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October 3, 2001

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

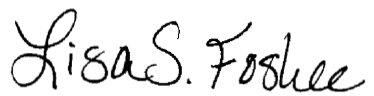
**Re: 960786-A-TL (Section 271)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Revised Direct Testimony of Wylie (Jerry) G. Latham, W. Keith Milner and Thomas G. Williams, and Revised Surrebuttal Testimony of Ken L. Ainsworth, Cynthia K. Cox (CKC-10 has also been stricken), W. Keith Milner, Ronald M. Pate, David T. Scollard, and Alphonso Varner, which we ask that you file in the captioned docket. This filing is pursuant to Order No. PSC-01-1830-PCO-TL issued September 11, 2001.

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

Sincerely,

  
Lisa S. Foshee (KA)

Enclosures

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey  
Nancy B. White

DNS 12566-01 thru 12574-01

**CERTIFICATE OF SERVICE  
DOCKET NO. 960786-A-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 3rd day of October, 2001 to the following:

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(+) Signed Protective Agreement

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BELLSOUTH TELECOMMUNICATIONS, INC.  
**REVISED** SURREBUTTAL TESTIMONY OF CYNTHIA K. COX  
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
DOCKET NO. 960786A-TL  
OCTOBER 3, 2001

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Cynthia K. Cox. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME CYNTHIA COX THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON MAY 22, 2001?

A. Yes. I filed direct testimony, including five exhibits.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the rebuttal testimony filed on behalf of several parties in this proceeding. Specifically, I respond to portions of the rebuttal testimonies of Mr. Rodney Page on behalf of ACCESS Integrated Networks, Inc. ("ACCESS"), of Mr. Jerry Willis on behalf of NuVox

1           Communications, Inc. (“NuVox”), of Mr. Michael Gallagher on behalf of Florida  
2           Digital Network (“FDN”), of Mr. Scott Sarem on behalf of Mpower and of  
3           Messrs. Mark Argenbright and Greg Darnell filed on behalf of WorldCom, Inc.  
4           (“WorldCom”), of Mr. Richard Guepe filed on behalf of AT&T Communications  
5           of the South Central States, Inc. (“AT&T”) and of Mr. Joseph Gillan, filed on  
6           behalf of the Florida Competitive Carrier Association (“FCCA”).  
7

8    Q.    HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

9  
10   A.    My rebuttal testimony is structured into four sections: 1) General Comments; 2)  
11           Status of Local Competition and Track A Compliance; 3) Specific requirements  
12           of the Act or checklist item being addressed by the specific intervening party; and  
13           4) Comments of intervening parties that do not relate to a specific checklist item.  
14

15    **GENERAL COMMENTS**

16  
17    Q.    DO YOU HAVE ANY GENERAL COMMENTS REGARDING THE  
18           TESTIMONY FILED ON BEHALF OF AT&T AND WORLDCOM?

19  
20    A.    Yes. As the Florida Public Service Commission (“FPSC”) is aware, the purpose  
21           of this proceeding is to address BellSouth’s compliance with the requirements of  
22           Section 271 of the Telecommunications Act of 1996 (the “Act”). As the FCC has  
23           noted, at any point in time there will be new and unresolved interpretive disputes  
24           about the precise content of an incumbent local exchange carrier’s (“ILEC’s”)  
25           obligation to its competitors, disputes that FCC rules have not yet addressed and

1 that do not involve per se violations of self-executing requirements of the Act.  
2 (See SWBT Order-KS/OK<sup>1</sup> at ¶ 19). Requiring resolution of every interpretive  
3 dispute would undermine Congress' intent to give Bell Operating Companies  
4 ("BOCs") like BellSouth incentive to open its local market to competition. Thus,  
5 it is not incumbent upon the Commission to resolve every interpretive dispute  
6 raised by the alternative local exchange companies ("ALECs") in this proceeding.

7  
8 Despite the explicit purpose of this proceeding, AT&T's and WorldCom's  
9 witnesses have largely presented issues that have been addressed in arbitration or  
10 generic proceedings before the FPSC and other state commissions in BellSouth's  
11 region. In fact, in most cases, the FPSC has already issued its decision in these  
12 arbitrations as to the appropriate resolution of these issues. Yet, in this  
13 proceeding, AT&T and WorldCom seek to relitigate many of these same issues  
14 by now arguing that the FPSC must revise its rulings on issues such that the FPSC  
15 rules consistent with AT&T and WorldCom's position or must deny BellSouth's  
16 271 application. Obviously, this is not the proceeding to relitigate arbitration  
17 orders. Nor is it reasonable to suggest that because the FPSC has decided certain  
18 issues in these arbitration dockets in a manner contrary to that advocated by  
19 AT&T or MCI that BellSouth should be denied entry into the long distance  
20 market. Therefore, I am not including the full discussion on issues that the FPSC  
21 has decided or will decide in generic or arbitration dockets.

22  
23 **STATUS OF LOCAL COMPETITION AND TRACK A COMPLIANCE**

24

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<sup>1</sup> *Joint Application by SBC Communications, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Report and Order (Released January 22, 2001) ("SWBT Order-KS/OK").



1 Q. PLEASE ADDRESS MR. GILLAN’S COMMENTS ON BELL SOUTH’S  
2 TRACK “A” COMPLIANCE.

3  
4 A. Mr. Gillan on behalf of the Florida Competitive Carriers Association (“FCCA”)  
5 appears to advocate a market test that BellSouth must meet prior to receiving  
6 interLATA relief. The FCC has flatly rejected this approach. The requirements  
7 that BellSouth must meet to be in compliance with Track A are found in Section  
8 271(c)(1)(A) of the Act, which states in part:

9  
10 Presence of a facilities-based competitor.—A Bell operating  
11 company meets the requirements of this subparagraph if it has  
12 entered into one or more binding agreements that have been  
13 approved under Section 252 specifying the terms and  
14 conditions under which the Bell operating company is  
15 providing access and interconnection to its network facilities  
16 for the network facilities of one or more unaffiliated competing  
17 providers of telephone exchange service . . . to residential and  
18 business subscribers.

19  
20 Therefore, there is no market share test. BellSouth is only required to  
21 demonstrate that facilities-based competition exists in Florida. As demonstrated  
22 in Exhibit CKC-3 attached to my direct testimony, BellSouth meets the  
23 requirements of Track A. Mr. Gillan provides no evidence that indicates  
24 otherwise. In fact, he never specifically states that BellSouth is not in compliance  
25 with Track A.

26  
27 Q. WHAT AREAS OF CONCERN DOES MR. GILLAN HIGHLIGHT IN HIS  
28 TESTIMONY WITH REGARD TO THE LEVEL OF COMPETITION IN  
29 FLORIDA?

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A. First, Mr. Gillan claims that resale is in rapid decline and that resale is not an economically viable means of competition. Next, Mr. Gillan disputes BellSouth's calculation of the number of ALEC facility-based lines. I will demonstrate that his concerns in each of these areas are unfounded and do not refute BellSouth's contention that it meets Track A requirements.

Q. IS MR. GILLAN'S DISCUSSION OF RESALE RELEVANT TO A DISCUSSION OF TRACK A COMPLIANCE?

A. No. As explained earlier, Track A compliance requires that BellSouth have an interconnection agreement with a carrier that is providing service to residential and business customers, predominantly over its own facilities. BellSouth has numerous such agreements. Mr. Gillan's discussion and concerns about resale are, therefore, irrelevant to a Track A determination.

Q. IS RESALE COMPETITION, AS MR. GILLAN ALLEGES, IN RAPID DECLINE?

A. No. Resale competition continues as a viable entry vehicle. However, the resold lines that Mr. Gillan cites at Exhibit JPG-2 needs to be put on a comparable basis. Mr. Gillan compares the resale volume from BellSouth's Form 477 filed with the FCC for December 2000 with the resale volume presented for February 2001 from Exhibit VW-5 and for March 2001 from Exhibit WKM-9. As reported, this information does exhibit a significant drop from December 2000. However,

1 while preparing its response to concerns regarding resale trends raised in other  
2 states' 271 proceedings, BellSouth realized that it inadvertently overstated the  
3 December 2000 resale volumes by incorrectly including the counts for UNE-Ps  
4 ("Unbundled Network Element - Platforms"). The revised resale volume for  
5 December 2000 is 202,780. Second, the February 2001 resale count presented  
6 has recently been found to include 3,643 items that should not be included as  
7 resold lines. Removing this slight overstatement leaves the adjusted resold line  
8 count for February 2001 from Wakeling Exhibit VW-5 at 188,320. Finally, the  
9 resold line count for March 2001 that Mr. Milner presented reflected only five  
10 major resold categories from his Exhibit WKM-9. When all of the resold line  
11 items in Exhibit WKM-9 are summed, the March 2001 total is 200,938.<sup>2</sup>

12  
13 Q. ARE THERE ANY OTHER ADJUSTMENTS TO BELLSOUTH'S FIGURES?

14  
15 A. Yes. These adjustments concern BellSouth ISDN lines. Only one Basic Rate  
16 ISDN ("BRI") line was included in the original BellSouth line counts. The new  
17 count uses a 2X multiplier to recognize potential B channels. Primary Rate ISDN  
18 ("PRI") lines were not included in the original BellSouth line counts. In fact, PRI  
19 lines are not counted today in the lines reported in BellSouth's financial reports.  
20 The new count uses a 24X multiplier per PRI to treat as voice grade equivalents  
21 ("VGEs"). The inclusion of BRI on a 2X and PRI on a 24X basis results in a  
22 higher BellSouth line count. This decreases the ALEC market share estimate.

