundled network elements requested by Intermedia because BellSouth has not provided Intermedia with requested unbundled network elements. (Strow, Tr. 2390.) In short, BellSouth has not adequately implemented, tested, and proven that it can receive and update white pages listing for CLEC customers in accordance with the Act.

ISSUE 10: **Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?**

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AT&T's Position: No. AT&T cannot order telephone numbers on a nondiscriminatory basis. BellSouth must establish methods and procedures for assignment of telephone numbers that apply to all competitors, including BellSouth, and further must implement nondiscriminatory electronic ordering procedures and capabilities.

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As described above under Issue 3, BellSouth's proposed electronic interfaces for telephone number assignment are discriminatory. For example CLECs can only reserve six numbers per order and 100 numbers in total, whereas BellSouth is not so limited. BellSouth is the administrator of telephone numbers in its service area. BellSouth must implement methods and procedures to assure that number assignments are made in a nondiscriminatory fashion. BellSouth has not done so.

Moreover, BellSouth has not complied with the Act because it has not provided adequate blocks of telephone numbers to competitors. Therefore, BellSouth has not demonstrated that it can comply with section 251(b)(3) and checklist item 9.

ISSUE 11: **Has BellSouth provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?**

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AT&T's Position: No. There are no methods and procedures in place for nondiscriminatory access to databases and associated signaling, nor has testing been conducted to determine how BellSouth will provide access to its Advanced Intelligent Network. In addition, the prices in BellSouth's SGAT for databases and signaling have not been approved by the Commission.

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BellSouth has not provided sufficient proof that it is providing or can provide nondiscriminatory access to databases and signaling in Florida. Moreover, BellSouth has not resolved the issue of mediated access to its Advanced Intelligent Network ("AIN"). Furthermore, BellSouth has unilaterally set prices for databases and signaling systems that this Commission has not approved. (Scheye, Tr. 580)

The FCC determined that databases and signaling systems were network elements and required incumbent LECs to unbundle access to their signaling systems and databases. FCC Order No. 96-325 ¶ 480. Section 271(c)(2)(B)(x) of the Act requires BellSouth to provide nondiscriminatory access to databases and associated signaling. AT&T's Florida Interconnection Agreement requires BellSouth to offer SS7 access through its signaling transfer points subject to mediation. (Agreement, Att. 2, ¶ 12.2.10.1) Here again, however, BellSouth has not developed the methods and procedures for nondiscriminatory access to signaling and databases. BellSouth has yet to define the means for mediated access to the databases that is nondiscriminatory. Without these details, the Commission cannot know what BellSouth actually will provide, and

BellSouth cannot demonstrate compliance with its obligations under section 251(c)(3) and checklist item ten.

ISSUE 12: **Has BellSouth provided number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?**

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AT&T's Position: BellSouth has not provided number portability to AT&T; and until it has methods and procedures in place to provide any requesting CLEC with number portability through a permanent or interim solution, it cannot meet this checklist requirement. At present, BellSouth provides only limited number portability options with no electronic ordering capability.

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BellSouth is not able to meet the requirements of section 251 regarding number portability because it has not yet finalized methods and procedures for interim and long-term number portability. BellSouth also has not finished developing or implementing a long term number portability solution. In addition, although BellSouth has agreed to offer number portability through Route Indexing-Portability Hub ("RI-PH") to AT&T, it does not offer this method of number portability in the SGAT.

Number portability is the ability for a customer to retain his or her telephone number when changing local service providers. The Act requires BellSouth to provide number portability in accordance with the requirements prescribed by the FCC. 47 U.S.C.A. section 251(b)(2). The FCC issued these requirements in its Number Portability Order, dated July, 1996. See In the Matter of Telephone Number Portability, First Report and Order, FCC No. 96-286 (July 2, 1996) ("FCC Number Portability Order"). Until a permanent number portability ("PNP") solution is fully deployed, the FCC requires BellSouth and other incumbent LECs to provide all technically feasible interim number portability ("INP") solutions to competing local exchange carriers. FCC Number Portability Order ¶¶ 110-11, 115. Section 271(c)(2)(B)(xi) of the Act requires that INP be provided thorough remote call forwarding, direct inward dialing and other comparable arrangements until PNP is in place.