23  
24 Note that the UNE loop counts BellSouth has included in its 271 ALEC line

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<sup>2</sup> Mr. Milner's testimony cited resold lines associated with the primary Items 2, 18, 19, 27, and 28 from Exhibit WKM-9. Total resold lines reflected in WKM-9 need to also include Items 1, 3, 9, 14, 17, 24, 25, 33, and 34.

1 estimates treats all ALEC UNE loops, including DSL and DS1, as one line, not  
 2 VGEs. This is one example of BellSouth's conservative approach to its ALEC  
 3 line estimates in its 271 competition filings.

4

5 Q. DO YOU HAVE A REVISED SUMMARY OF TABLES 1 AND 2 OF  
 6 WAKELING'S AFFIDAVIT TO REFLECT THE CHANGES DESCRIBED  
 7 ABOVE?

8

9 A. Yes. As a result of the above revision, the estimate of ALEC market share has  
 10 declined slightly to a range of 9.4% to 10.8%. The revisions are as follows:

11

12

TABLE 1

13

<b>Summary - Original Filing</b>	<b>Res lines</b>	<b>Bus lines</b>	<b>Total lines</b>
CLEC lines	220,680	614,724	835,404
BST lines	4,717,987	1,862,819	6,580,806
Total	4,938,667	2,477,543	7,416,210
CLEC % of Total lines	4.5%	24.8%	11.3%

<b>Adjustments</b>	<b>Res lines</b>	<b>Bus lines</b>	<b>Total lines</b>
CLEC Resold Bus line count error		(3,643)	(3,643)
BST adjustments for ISDN lines	3,352	314,264	317,616

<b>Revised Summary</b>	<b>Res lines</b>	<b>Bus lines</b>	<b>Total lines</b>
CLEC lines - Revised	220,680	611,081	831,761
BST;s lines - Revised	4,721,339	2,177,083	6,898,422
Total - Revised	4,942,019	2,788,164	7,730,183
CLEC % of Total lines	4.5%	21.9%	10.8%

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17

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TABLE 2

2

<b>Summary - Original Filing</b>	<b>Res lines</b>	<b>Bus lines</b>	<b>Total lines</b>
CLEC lines	220,682	497,496	718,178
BST lines	4,717,987	1,862,819	6,580,806
Total	4,938,669	2,360,315	7,298,984
CLEC % of Total lines	4.5%	21.1%	9.8%

<b>Adjustments</b>	<b>Res lines</b>	<b>Bus lines</b>	<b>Total lines</b>
CLEC Resold Bus line count error		(3,643)	(3,643)
BST adjustments for ISDN lines	3,352	314,264	317,616

<b>Revised Summary</b>	<b>Res lines</b>	<b>Bus lines</b>	<b>Total lines</b>
CLEC lines - Revised	220,682	493,853	714,535
BST;s lines - Revised	4,721,339	2,177,083	6,898,422
Total - Revised	4,942,021	2,670,936	7,612,957
CLEC % of Total lines	4.5%	18.5%	9.4%

3

4 Q. AFTER THESE REVISIONS, DOES RESOLD LINES IN FLORIDA  
5 INDICATE A SIGNIFICANT DECLINING TREND?

6

7 A. No. As indicated above, the adjusted resold line counts are 202,780 for December  
8 2000, 188,320 for February 2001 and 200,938 for March 2001.<sup>3</sup> These counts do  
9 not indicate a significant decline in total resale lines during the first quarter of  
10 2001.

11

12 Q. DOES MORE RECENT RESALE ACTIVITY SINCE MARCH 2001 SUPPORT  
13 MR. GILLAN’S CLAIM OF “UNATTRACTIVE ECONOMICS”?

14

15 A. No. Resale continues as a viable strategy. One quarter later, in June 2001, there

<sup>3</sup> The resold line total for February 2001 itself is conservative because it is the sum of resold lines for the ALEC’s listed. BellSouth, as a practical expedient for its estimates and as labeled in its Exhibits, included ALECs having 40 or more lines.

1 are over 212,000 total resold lines. However, over these first two quarters of  
2 2001, the number of UNE-P has almost doubled, apparently associated with a  
3 migration to the facilities-based UNE-P offering, for business resold lines in  
4 particular. Mr. Gillan would find this consistent with his view that “UNE-based  
5 entry is the most likely path to bring competitive benefits to the average Florida  
6 consumer or small business. UNE combinations, in particular, hold the most  
7 promise in this regard.” (Emphasis added) (See Gillan, lines 7-9, page 10). As an  
8 example, ITC^DeltaCom, an ALEC in Florida, reported “The Company  
9 successfully converted approximately 30,000 of its resale lines to BellSouth’s  
10 UNE-P during the first quarter of 2001 and, as a result, improved provisioning  
11 and installation times for customers and improved margins for the Company.”  
12 (See “ITC^DeltaCom Reports First Quarter 2001 Results” dated May 2, 2001, at  
13 page 2).

14  
15 Moreover, the long-term migration from resale service to facilities-based  
16 competition has been anticipated as competition matures. For example, the  
17 Association for Local Telecommunications Service (“ALTS”)<sup>4</sup> indicated: “The  
18 amount of resale competition is expected to decline as ALECs continue to build  
19 their networks.” Additionally, Professor Marius Schwartz, affiant-economist for  
20 the DOJ, referring to UNEs and resale, wrote: “...such entry modes can assist and  
21 accelerate the transition to full-facilities competition, by allowing entrants to  
22 attain a customer base before being forced to build extensive facilities.” (See ¶50,  
23 Affidavit of Dr. Marius Schwartz on behalf of the United States DOJ, May 14,  
24 1997, Re: Bell Atlantic 271 filing).

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<sup>4</sup> ALT’S Annual Report on the State of the Local Telecom Industry, 2001; Released March 13, 2001, Page 12.

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The evidence presented in BellSouth’s Exhibits VW-5 and VW-7 demonstrates that flexibility and diversity in market entry approaches described above is strong in Florida. These exhibits provide clear and direct evidence of different ALEC combinations of resale and facilities-based service and different combinations of leased and self-provisioned “last mile” customer connections in Florida. In summary, resale remains a viable and significant local entry strategy in Florida and elsewhere and any recent moderation in growth is consistent with long run expectations of migration to facilities-based alternatives, including UNE-P.

Q. DO YOU AGREE WITH MR. GILLAN’S CRITICISMS OF THE ALECS’ FACILITIES-BASED LINES ESTIMATE FROM BELLSOUTH’S METHOD ONE AND METHOD TWO? EXPLAIN.

A. No. Mr. Gillan develops his own flawed metric to inaccurately challenge BellSouth’s estimates. Under BellSouth Method One, all of each ALEC’s indicators of its number of facilities-based lines are considered. These indicators for each ALEC include: its number of E911 Listings, its UNEs (loop and UNE-Ps) and third, its total interconnection trunks. Each ALEC may have data in one, two or all of these three indicator categories depending on which customer markets the ALEC serves and the mix of facilities the ALEC decides to use. Mr. Gillan’s rework of BellSouth’s estimates disregards without comment the ALEC E911 Listings provided. These ALEC E911 listings are significantly higher than the UNE loops and UNE-P that he does adopt from Exhibit VW-7 and displays at Gillan Exhibit JPG-1. In challenging the BellSouth’s facilities-based lines

1 estimate Mr. Gillan must ignore the E911 Listings that ALECs themselves report  
2 because it directly refutes his reworked estimate of ALEC facilities-based lines.  
3 At Exhibit JPG-5, Mr. Gillan offers an alternative range of 29,313 to 233,211 for  
4 ALEC facilities-based lines. However, the 470,186 ALEC E911 listings from  
5 Exhibit VW-7, minus the 106,619 UNE loops, proves that there are at least  
6 363,567 ALEC facilities-based lines even before incorporating the other evidence  
7 that BellSouth also considers in its Method One process.<sup>5</sup> Instead, Mr. Gillan's  
8 alternative estimate of ALEC facilities-based lines has incorrectly relied on 9.5%  
9 of the total ALEC interconnection trunk data from BellSouth's Exhibit VW-7.  
10 Mr. Gillan's missteps, in regard to his alternative estimate, are discussed in  
11 greater detail below. Note, however, that Mr. Gillan does not directly challenge  
12 either the ALECs' own E911 Listings or UNE loops or UNE-Ps and also does not  
13 challenge the ALECs identified in BellSouth's exhibits. Mr. Gillan does not  
14 directly address or propose any adjustments to BellSouth's Method Two, ALEC  
15 line estimate. Instead of directly challenging BellSouth's Method Two result, Mr.  
16 Gillan side steps it by applying his own calculated alternative to the average of the  
17 BellSouth's Method One and Two results.<sup>6</sup> Nonetheless, while Mr. Gillan does  
18 take issue with BellSouth's estimates of ALEC market share, even his own  
19 alternative estimates at JPG-5 serve to confirm that BellSouth meets the Act's  
20 Track A requirement and nowhere does Mr. Gillan assert that BellSouth fails to  
21 meet the Track A requirement.

22

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<sup>5</sup> Unlike UNE loops, UNE-Platforms should not be subtracted from the count of ALEC E911 listings because ALECs would not be registering E911 listings for UNE-Ps whose listings are maintained by BellSouth. UNE loops, for which ALECs' switches provide dial tone, would be associated with ALECs' E911 listings. Other ALEC E911 listings beyond UNE loops would be associated with facilities-based end user connections that the ALECs provide themselves.

<sup>6</sup> See Mr. Gillan's footnote 1 at Exhibit JPG-1 and the fact that the 10.6% ALEC share in the JPG-1 Table is the average of BellSouth's own 11.3% (Method One) and 9.8% (Method Two) estimates.