Number portability will have to work with new switches and network arrangements that will be put in place by the CLECs. In addition, BellSouth must develop and implement billing methods and procedures to permit number portability. The implementation of a permanent number portability solution in Florida is scheduled throughout 1998 for the major Florida Metropolitan Statistical Areas. (Hamman, Tr. 2675) Until the industry solution is available, AT&T will have to rely on BellSouth's network to provide portability. Despite repeated requests from AT&T, BellSouth has not specified how interim portability will work and in what timeframe it will be available. (Id. at 2675-76)

Number portability that is nondiscriminatory is not currently available. For example, for its larger customers, AT&T has requested interim number portability via RI-PH. This method of portability will permit conservation of telephone numbers to avoid an area code split. (Id. at 2674) Provision of INP through RI-PH will require significant coordination between AT&T and BellSouth. The parties need to establish methods for ordering and implementing INP and are in the process of performing operational testing. Only when this is complete will INP suitable for high volume customers be available. In addition, although BellSouth has agreed to provide RI-PH to AT&T, this method of number portability is not available in the SGAT. Therefore, a CLEC ordering from the SGAT could only obtain RI-PH through use of the cumbersome BFR process. (Scheye, Tr. 535) Since BellSouth has already agreed to provide RI-PH to AT&T, there is no reason that it could not be made generally available in the SGAT.

The industry forum on number portability has adopted a PNP solution. BellSouth, however, does not have a timeframe for the implementation of this solution. (Scheye, Tr. 467) The FCC, in its Ameritech Order, advised future section 271 applicants that "[i]t is not sufficient for an applicant to assert summarily in its application that it plans to deploy long-term number portability, without providing adequate documentation that it has undertaken reasonable and timely steps to meet its obligations in this area." FCC Ameritech Order ¶ 342. Instead, a section 271 applicant should provide the following:

> a detailed implementation plan addressing, at minimum, the BOC's schedule for intra- and inter-company testing of a long-term number portability method, the current status of the switch request process, an identification of the particular switches for which the BOC is obligated to deploy number portability, the status of deployment in requested switches, and the schedule under which the BOC plans to provide commercial roll-out of a long-term number portability method in specified central offices in the relevant state. We would also expect to review evidence demonstrating that the BOC will provide nondiscriminatory access to OSS to support the provision of number portability.

FCC Ameritech Order ¶ 342. BellSouth has satisfied none of these requirements. Since BellSouth has not developed, tested and implemented the capability to provide number portability through either an interim or permanent solution, BellSouth cannot claim that it is currently able to comply with the requirements of section 251(b)(2) and checklist item 11.

ISSUE 13: **Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?**

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AT&T's Position: BellSouth has not provided such access to AT&T.

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The Act requires BellSouth to provide dialing parity to CLECs and nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing with no unreasonable dialing delays. 47 U.S.C.A. section 251(b)(3). Several checklist items also require nondiscriminatory access to these items and services along with dialing parity. 47 U.S.C.A. section 271(c)(2)(B)(vii),(ix), (xii). BellSouth has not yet implemented methods and procedures for assuring dialing parity in Florida. As discussed in regard to unbundled local switching above under Issue 7, BellSouth is not providing direct routing to AT&T operator platforms. Therefore, in order to reach AT&T operator services, directory assistance, and repair services, AT&T customers must dial additional digits rather than "0," "411," and "611." BellSouth's customers,

on the other hand, can reach BellSouth services by dialing the old familiar numbers. This is discriminatory. This Commission should reject BellSouth's claim that it satisfied checklist item 12. Until BellSouth has implemented direct routing to permit dialing parity for CLECs' customers to reach their own provider's operator services, directory assistance and repair services, BellSouth has not met the requirement to provide dialing parity and has not complied with checklist item 12.

ISSUE 14: **Has BellSouth provided reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?**

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AT&T's Position: Interconnection arrangements are satisfactory but have yet to be implemented. BellSouth must implement methods and procedures for billing. BellSouth has improperly refused to pay reciprocal compensation on calls to enhanced service providers. Further, without an agreement on a Percentage Local Usage factor for local traffic between BellSouth and AT&T, the parties will be unable to bill each other properly and BellSouth will be unable to meet this requirement.

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Reciprocal compensation is the means that local carriers use to compensate each other for the costs of interconnecting and handling calls from each other's network. Section 251(f) of the Act requires that an SGAT meet the pricing requirements of section 252(d) prior to approval. Section 252(d)(2) governs the pricing structure of reciprocal compensation, and requires mutual recovery of costs based on a reasonable approximation of the costs for terminating calls. 47 U.S.C.A. section 252(d)(2). Section 271(c)(2)(B)(xiii) of the Act requires that BellSouth provide reciprocal compensation arrangements in accordance with section 252(d)(2).

BellSouth's SGAT does not meet the reciprocal compensation requirements of section 251(b)(5) of the Act because there are no rates provided in the SGAT. Moreover, BellSouth has improperly refused to pay reciprocal compensation to calls that originate from its customers and terminate at an ALEC customer who is an enhanced service provider. (Milner, Tr.

949-50) Contrary to BellSouth Witness Scheye's assertion that these calls are interLATA, (Scheye, Tr. 335-41), these calls originate and terminate locally. Thus, BellSouth must pay reciprocal compensation, as required by section 271(c)(2)(B)(xiii) and 252(d)(2) of the Act.