1 Q. ARE MR. GILLAN'S "CORRECTED" ESTIMATES BASED ON HIS  
2 ADJUSTMENTS TO BELL SOUTH'S TRUNK DATA VALID?

3  
4 A. No. Mr. Gillan's revisions lead to results for facilities-based lines that are  
5 contradicted by other ALEC data included in BellSouth's 271 submission. To  
6 estimate ALEC Originating trunks in Exhibit JPG-4 Mr. Gillan makes an  
7 adjustment to the total trunks: "...to eliminate the effect of ISP customers ...the  
8 analysis reduced the number of interconnection trunks by the number of trunks  
9 used to serve terminating traffic..." Mr. Gillan presents an estimate of 33,983  
10 Originating Trunks at row "d" in Exhibit JPG-4. However, Mr. Milner's  
11 testimony at the top of page 20 reported that BellSouth had provisioned 132,850  
12 trunks from ALECs' switches to BellSouth switches in Florida and 64,132 two-  
13 way trunks (including transit trunks) to ALECs in Florida. Mr. Gillan has  
14 previously cited the corresponding numbers from Mr. Milner's testimony in  
15 Mississippi and there applied his Line "b" reduction (for ISP) only to BellSouth-  
16 ALEC two-way trunks. Mr. Gillan's inconsistent approach in Florida has resulted  
17 in an originating trunk count that is approximately 25% of actual originating  
18 trunks. This first error necessitates that Mr. Gillan adopt a line-to-trunk ratio of  
19 at least 3.14 to avoid a negative result for his alternate estimate of ALEC  
20 facilities-based lines. Accordingly, he adopts, without citing any supporting  
21 network justification, [a line-to-trunk ratio] "...substantially more aggressive than  
22 that used by BellSouth: a 4-to-1 ratio and a 10-to-1 ratio." Mr. Gillan's  
23 introduction of a 10-to-1 line-to-trunk ratio is much higher than to the other line-  
24 to-trunk ratios in his testimony on behalf of SECCA, in other state 271

1 proceedings used to benchmark BellSouth estimates.<sup>7</sup> Of course, Mr. Gillan can  
2 afford the use of high new 10-to-1 line-to-trunk ratio after his erroneous  
3 calculation, at Line “b” of Exhibit JPG-4, that made his estimated Originating  
4 Trunks one-tenth of their actual total amount.<sup>8</sup> Mr. Gillan provides no  
5 independent information from his FCCA ALEC member networks to corroborate  
6 his alternate facilities-based estimate at JPG-5. It is clear however, that his  
7 alternate estimate would be a nonsensical negative number if he applied the same  
8 line-to-trunk ratios from his testimony in Alabama, Louisiana or Mississippi.  
9 Second, as demonstrated earlier, the ALECs’ E911 listings provided in BellSouth  
10 Exhibits VW-7 and VW-8 alone establish that there are over 363,000 facilities-  
11 based lines in Florida in February 2001. Mr. Gillan does not challenge or offer  
12 any explanation to reconcile the ALECs’ own E911 listings with his alternative  
13 estimates. Finally, the actual line-to-trunk ratio reflected in BellSouth’s Exhibit  
14 VW-7 is 1.44 lines per total interconnection trunk, i.e., 1.44:1. This actual ALEC  
15 ratio is based on dividing the sum of ALEC E911 listings by the sum of total  
16 interconnection trunks for those same ALECs. BellSouth’s Method One has  
17 consistently applied and characterized as conservative a 1-line-to-1-trunk ratio in  
18 all its 271 state filings throughout its 9 state region. This actual 1.44-to-1 ratio in  
19 Florida that uses total ALEC interconnection trunks strongly argues against the  
20 validity of Mr. Gillan’s inconsistent and unsubstantiated set of adjustments as  
21 applying this to his revised interconnection trunk estimate would produce a  
22 negative number of facilities-based lines.

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<sup>7</sup> For SECCA, Mr. Gillan applied a 2:1 ratio in Alabama (pg. 17, June 5, 2001), applied a 2:1 ratio in Louisiana (pg. 11, June 8, 2001), applied a 1:1 line:trunk ratio in Mississippi (pg. 12, July 2, 2001), applied a 4:1 ratio in Kentucky (pg. 15, July 9, 2001), applied a 4:1 ratio in South Carolina (pg. 16, July 9, 2001), and applied a 4:1 ratio in Georgia (pg. 12, July 16, 2001) .

<sup>8</sup> Gillan, top of page 16, “Even with the much higher ratio of 10-to-1, however, ALEC facilities-based market share would only be approximately 2.2% of the market.”

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Q. MR. GILLAN CONTENDS THAT BELLSOUTH'S ACCESS LINES USED TO CALCULATE THE ALEC MARKET SHARE PERCENTAGE SHOULD BE ADJUSTED. ARE SUCH ADJUSTMENTS THE COMMON PRACTICE?

A. No. Neither the FCC nor other 271 applicants nor ALTS make such adjustments in citing ALEC market share. Of course, it is important to remember that there is no ALEC line share threshold established in the 1996 Act. Nonetheless, at pages 11-12, referring to BellSouth's access lines, Mr. Gillan contends "...to accurately compare ALEC lines to BellSouth lines requires that *all* of BellSouth's lines be included..." In his testimony, Dr. Taylor explains his disagreement with Mr. Gillan's suggestion regarding BellSouth's access lines. It is clear, however, that the ranges of ALEC market shares presented for BellSouth's area in Florida (i.e., 9.8% to 11.2%) are consistent with and exceed the level of other successful 271 applicants and are calculated in a similar manner. For example, the New York ALEC market share for Verizon (formerly Bell Atlantic) was approximately 7.3% at the time of its 271 application. BellSouth in Florida also exceeds the level of ALEC market share for SBC-Texas (8.1% - 8.4%), Kansas (9.0% - 9.5%), and Oklahoma (5.5% - 6.3%) in their successful 271 Applications.<sup>9</sup> In its last two annual reports, ALTS, the major ALEC industry group, has reported its national ALEC market share on the same basis that BellSouth, other 271 applicants and the FCC uses. At page 9 of the 2001 edition of the ALTS Annual Report, the ALEC market share reported uses the local access line amount that closely approximates (within approximately 1%) the FCC's Table 6 amounts for

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<sup>9</sup> If available for other 271 Applicants, ALEC market share estimates shown above are for the two most comparable estimation methods with BellSouth. SBC-Missouri's filing presented estimates of 8.7% - 9.2%.

1 the sum of state market share lines. Mr. Gillan's call to redefine the ILEC base in  
2 the market share calculation is unjustified and contrary to precedent and practice.

3

4 Q. DOES MR. GILLAN OFFER ANY OF ITS OWN INFORMATION, EVEN IN  
5 THE AGGREGATE, AS A BASIS TO CHALLENGE BELLSOUTH'S ALEC  
6 LINE ESTIMATES?

7

8 A. No. Mr. Gillan chooses only to rework BellSouth's estimates. In his rebuttal  
9 testimony Mr. Gillan does not offer any information on local lines of FCCA  
10 members, even in the aggregate. Of course, nearly 90% of the total facilities-  
11 based lines in BellSouth's Method Two (Exhibit VW-7) estimate rely on the E911  
12 listings that ALECs themselves report to the E911 database contractor. The  
13 remaining 10% of the Method Two facilities-based lines estimate is comprised of  
14 UNE-Ps leased from BellSouth. Mr. Gillan does not directly challenge either the  
15 E911 listings or the UNE-P information from BellSouth's estimates.

16

17 Q. DOES BELLSOUTH'S EVIDENCE INDICATE THAT LOCAL  
18 COMPETITION IS SIGNIFICANT IN FLORIDA?

19

20 A. Yes. In fact, Mr. Gillan does not contend that BellSouth has failed to meet the  
21 Track A requirements of the Act. Mr. Gillan does not challenge the ALECs  
22 identified, nor the ALECs' own E911 listing data, or the number of ALECs'  
23 UNE-Ps that comprise BellSouth's Method Two estimate. That conservative  
24 method shows that ALECs are serving at least 9.8% of the local access lines in  
25 BellSouth's area in Florida at the end of February 2001. This conservative lower

1 estimate includes data for 45 facilities-based ALECs, with over two-thirds of  
2 these also providing facilities-based service to residences.

3

4 Q. DOES ANY PARTY CHALLENGE BELLSOUTH'S USE OF ALECS' E911  
5 LISTINGS TO ESTIMATE ALEC LINES?

6

7 A. Yes. Mr. Gallagher, with Florida Digital Network ("FDN"), suggests that the  
8 E911 database may not be current with regard to ALEC listings. Specifically, Mr.  
9 Gallagher asserts "...tabulations from the E911 database will be overstated unless  
10 the database is regularly updated to remove CLEC customers disconnected for  
11 nonpayment or other reasons..." (See FDN, lines 21-23, at page 5, and lines 1-2,  
12 at page 6). BellSouth is not in a position to evaluate such general skepticism  
13 expressed by FDN that the ALEC industry generally may not be diligent in  
14 keeping their E911 listings current in the database. BellSouth presumes ALECs  
15 exercise the same diligence as BellSouth does, recognizing the extreme  
16 importance of 911 listings for public safety.

17

18 Q. DOES MR. GALLAGHER OFFER ANY OTHER BASIS TO CHALLENGE  
19 BELLSOUTH'S ESTIMATES OF ALEC LINES?

20

21 A. Yes. At the top of page 6, Mr. Gallagher states that "BellSouth's estimate that  
22 CLECs serve 24.8% or 21.1% of the business sector simply is inconsistent with  
23 FDN's observation and experience in the marketplace." Mr. Gallagher describes  
24 very briefly a two percent sample evaluated in one central office (Magnolia) in  
25 Orlando and which led it to conclude that ALECs serve approximately 7.2% of

1 the market. At best, Mr. Gallagher's analysis is non-scientific or not statistically  
2 valid. He also provides no supporting documentation and uses one central office  
3 as his base. I also would note that BellSouth's Exhibit VW-4, the FPSC staff's  
4 survey of ALECs in Florida, released December 2000, showed that as of June  
5 2000 ALEC business penetration in the Orlando exchange was "25% - 30%". (See  
6 Exhibit VW-4, Table 3.5 for "Total ALEC Bus. Providers" for Orlando, at page  
7 42).

8

9 Q. CAN BELLSOUTH PROVIDE ANOTHER EXAMPLE TO REFUTE MR.  
10 GALLAGHER'S ASSERTION THAT ITS ESTIMATES ARE OVERSTATED?

11

12 A. Yes. FDN's own News Release "Florida Digital Network Secures \$130 Million  
13 in New Financing" dated June 14, 2001 (Retrieved from  
14 <http://ww.floridadigital.net/news/news.cfm?id=49>) reports "FDN currently has  
15 over 50,000 business telephone lines in service and is growing by approximately  
16 1000 customers per month." (Emphasis added). FDN operates in five of the six  
17 Florida MSA's that are in BellSouth's service area, with Tampa being the  
18 exclusion. BellSouth's Exhibits VW-5 and VW-6 (confidential version) filed  
19 with the FPSC before FDN's disclosure presents an estimate of lines for FDN that  
20 is significantly lower than the total FDN has declared. In this instance, FDN's  
21 own data provides an example that should alleviate any concerns regarding  
22 possible overstatement in BellSouth's estimates. Further, despite Mr. Gallagher's  
23 discussion on competition in Florida, he never asserts that BellSouth fails to meet  
24 the Act's Track A requirement.

25

1 Q. DOES OTHER RECENT ALEC INFORMATION PROVIDE EVIDENCE  
2 REGARDING THE *TREND* OF LOCAL COMPETITION IN FLORIDA?  
3

4 A. Yes. Competition for both residence and business show strong growth. The most  
5 recent ALEC E911 listings in BellSouth's area provide a simple and direct  
6 comparison regarding ALEC trends. The total of ALEC E911 *residence class*  
7 listings for June represents a 45% compound annual growth rate over the four  
8 months February (data month for BellSouth's ALEC estimates) to June 2001.  
9 The total of ALEC E911 *business class* listings for June represents a 66%  
10 compound annual growth rate over the four months February to June 2001.  
11 Growth in ALECs' E911 listings reflects a rise in facilities-based lines in  
12 particular. This data shows that Mr. Gallagher's concerns regarding the number  
13 of ALECs experiencing financial difficulties is resulting in fewer lines being  
14 served by ALECs.  
15

16 Q. DOES BELLSOUTH, IN FLORIDA, MEET THE SPECIFIC REQUIREMENTS  
17 FOR TRACK A UNDER THE ACT?  
18

19 A. Yes. In summary, BellSouth's Method Two, Exhibits VW-6 and VW-8,  
20 identifies 45 unaffiliated facilities-based ALECs that, conservatively, serve an  
21 aggregate of at least 128,000 residence and 397,000 business lines in BellSouth's  
22 service area in Florida. These 45 ALECs identified in Method Two, Exhibits  
23 VW-6 and VW-8, that predominantly provide service on a facilities-basis also  
24 serve approximately 19,000 residential and approximately 80,000 business resold  
25 lines. Thus, BellSouth's conservative Method Two, by itself, establishes that

1 BellSouth has met the Act's Track A requirements.

2

3 Q. ON PAGE 3, MR. GILLAN STATES, "THE MOST LIKELY EFFECT OF  
4 BELLSOUTH'S GAINING INTERLATA AUTHORITY WOULD BE FOR IT  
5 TO GAIN EVEN GREATER DOMINANCE IN THE FUTURE." PLEASE  
6 COMMENT.

7

8 A. I disagree. BellSouth's gaining interLATA authority, given all the requirements  
9 and performance safeguards established, will not impede further local  
10 competition. Contrary to Mr. Gillan's projections, the FCC has recently provided  
11 striking evidence that, in fact, local competition has been dramatically stimulated  
12 in the two states that received the earliest interLATA service authorization. (*See*  
13 Exhibit CKC-6). In its May 21, 2001 News Release and Local Telephone  
14 Competition Status as of December 31, 2000, the FCC reported:

15

16 CLECs captured 20% of the market in the state of New York –  
17 the most of any state. CLECs reported 2.8 million lines in New  
18 York...- an increase of over 130%, from the time the FCC  
19 granted Verizon's long distance application in New York in  
20 December 1999 to December 2000.

21

22 CLECs captured 12% of the market in Texas, gaining over a  
23 half-a-million (644,980) end-user lines in the six months since  
24 the Commission authorized SBC's long distance application in  
25 Texas – an increase of over 60% in customer lines since June  
26 of 2000.

27

28 CLEC market share in New York and Texas (the two states  
29 that had 271 approval during the reporting period ending in  
30 December 2000) are over 135% and 45% higher than the  
31 national average, respectively.

32

33 Consequently, there is recent direct evidence that gaining interLATA authority



1 will stimulate, rather than impede, local competition.

2

3 **CHECKLIST ITEM 1**

4

5 Q. MR. ARGENBRIGHT, ON PAGES 5-11, ARGUES WORLDCOM'S  
6 POSITION ON POINT OF INTERCONNECTION. HAS THIS COMMISSION  
7 PREVIOUSLY RULED ON THE POINT OF INTERCONNECTION ("POI")  
8 ISSUE AS PRESENTED BY MR. ARGENBRIGHT?

9

10 A. Yes, partially. This issue was presented to the FPSC in Docket No. 000649-TP  
11 ("MCI WorldCom Arbitration") and in its subsequent Order issued March 30,  
12 2001 the FPSC found:

13

14 WorldCom, as the requesting carrier, has the exclusive right  
15 pursuant to the Act, the FCC's Local Competition Order and  
16 FCC regulations, to designate the network point (or points) of  
17 interconnection at any technically feasible point for the mutual  
18 exchange of traffic.

19

20 However, while we acknowledge that BellSouth's FCC-  
21 mandated obligation to deliver its originated traffic to ALEC-  
22 designated POIs raises troubling issues of compensation and  
23 definition, we find that the record in the proceeding is inadequate  
24 to support resolution of these issues. We note that these issues  
25 will be addressed in our generic docket on reciprocal  
26 compensation, Docket No. 000075-TP.

27 (Pages 78-79).

28

29

30 Q. IS THE POINT OF INTERCONNECTION ISSUE AS DISCUSSED BY MR.  
31 ARGENBRIGHT THE SAME ISSUE PRESENTED IN THE MCI  
32 WORLDCOM ABITRATION?

33

1 A. Yes. WorldCom, through the testimony of Mr. Argenbright, has presented no  
2 new evidence that should lead this Commission to reach a different conclusion  
3 here. As stated previously, the FPSC has determined that an ALEC may  
4 determine the point of interconnection within a LATA. The issue of whether an  
5 ALEC must compensate BellSouth for delivering its originating traffic to a distant  
6 point of interconnection will be addressed in the FPSC's Order Docket No.  
7 000075-TP (Phase II). The current schedule in this docket anticipates a Staff  
8 Recommendation on August 23, 2001 and a Commission Agenda vote on  
9 September 6, 2001.

10

11 Q. HOW HAVE STATE COMMISSIONS IN THE BELLSOUTH REGION  
12 ADDRESSED THIS ISSUE?

13

14 A. The South Carolina and North Carolina Commissions have ruled consistent with  
15 BellSouth's position on this issue. In the South Carolina AT&T Arbitration  
16 Order<sup>10</sup>, the Commission concluded that "while AT&T can have a single POI in a  
17 LATA if it chooses, AT&T shall remain responsible to pay for the facilities  
18 necessary to carry calls from distant local calling areas to that single POI." (See  
19 page 28). In the North Carolina AT&T Arbitration Order<sup>11</sup> the Commission  
20 ordered that "AT&T may designate its own points of interconnection (POI) with  
21 BellSouth Telecommunications, Inc.'s (BellSouth's) network. Further, if AT&T  
22 interconnects at points within the local access and transport area (LATA) but

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<sup>10</sup> *Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252, Order on Arbitration*, Released January 30, 2001 ("AT&T Arbitration Order").

<sup>11</sup> *Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolina, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996, Order Ruling on Objections and Requiring the Filing of the Composite Agreement*, Released March 9, 2001, ("AT&T Arbitration Order").

1 outside BellSouth's local calling area from which traffic originates, AT&T should  
2 be required to compensate BellSouth for, or otherwise be responsible for,  
3 transport beyond the local calling area." (See Page 1). Further, in the Sprint  
4 Arbitration Order<sup>12</sup> in North Carolina, the NCUC found that "Sprint may  
5 designate its own points of interconnection (POIs) with BellSouth's network.  
6 Further, if Sprint interconnects at points within the local access and transport area  
7 (LATA) but outside of BellSouth's local calling area from which traffic  
8 originates, Sprint should be required to compensate BellSouth for, or otherwise be  
9 responsible for, transport beyond the local calling area." (See page 3).

10  
11 The Kentucky Commission has ruled in the AT&T arbitration that AT&T may  
12 establish a minimum of one point of interconnection per LATA but must establish  
13 another POI when the amount of traffic reaches a DS3 level. The issue is pending  
14 in the remaining BellSouth states.

15

16 Q. NOTWITHSTANDING MR. ARGENBRIGHT'S TESTIMONY, DOES  
17 BELLSOUTH PROVIDE A SINGLE POINT OF INTERCONNECTION IN  
18 COMPLIANCE WITH SECTION 271 OF THE ACT?