BellSouth also cannot meet the requirements of section 251(b)(5) because it has not established methods and procedures to permit reciprocal compensation. Until these methods are established, tested and implemented, BellSouth and its competitors will not be able to bill each other appropriately.

AT&T has encountered specific examples of this problem. As discussed above in regard to interconnection, in order to bill each other properly when a trunk is being used for both local and long-distance calls, the parties must enter an agreement regarding a percentage local use factor. (Hamman, Tr. 2677) This will enable them to distinguish long-distance calls for which access charges must be paid from local calls. BellSouth repeatedly has delayed progress on billing issues, canceling several meetings at the last minute. (Hamman, Tr. 2632-33) Numerous billing issues remain to be resolved. BellSouth cannot meet the requirements of section 251(b)(5) and checklist item 13 until methods and procedures for billing are in place and have been tested.

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

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AT&T's Position: BellSouth has not provided such services to AT&T and proposes ordering mechanisms which are discriminatory in nature.

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BellSouth's SGAT does not comply with the requirements of section 251(b)(1) and (c)(4) because it imposes unreasonable restrictions on resale, and its interfaces do not permit ordering services for resale. The Act requires that BellSouth offer for resale at wholesale rates all telecommunications services BellSouth provides at retail to noncarrier subscribers. 47 U.S.C.A.

section 251 (b)(1), (c)(4). Section 271(c)(2)(B)(xiv) of the Act requires BellSouth to make services available for resale in accordance with section 251(c)(4) and 252(d)(3). Because competition was intended to benefit all consumers, the FCC has recognized only a few exceptions to an incumbent LEC's obligations to make available for resale all of its telecommunications services. Under the FCC Order, BellSouth may not place restrictions on the resale of services unless it can prove that such restrictions are narrowly tailored, reasonable, and nondiscriminatory. 47 C.F.R. section 51.613(b). This regulation was specifically upheld by the Eighth Circuit. Iowa Util., 1997 WL 403401 at *31.

Moreover, as discussed above under Issue 3, BellSouth's proposed interfaces do not meet the requirement to provide nondiscriminatory access to OSS functions, including preordering, ordering, provisioning, maintenance and billing for resold services. As the FCC ruled in its Ameritech Order, providing nondiscriminatory access to OSS functions is a necessary component needed to satisfy section 271(c)(2)(B)(xiv) and 252(c)(4). See FCC Ameritech Order ¶ 131 ("Because the duty to provide . . . resale services under section 251(c)(4) include the duty to provide nondiscriminatory access to OSS functions, an examination of a BOC's OSS performance is necessary to evaluate compliance with section 271(c)(2)(B) . . . (xiv)."). For all of these reasons, this Commission should find that BellSouth has not complied with the requirements of section 251(b)(1) and (c)(4) and checklist item 14.

Issue 15(a)	**Has BellSouth developed performance standards and measurements? If so, are they being met?**
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AT&T's Position:	No. The performance standards and measurements proposed by BellSouth are insufficient to demonstrate parity or nondiscriminatory access.
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See discussion above under Issue 3(a).

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

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AT&T's Position: Section 271(e)(2)(A), requires a Bell operating company to provide *intraLATA* toll dialing parity "coincident with" its authorized provision of interLATA service.

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ISSUE 17: **If the answer to issues 2-15 is "yes," have those requirements been met in a single agreement or through a combination of agreements?**

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AT&T's Position: Not applicable because the answer to each of the above issues is "no."

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ISSUE 18: **Should this docket be closed?**

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AT&T's Position: Yes.

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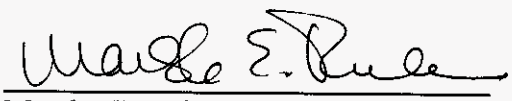
AT&T respectfully requests that the Commission reject BellSouth's proposed SGAT because, as demonstrated above, it does not meet the requirements of section 252(f). AT&T further requests the Commission to find that BellSouth has not complied with the requirements of section 271(c), for the reasons expressed herein.

Finally, AT&T requests that the Commission order that any and all future 271 filings, including but not limited to SGAT submissions, be subject to a substantive review after proper advance notice. In order to aid the Commission's review of such filings and avoid the problems caused by BellSouth's lack of clarity in this proceeding, the Commission should adopt the procedural requirements set forth in the FCC's Ameritech Order: the Commission should require BellSouth's case to be complete on the day that it is filed (Ameritech Order ¶50), should limit BellSouth's ability to introduce new evidence (¶¶51-55), and should require BellSouth to state its positions and arguments clearly (¶60), and to clearly establish the relevance and meaning of

the evidence it submits (¶61). The FCC requires such procedures in order to ensure the integrity of its review process, and the Commission also is entitled to ensure the integrity of its review.

Respectfully Submitted



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