19

20 A. Yes. BellSouth allows ALECs to interconnect at a single point in each LATA if  
21 they so desire in compliance with checklist item 1. The requirement of the Act, as  
22 interpreted by the FCC in its section 271 decision, is that a BOC provide "a single  
23 interconnection point within a LATA." SWBT Order-TX<sup>13</sup>, "[w]e note that in

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<sup>12</sup> *Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Recommended Arbitration Order*, Released July 5, 2001, ("Sprint Arbitration Order").

<sup>13</sup> *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communication Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the*

1 SWBT's interconnection agreement with MCI (WorldCom), WorldCom may  
2 designate 'a single interconnection point within a LATA.' Thus, SWBT provides  
3 WorldCom interconnection at any technically feasible point, and section 252(i)  
4 entitles AT&T, or any requesting carrier, to seek the same terms and conditions as  
5 those contained in WorldCom's agreement, a matter any carrier is free to take up  
6 with the Texas Commission." (§ 78). Also, in the SWBT Order-KS/OK, the FCC  
7 concluded "SWBT provides interconnection at all technically feasible points,  
8 including a single point of interconnection and therefore demonstrates compliance  
9 with the checklist item." (§ 232). Finally, in the Verizon Massachusetts Order<sup>14</sup>,  
10 the FCC concluded "Verizon provides interconnection at all technically feasible  
11 points, including a single point of interconnection, and therefore demonstrates  
12 compliance with the checklist item." (§ 197). As evidenced by its interconnection  
13 agreements, BellSouth provides ALECs with a single point of interconnection,  
14 just as Verizon and SWBT do. Thus, irrespective of Mr. Argenbright's testimony,  
15 BellSouth is in compliance with checklist item 1.

16  
17 Q. PLEASE DESCRIBE BELLSOUTH'S UNDERSTANDING OF THE  
18 "TANDEM PROVIDER ISSUE" DISCUSSED IN MR. ARGENBRIGHT'S  
19 TESTIMONY (PAGES 14-17).

20  
21 A. WorldCom wants access traffic to be delivered to BellSouth over WorldCom's  
22 local interconnection trunks instead of access trunks and not to BellSouth's access

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*Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, Released June 30, 2000 ("SWBT Order-TX").

<sup>14</sup> *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Released April 16, 2001, ("Verizon Massachusetts Order").

1 tandem. If such traffic is not exchanged through the companies' respective access  
2 tandems, but is delivered to BellSouth end offices over local interconnection  
3 trunks, BellSouth is unable to identify and properly bill switched access traffic.  
4 BellSouth's position is that ALECs should not be permitted to mix switched  
5 access traffic as local traffic by routing such switched access traffic over local  
6 interconnection trunks. The handling of switched access traffic is governed  
7 pursuant to switched access tariffs.

8

9 Q. HAS THE FPSC PREVIOUSLY RULED ON THIS ISSUE?

10

11 A. Yes. As stated by Mr. Argenbright, in the WorldCom Arbitration Order, the  
12 FPSC requires WorldCom to deliver all terminating switched access traffic to  
13 BellSouth over switched access trunks to BellSouth's access tandem.

14

15 Q. HAS MR. ARGENBRIGHT PRESENTED ANY NEW EVIDENCE SUCH  
16 THAT THE FPSC SHOULD CHANGE ITS POSITION?

17

18 A. No. There is no need to relitigate this issue in this proceeding. Further, the  
19 FPSC's ruling is consistent with BellSouth's obligation under checklist item 1.

20

21 Q. MR. WILLIS CONTENDS ON PAGE 3 OF HIS TESTIMONY THAT NUVOX  
22 MUST USE THE ACCESS SERVICE REQUEST (ASR) PROCESS TO ORDER  
23 INTERCONNECTION TRUNKS AND FACILITIES AND LOCAL  
24 FACILITIES TO ITS CUSTOMERS. IS THIS ACCURATE?

25

1 A. Not entirely. Mr. Willis is correct that NuVox, or any ALEC, must order  
2 interconnection trunks and facilities via the ASR process. NuVox would use the  
3 local service request (LSR) process to order UNEs to serve its customers. NuVox  
4 would use the ASR process to order special access services to serve its customer.

5

6 Q. DOES THE FACT THAT NUVOX USES THE ASR PROCESS TO ORDER  
7 INTERCONNECTION TRUNKS AND FACILITIES RESULT IN NUVOX  
8 BEING INCORRECTLY BILLED ACCESS RATES INSTEAD OF LOCAL  
9 INTERCONNECTION RATES?

10

11 A. No. BellSouth's interconnection agreements specify that in instances where no  
12 rate is contained in the agreement, the parties will use rates from their respective  
13 access tariffs for billing. This language is in the NuVox agreement (known as the  
14 "Trivergent" agreement) so there may be cases where NuVox is appropriately  
15 billed access rates for interconnection. Further, in instances where there is a local  
16 rate, the billing for interconnection may be apportioned between local and access  
17 rates. In a June 1, 2000 letter to all carriers, BellSouth described the billing  
18 method and necessary factors to apportion the charges for facilities between  
19 jurisdictions. These factors, to be provided by NuVox, are applied to the  
20 interconnection facilities and determine what portion should be billed at local  
21 interconnection rates and what portion should be billed at access rates.

22

23 Q. CAN NUVOX CONVERT ITS SPECIAL ACCESS SERVICE TO UNES AND  
24 AS A RESULT PAY UNE RATES?

25

1 A. Yes, if it meets the criteria established by the FCC. In June 2000, the FCC  
2 released a Supplemental Order Clarification in CC Docket No. 96-98, wherein it  
3 stated, in paragraph 8, “[t]herefore, until we resolve the issues in the Fourth  
4 FNPRM, IXC’s may not substitute an incumbent LEC’s unbundled loop-transport  
5 combinations for special access services unless they provide a significant amount  
6 of local exchange service, in addition to exchange access service, to a particular  
7 customer.” Nuvox may convert those lines that meet the FCC’s restrictions if it  
8 so chooses; however, no refund is due. It is my understanding that BellSouth has  
9 converted a large number of special access lines to UNEs on behalf of NuVox.

10

11 **CHECKLIST ITEM 2**

12

13 Q. ARE BELLSOUTH’S UNE RATES COST-BASED?

14

15 A. Yes. BellSouth’s current UNE rates, in compliance with the Act, are cost-based,  
16 as determined by the FPSC in Docket No. 990649-TP. Of course, as this  
17 Commission is aware, the FPSC recently issued an order in its current generic  
18 UNE cost proceeding, Order No. PSC-01-1181-FOF-TP. The current schedule  
19 anticipates a Staff Recommendation on all Motions for Reconsideration on  
20 September 6, 2001 and a Commission Agenda decision on September 18, 2001.  
21 Once the Commission issues its written order, BellSouth will update its SGAT.

22

23 Q. PLEASE COMMENT GENERALLY ON THE TESTIMONY OF MR.  
24 DARNELL AND MR. GILLAN CONCERNING COST-BASED UNBUNDLED  
25 NETWORK ELEMENT (“UNE”) RATES.

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A. As I mentioned earlier, the FPSC has conducted a comprehensive generic UNE cost docket and issued an order. To the extent that Mr. Darnell and Mr. Gillan may be asking the FPSC to re-litigate the generic UNE cost docket in this proceeding, such action is not necessary. Addressing cost issues in this proceeding, in light of the extensive generic UNE proceeding that the FPSC has completed, would be duplicative of the FPSC’s time and resources.

In the current cost docket, the FPSC updated the existing UNE rates and established cost-based rates for all UNEs for which a rate had not yet been established. As I discussed in my direct testimony, the cost-based rates BellSouth included on the Price List contained in its Statement of Generally Available Terms and Conditions (“SGAT”) (*see* Direct Testimony Exhibit CKC-5, Attachment A, filed May 22, 2001) will be modified to conform to the final prices established by the FPSC in the generic UNE cost proceeding which should alleviate Mr. Darnell’s concerns. The prices that ALECs will be charged for interconnection and UNEs are based on total element long run incremental cost (“TELRIC”) methodology. For all checklist items to which Section 252(d) is applicable, BellSouth provides rates that meet the criteria of Section 252(d) of the Act.

Q. PLEASE COMMENT ON MR. GILLAN’S STATEMENT AT PAGE 19 THAT “THE FLORIDA COMMISSION SHOULD PLACE PARTICULAR EMPHASIS ON ESTABLISHING COST-BASED RATES FOR UNES.”



1 A. Mr. Gillan's suggestion is not necessary. The FPSC has always shown a  
2 commitment to cost-based rates. Moreover, any comments that the FCCA  
3 thought appropriate on this issue should have been made a part of the record in  
4 the generic UNE cost proceeding. Mr. Gillan's discussion of BellSouth's  
5 proposed UNE rates, therefore, is not appropriate in the context of this  
6 proceeding.

7  
8 Q. PLEASE COMMENT ON MR. GILLAN'S ALLEGED "ANALYSIS" (PAGES  
9 20-22) OF BELLSOUTH'S FINANCIAL PERFORMANCE IF BELLSOUTH  
10 WERE A UNE-BASED CARRIER.

11  
12 A. Mr. Gillan states, on page 21, that "BellSouth could not even operate in Florida if  
13 required to lease the existing network. . . ." Mr. Gillan's flawed "analysis" is  
14 nothing more than an attempt to divert the FPSC's attention from the real question  
15 at hand.

16  
17 The standard here is not whether anyone can make money at these cost-based  
18 rates. The FCC stated, in ¶41 of its Verizon-Massachusetts Order, "In the 'SWBT  
19 Kansas/Oklahoma Order', the Commission held that this profitability argument is  
20 not part of the section 271 evaluation of whether an applicant's rates are TELRIC-  
21 based. The Act requires that we review whether the rates are cost-based, not  
22 whether a competitor can make a profit by entering the market."

23  
24 The question is whether BellSouth's UNE rates have been developed in  
25 compliance with the Act and the FCC's rules; that is, are the rates cost-based?

1 The answer is yes. The fact that, in some cases, BellSouth's proposed UNE rates  
2 are higher than BellSouth's retail rates is not the result of an attempt on  
3 BellSouth's part to limit competition. It is certainly not "news" to the FPSC that  
4 BellSouth's retail residence local exchange rates are below the cost of providing that  
5 service. ALECs, however, have been successful in winning business customers, in  
6 part due to the margin between BellSouth's business local exchange rates and  
7 BellSouth's UNE rates. In addition, resale that provides for a discount off of the  
8 tariffed retail rate also is available.

9  
10 Q. PLEASE ADDRESS MR. GILLAN'S DISCUSSION, ON PAGE 22, WITH  
11 REGARD TO BELLSOUTH'S DAILY USAGE FILE ("DUF") RATES.

12  
13 A. Mr. Gillan's discussion/analysis is flawed. First, it is confusing as to what Mr.  
14 Gillan is actually calculating and what he is using to make his calculation. He  
15 states that it would appear that DUF rates apply on a per-message basis, which in  
16 general is correct. It then appears from his Exhibit JPG-8, footnotes 3 and 4, that  
17 he is using minutes (which certainly would be greater than messages) to develop  
18 his costs. Mr. Gillan then restates BellSouth-Florida DUF cost per line based on  
19 "assuming" this, "estimating" that, and "calculating an average" cost of  
20 something else. He uses this restated cost to compare to Qwest's proposed cost  
21 and another figure represented to be an Ameritech cost, neither of which is  
22 provided with an explanation.

23  
24 Mr. Gillan's analysis does not demonstrate that BellSouth is not in compliance  
25 with the Act and the FCC's pricing rules. As stated previously, the standard

1 necessary for BellSouth to be in compliance is whether BellSouth's UNE rates  
2 comply with TELRIC principles. The FPSC has established cost-based DUF rates  
3 in Docket No. 990649-TP. Any concerns Mr. Gillan has with those rates should  
4 have been addressed in that docket. Nevertheless, it should be recognized that  
5 rate differences among BOCs do not preclude rates from being cost-based, and  
6 certainly do not preclude granting 271 relief. Specifically, the FCC noted in its  
7 background discussion of UNE pricing in its SWBT-TX Order, "that SWBT's  
8 nonrecurring charges are substantially higher than those charged by incumbent  
9 LECs in other states. . . ." (Fn. 648). In that Order, however, the FCC still  
10 determined that SWBT's prices were cost-based and granted 271 relief in Texas.

11

12 Q. PLEASE COMMENT ON MR. GUEPE'S DISCUSSION ON PAGES 6-8 AND  
13 MR. GILLAN'S DISCUSSION ON PAGES 20-21, WITH REGARD TO THEIR  
14 CONTENTION THAT BELLSOUTH SHOULD COMBINE UNES.

15

16 A. Both Mr. Guepe and Mr. Gillan suggest that the FPSC require BellSouth to  
17 combine UNES for ALECs when the UNES are not combined. On page 7, Mr.  
18 Guepe states, "BellSouth will not provide cost-based access to combinations that  
19 allow ALECs to serve new customers or to provide additional lines for existing  
20 customers . . . BellSouth, if it so chooses . . . assesses a non-cost based 'glue  
21 charge'" Before I comment on the validity of Mr. Guepe's statements, I need to  
22 explain what a "glue charge" is.

23

24 Where BellSouth agrees to physically combine UNES for an ALEC, the prices for  
25 such combinations will be a negotiated rate. The difference between negotiated

1 prices and cost-based prices is referred to as a “glue charge” in this issue. The  
2 “glue charge” is not necessarily a separate charge; it is simply the difference in  
3 prices described above.  
4

5 Q. HAS THE FPSC PREVIOUSLY RULED ON THE ISSUE REGARDING  
6 “NEW” UNE COMBINATIONS?  
7

8 A. Yes. In numerous arbitration orders (i.e., Intermedia, MCI, AT&T, Sprint), the  
9 FPSC has found that it is not the duty of BellSouth to perform the functions  
10 necessary to combine unbundled network elements. The FPSC has correctly  
11 determined that Rule 51.315(b) only requires BellSouth to make available at  
12 TELRIC rates those combinations requested by an ALEC that are, in fact, already  
13 combined and physically connected in its network at the time a requesting carrier  
14 places an order.  
15

16 The FPSC further has concluded that BellSouth should be compensated for the  
17 work it does to physically combine unbundled network elements that an ALEC  
18 requests when those elements are not currently combined within BellSouth’s  
19 network.  
20

21 Q. HAS ANY PARTY PRESENTED ANY NEW ARGUMENTS SUCH THAT  
22 THE FPSC SHOULD CHANGE THEIR POSITION?  
23

24 A. No. Mr. Gillan and Mr. Guepe provide no new evidence and the FPSC should not  
25 change its position on this issue.

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Q. IS BELLSOUTH OBLIGATED TO OFFER NEW COMBINATIONS AT COST-BASED RATES TO COMPLY WITH SECTION 271?

A. No. The FCC made it clear in the Bell Atlantic New York Order that new combinations are not a requirement of Section 271. In that Order, the FCC concluded, “that Bell Atlantic demonstrates that it provides to competitors combinations of network elements that are *already preassembled in their network*, as well as nondiscriminatory access to unbundled network elements, in a manner that allows competing carriers to combine those elements themselves.” (¶ 231, emphasis added). The FCC reached a similar conclusion in its SWBT Order-TX, stating “that SWBT provides access to UNEs in a manner that allows requesting carriers to combine those elements, and that SWBT provides access to *preexisting combinations* of network elements.” BellSouth’s combination policy is fully compliant with Section 271. (¶ 216, emphasis added) (*See also*, SWBT Order-KS/OK at ¶ 172).

**CHECKLIST ITEM 4**

Q. PLEASE RESPOND TO SPRINT’S REFERENCE IN ITS REBUTTAL COMMENTS TO A NORTH CAROLINA UTILITIES COMMISSION ORDER THAT DISCUSSES WHETHER ALECS SHOULD PAY ELECTRONIC OR MANUAL RATES FOR ACCESSING A PARTICULAR BELLSOUTH DATABASE.

1 A. It is not necessary for the FPSC to refer to the North Carolina Utilities  
2 Commission order discussed by Sprint. This Commission has addressed this issue  
3 more generally in the context of the MCI arbitration. The FPSC found that  
4 “where it is determined that BellSouth has an electronic interface in place for its  
5 retail offerings, but there is no analogous system in place for comparable services  
6 obtained by an ALEC, it would be a reasonable presumption that an ALEC is  
7 being denied a meaningful opportunity to compete; where such a finding is made,  
8 BellSouth should charge an electronic ordering charge. However, such a  
9 determination will need to be made on a case-by-case basis.” (See page 19).

10

11 **CHECKLIST ITEM 5**

12

13 Q. PLEASE DESCRIBE BELLSOUTH’S UNDERSTANDING OF THE  
14 UNBUNDLED TRANSPORT ISSUES DISCUSSED BY MR. ARGENBRIGHT  
15 (PAGES 17-23).

16

17 A. Mr. Argenbright contends that BellSouth must provide dedicated interoffice  
18 transport between ALEC switching locations and between a ALEC’s network and  
19 another requesting carrier’s network. The FCC requires BellSouth to unbundle  
20 dedicated transport in BellSouth’s existing network and has specifically excluded  
21 transport between other carriers’ locations. BellSouth is not required to offer, and  
22 certainly is not required to build, dedicated transport facilities between ALEC  
23 network locations, whether they be nodes or network switches or between the  
24 ALEC’s network and another carrier’s network.

25

1 Q. HAS THE FPSC PREVIOUSLY RULED REGARDING THE UNBUNDLED  
2 TRANSPORT ISSUE?

3  
4 A. Yes. In the MCI arbitration Order the FPSC concluded that BellSouth is not  
5 required to provide MCI with unbundled dedicated transport between other  
6 carriers' locations, or between MCI switches.

7  
8 Q. HAS MR. ARGENBRIGHT PRESENTED ANY NEW EVIDENCE THAT  
9 SHOULD CAUSE THE FPSC TO CHANGE ITS POSITION?

10  
11 A. No. There is no need to relitigate this issue in this proceeding. Further, the  
12 FPSC's ruling is consistent with BellSouth's obligation under checklist item 5.

13  
14 Q. IN LIGHT OF MR. ARGENBRIGHT'S TESTIMONY ON THIS CHECKLIST  
15 ITEM, DO YOU STILL CONTEND THAT BELLSOUTH PROVIDES ACCESS  
16 TO UNBUNDLED TRANSPORT IN COMPLIANCE WITH SECTION 271?

17  
18 A. Yes. As I discussed in my direct testimony, FCC Rule 51.319 requires a BOC to  
19 offer access to local transport on the trunk side of a wireline local exchange  
20 carrier switch unbundled from switching or other services. In the Bell Atlantic  
21 Order, the FCC stated that it requires that BOCs provide both dedicated and  
22 shared transport to requesting carriers. (¶ 337). As evidenced by its  
23 interconnection agreements and its SGAT, BellSouth provides unbundled  
24 transport in compliance with these obligations. Because BellSouth is not  
25 obligated to provide dedicated transport between ALEC locations (or between an

1 ALEC and another carrier), Mr. Argenbright's testimony has no bearing on  
2 whether BellSouth is compliant with the checklist.

3

4 **CHECKLIST ITEM 6**

5

6 Q. MR. GUEPE STATES THAT "BELLSOUTH FAILS TO PROVIDE  
7 APPROPRIATE ACCESS TO UNES FOR CUSTOMERS LOCATED WITHIN  
8 DENSITY ZONE 1 IN THE TOP 50 MSA'S." PLEASE RESPOND.

9

10 A. BellSouth has elected to be exempted from providing access to unbundled local  
11 switching to serve customers with four or more lines in Density Zone 1 of the  
12 Miami, Orlando and Ft. Lauderdale MSAs. To avail itself of this exemption, the  
13 FCC requires BellSouth to combine loop and transport UNEs (also known as the  
14 "Enhanced Extended Link" or "EEL") in the geographic area where the  
15 exemption applies. The FCC also requires that such combinations be provided at  
16 cost-based rates. BellSouth will physically combine loop and transport UNEs at  
17 FCC mandated cost-based prices as required in the FCC's UNE Remand Order in  
18 order to have the exemption from providing local circuit switching.

19

20 Beyond this limited exception dictated by the FCC, BellSouth is under no  
21 obligation to physically combine network elements, where such elements are not  
22 in fact combined.

23

24 Q. HAS THE FPSC PREVIOUSLY RULED ON THIS ISSUE?

25



1 A. Yes. In the AT&T arbitration, the FPSC concluded “it is not the duty of  
2 BellSouth to ‘perform the functions necessary to combine unbundled network  
3 elements in any manner.’” (See Page 23). The FPSC further states that the phrase  
4 “currently combines” is limited to UNE combinations that are, in fact, already  
5 combined and physically connected in BellSouth’s network and that there is no  
6 physical work that BellSouth must complete in order to effect the combination for  
7 an ALEC that submits an order. (*Id.*)

8  
9 In addition, the FPSC established cost-based rates for new EELs in its May 25,  
10 2001 Order, UNE Cost Docket No. 990649-TP.

11  
12 Q. HAS MR. GUEPE PRESENTED ANY NEW EVIDENCE THAT SHOULD  
13 CAUSE THE FPSC TO CHANGE ITS POSITION?

14  
15 A. No. There is no need to relitigate this issue in this proceeding. Further, the  
16 FPSC’s ruling is consistent with BellSouth’s obligation under checklist item 6.

17  
18 **CHECKLIST ITEM 13**

19  
20 Q. WHAT IS BELLSOUTH’S UNDERSTANDING OF THE “TANDEM  
21 INTERCONNECTION ISSUE” DISCUSSED BY MR. ARGENBRIGHT  
22 (PAGES 25-30)?

23  
24 A. The disagreement between BellSouth and WorldCom on this issue has been  
25 whether the FCC established a single-pronged or a two-pronged test for  
26 determining if an ALEC is eligible to receive the tandem interconnection rate for

1 reciprocal compensation. A single-pronged test is based on whether the ALEC's  
2 facilities serve a comparable geographic area as that served by BellSouth's  
3 facilities. A two-pronged test refers to both a geographic test and a test as to  
4 whether the ALEC's switch(s) perform comparable functions to BellSouth's  
5 switch(s).

6  
7 However, BellSouth acknowledges that the FCC's language in its April 27, 2001  
8 NPRM<sup>15</sup> accompanying its Order on Remand seems to resolve the question of  
9 whether a two-pronged or a single-pronged test is to be used. Nonetheless, even  
10 if only the geographic test is required, the ALEC still has the burden of proof that  
11 it is entitled to the tandem switching rate in every instance based on the  
12 geographic coverage of its switch.

13  
14 Q. IS THE FPSC ADDRESSING THE TANDEM INTERCONNECTION ISSUE  
15 IN A GENERIC PROCEEDING?

16  
17 A. Yes. The FPSC is addressing the tandem interconnection issue in Docket No.  
18 000075-TP (Phase II).

19  
20 Q. DOES THE FCC'S ORDER ON REMAND RESOLVE THE TANDEM  
21 INTERCONNECTION ISSUE RAISED BY MR. ARGENBRIGHT?

22  
23 A. Yes. For all practical purposes, the FCC recently has resolved this issue. As has

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<sup>15</sup> *Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking*, CC Docket No. 01-92, Released April 27, 2001 ("NPRM").

1           been anticipated for some time, the FCC issued its Order on Remand<sup>16</sup> affirming  
2           its earlier conclusion that traffic bound for Internet Service Providers (“ISPs”) is  
3           predominantly interstate access traffic that is not subject to the reciprocal  
4           compensation obligations of Section 251(b)(5) but is within the jurisdiction of the  
5           FCC under Section 201 of the Act. (Order at ¶1).

6  
7           After it held that ISP-bound traffic was not subject to reciprocal compensation,  
8           the FCC established a phased-in interim regime that will govern intercarrier  
9           compensation for ISP-bound traffic over the next three years. (Order on Remand  
10          at ¶ 77). The FCC’s phased-in interim regime “establishes relatively low per  
11          minute rates, with a cap on the total volume of traffic entitled to such  
12          compensation.” (*Id.*). The FCC characterized these payments as intercarrier  
13          compensation that is not subject to the reciprocal compensation obligations in  
14          Section 251 of the Act.

15  
16          After establishing the intercarrier compensation mechanism referenced above, the  
17          FCC gave individual ILECs the ability to “opt” into the FCC’s scheme, if the  
18          ILEC agreed to exchange all 251(b)(5) traffic at the designated ISP compensation  
19          rates. BellSouth has determined that it will “opt” into the FCC rates for ISP  
20          traffic and also offers to exchange all 251(b)(5) traffic at the designated ISP  
21          compensation rates. Therefore, the issue of whether a ALEC’s switch serves a  
22          geographic area comparable to the ILEC’s tandem switch is relevant only if the  
23          ALEC declines BellSouth’s offer to exchange 251(b)(5) traffic at the same rate as  
24          ISP traffic.

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<sup>16</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Issued April 27, 2001 (“Order on Remand”).

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Q. MR. ARGENBRIGHT (PAGE 30) STATES THAT BELLSOUTH MUST AMEND ITS SGAT TO REFLECT THAT ALECS WILL RECEIVE THE TANDEM INTERCONNECTION RATE BASED ON GEOGRAPHIC COMPARABILITY BEFORE SATISFYING CHECKLIST ITEM 13. PLEASE COMMENT.

A. As I stated previously, BellSouth agrees that comparable geographic coverage is the sole demonstration an ALEC must make to receive the tandem interconnection rate. The FCC found that Bell Atlantic was in compliance with this checklist item because “it (1) has in place reciprocal compensation arrangements in accordance with section 252(d)(2), and (2) is making all required payments in a timely fashion.” (§ 376). Like Bell Atlantic, BellSouth has in place reciprocal compensation arrangements set forth in its binding interconnection agreements, and makes all payments pursuant to those arrangements in a timely fashion. Thus, BellSouth is in compliance with this checklist item. Additionally, BellSouth’s local traffic definition (*see* Section I.A) and the reciprocal compensation language (*see* Section XIII, footnote 3) contained in the terms and conditions portion of the SGAT that was attached to my direct testimony as Exhibit CKC-5 comply with the FCC’s Order on Remand dated April 27, 2001, in CC Docket No. 96-98 and No. 99-68 and with the FCC’s clarification as to ALEC eligibility for the tandem interconnection rate in its April 27, 2001 NPRM.

Q. WHAT IS BELLSOUTH’S UNDERSTANDING OF THE “FX ISSUE” DISCUSSED BY MR. ARGENBRIGHT (PAGES 30-41)?

1

2 A. This issue concerns compensation between carriers, rather than restrictions on  
3 assignments of NPA/NXX codes. Both BellSouth and WorldCom agree that  
4 carriers are permitted to assign NPA/NXX codes in any manner desired, including  
5 outside the local calling area or rate center with which the codes are associated.  
6 However, if WorldCom chooses to give out its numbers in this manner, calls  
7 originated by BellSouth end users to those numbers are not local calls.  
8 Consequently, such calls are not local traffic under the agreement and no  
9 reciprocal compensation applies. Further, WorldCom should identify such long  
10 distance traffic and pay BellSouth for the originating switched access service  
11 BellSouth provides on those calls.

12

13 Q. IS THE FPSC ADDRESSING THE "FX ISSUE" IN A GENERIC  
14 PROCEEDING?

15

16 A. Yes. The FPSC is addressing "FX" in the generic proceeding in Docket No.  
17 000075-TP (Phase II).

18

19 Q. HOW HAVE STATE COMMISSIONS IN THE BELLSOUTH REGION  
20 ADDRESSED THIS ISSUE?

21

22 A. The South Carolina, Tennessee, and Alabama Commissions have ruled consistent  
23 with BellSouth's position on this issue: (1) South Carolina Docket No. 2000-516-  
24 C, Order No. 2001-045, dated January 16, 2001 (Adelphia arbitration); (2)  
25 Tennessee Docket No. 99-00948, Interim Order dated June 25, 2001 (Intermedia

1 arbitration); and (3) Alabama Docket No. 27385, Order dated May 21, 2001  
2 (Intermedia Arbitration).

3  
4 The Kentucky Commission has heard this issue in two recent arbitration cases  
5 (Adelphia and Level 3), both of which were subsequently settled by the parties.  
6 In the case of the Level 3 arbitration, the parties reached a negotiated settlement,  
7 after the Commission had issued its March 14, 2001 Order. As an indication of  
8 the Commission's position on this issue, that March 14 Order stated:

9  
10 Each party shall consider the other's FX or virtual NXX  
11 service to be local traffic when the customer is physically  
12 located within this same LATA as the calling area with which  
13 the telephone number is associated.  
14

15 Thus, although the Kentucky Commission did not agree with BellSouth's  
16 position, it did recognize the potential abuse if an ALEC were to assign NXX  
17 numbers such that the call would appear to be local to the originating party, but  
18 would actually cross LATA boundaries, or even cross state boundaries. In order  
19 to limit such potential abuse, the Kentucky Commission specified that only calls  
20 within the same LATA would be considered local calls. In its Recommended  
21 Arbitration Order dated April 3, 2001 in the MCI/BellSouth arbitration  
22 proceeding, the North Carolina Utilities Commission reached the same conclusion  
23 as the Kentucky Commission on this issue. Pursuant to the North Carolina  
24 Commission's procedural schedule, objections to the Recommended Arbitration  
25 Order were filed on May 3, 2001, and neither BellSouth nor MCI objected to the  
26 Commission's decision on this issue.

27  
28 BellSouth offers in its Standard Interconnection Agreement an option for the

1 parties to treat all calls within a LATA as local calls for purposes of reciprocal  
2 compensation. This option is consistent with the Kentucky and North Carolina  
3 Commissions' rulings on FX or Virtual NXX traffic. Likewise, BellSouth's  
4 settlements with Level 3 and Adelphia are consistent with the Kentucky  
5 Commission's March 14 Order in the Level 3 case. Specifically, those  
6 settlements resulted in the parties receiving reciprocal compensation for  
7 terminating all intraLATA traffic. In BellSouth's negotiations with WorldCom in  
8 other states, WorldCom has not agreed to such treatment.

9  
10 Q. DOES MR. ARGENBRIGHT'S TESTIMONY ON THE NPA/NXX ISSUE  
11 AFFECT YOUR CONCLUSION THAT BELL SOUTH IS IN COMPLIANCE  
12 WITH THE COMPETITIVE CHECKLIST?

13  
14 A. No. The dispute is whether calls should be treated as local or toll for the purposes  
15 of intercarrier compensation. We agree that carriers can assign NPA/NXX codes  
16 in any manner they desire. Reciprocal compensation, however, is only  
17 appropriate for local traffic. ALECs should properly compensate BellSouth for  
18 originating access charges on calls that originate in one local calling area and  
19 terminate in another and, in no event, should reciprocal compensation apply to  
20 such calls.

21  
22 BellSouth's position on this issue is the same as the Texas Commission and the  
23 FCC granted SBC 271 authority in Texas. Obviously, BellSouth's position is  
24 compliant with section 271.

25

1     **CHECKLIST ITEM 14**

2

3     Q.     ON PAGE 9, MR. GILLAN COMPLAINS THAT “RESALE NEITHER  
4           PERMITS A CARRIER TO INNOVATE, OR EFFECTIVELY OFFER  
5           INTEGRATED LOCAL/LONG DISTANCE PACKAGES.” PLEASE  
6           COMMENT.

7

8     A.     Whether resale permits a carrier to offer integrated packages is irrelevant to a  
9           determination of BellSouth’s compliance under checklist item 14. To prove  
10          checklist compliance with Section 271(c)(2)(B)(xiv) requires that BellSouth  
11          demonstrate that “[t]elecommunications services are available for resale in  
12          accordance with the requirements of sections 251(c)(4) and 252(d)(3).”  
13          BellSouth has demonstrated availability of resale services through its SGAT and  
14          through existing interconnection agreements (See Exhibit CKC-3 attached to my  
15          direct testimony).

16

17          Although not relevant for checklist compliance, I will respond to Mr. Gillan’s  
18          assertions. On page 9 of his testimony, Mr. Gillan contends that this alleged  
19          limitation is a result of BellSouth continuing to assess access charges on the  
20          reseller’s lines. Assessing access charges on a resold line is not unique to  
21          BellSouth. In its Local Competition First Report and Order (¶980), the FCC  
22          established that ILECs continue to bill access when local services are resold under  
23          section 251(c)(4). Congress envisioned three separate options for ALECs to enter  
24          the local exchange telecommunications market. Resale is one of those options.  
25          The situation Mr. Gillan presents is simply the construct of the resale model. As



1 shown in the Status of Competition portions of both this testimony and Exhibit  
2 CKC-4 attached to my direct testimony, there are apparently several ALECs  
3 making a business of resale in Florida that may disagree with Mr. Gillan's  
4 conclusion. If resale is not a viable alternative for some ALECs, Congress also  
5 provided opportunities for a ALEC's entry through purchasing facilities from  
6 BellSouth or by constructing its own facilities. In addition, Congress did not  
7 envision resale as a long-term entry method. For this reason, as noted earlier in  
8 this testimony, the long-term migration from resale service to facilities-based  
9 service has been expected as competition matures.

10  
11 Q. MR. GILLAN'S TESTIMONY AT PAGE 26 AND MR. GALLAGHER'S  
12 TESTIMONY AT PAGE 16, REFER TO THE "ASCENT DECISION" AND  
13 ALLEGE THAT BELL SOUTH MUST PERMIT THE RESALE OF ITS  
14 ADVANCED DATA SERVICES AT A WHOLESALE DISCOUNT. DO YOU  
15 AGREE WITH MR. GILLAN AND MR. GALLAGHER?

16  
17 A. No. The January 9, 2001 ruling by the United States Court of Appeals for the  
18 District of Columbia Circuit, as referred to by Mr. Gillan and Mr. Gallagher, does  
19 not support their allegation. Mr. Gillan and Mr. Gallagher have taken a statement  
20 out of context and used it inappropriately. This decision dealt with regulatory  
21 relief granted by the FCC regarding resale of advanced services *if conducted*  
22 *through the separate affiliate established in the Ameritech and SBC merger.* The  
23 Court ruled that an ILEC may not "sideslip §251(c)'s requirements by simply  
24 offering telecommunications services through a wholly owned affiliate." (*See*  
25 *Ruling, at page 4*). This is not what is at issue here, nor does the ruling require

1 BellSouth to resell its advanced data services at a wholesale discount, as Mr.  
2 Gillan and Mr. Gallagher would have the FPSC believe. Further, BellSouth has  
3 no separate affiliate for the sale of advanced services, and therefore, this decision  
4 does not apply to BellSouth.

5

6 Q. IS THERE A MORE RECENT COURT RULING THAT SPEAKS DIRECTLY  
7 TO MR. GILLAN’S AND MR. GALLAGHER’S ALLEGATIONS?

8

9 A. Yes. The United States Court of Appeals for the District of Columbia Circuit  
10 issued a decision speaking directly to this issue. In the Background discussion in  
11 its decision in “Association of Communications Enterprises, Petitioner v. Federal  
12 Communications Commission and United States of America, Respondents, On  
13 Petition for review of an Order of the Federal Communications Commission,”  
14 Case No. 00-1144; decided June 26, 2001, the Court states:

15

16 At issue in this case is that part of the ‘Second Report and  
17 Order’ in which the Commission addressed the question  
18 whether the resale requirement of §251(c)(4)(A) applies to an  
19 ILEC’s offering of advanced services. As the Commission  
20 acknowledged, it had previously determined that advanced  
21 services constitute ‘telecommunications service’ and that the  
22 end-users and ISPs to which the ILECs offer such services are  
23 ‘subscribers who are not telecommunications carriers’ within  
24 the meaning of §251(c)(4)(A). The remaining issue, therefore,  
25 was whether an ILEC’s offering of certain advanced services,  
26 including DSL, is made ‘at retail’ so as to trigger the discount  
27 requirement. The Commission ultimately concluded that while  
28 an incumbent LEC DSL offering to residential and business  
29 end-users is clearly a retail offering designed for and sold to  
30 the ultimate end-user, an incumbent LEC offering of DSL  
31 services to Internet Service Providers as an input component to  
32 the Internet Service Provider’s high-speed Internet service  
33 offering is not a retail offering. Accordingly, . . . DSL services  
34 designed for and sold to residential and business end-users are

1 subject to the discounted resale obligations of section 251(c)(4)  
2 . . . [H]owever, . . . section 251(c)(4) does not apply where the  
3 incumbent LEC offers DSL services as an input component to  
4 Internet Service Providers who combine the DSL service with  
5 their own Internet Service.  
6

7 The Association of Communication Enterprises (ASCENT)  
8 petitioned for review of this determination, and various tele-  
9 communications and DSL providers intervened on behalf of the  
10 Commission.  
11

12 In conclusion, the Court states:

13  
14 In sum, having considered ASCENT’s objections, we find the  
15 Commission’s Order in all respects reasonable.  
16

17 In addition, the FCC reiterated its position on the resale of advanced services in  
18 its Bell Atlantic New York Order. In paragraph 393 of that Order, addressing  
19 Bell Atlantic’s ADSL Access Tariff offering, the FCC stated, “we agree with Bell  
20 Atlantic that it is not required to provide an avoided-cost discount on its  
21 wholesale ADSL offering because it is not a retail service subject to the discount  
22 obligations of section 251(c)(4).” More recently, in its Verizon Connecticut  
23 Order, the FCC clearly stated that resale obligations only extend to  
24 telecommunications services offered at retail. Therefore, BellSouth is not  
25 required to offer its wholesale DSL telecommunications service to ALECs at a  
26 resale discount, nor is it required to resell its Internet access service.<sup>17</sup> BellSouth  
27 is in compliance with the FCC’s requirements with respect to resale of advanced  
28 services.

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<sup>17</sup> *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order (Released July 20, 2001) (“Verizon Connecticut Order”)(fn 93).

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Q. DOES BELLSOUTH OFFER AN xDSL TELECOMMUNICATIONS SERVICE AS A RETAIL OFFERING?

A. No. The only DSL telecommunications service that BellSouth offers is a wholesale service offered to ISPs. BellSouth does not offer a retail DSL telecommunications service, and based on the FCC's Second Report and Order referred to above, as well as the Court's Decision, BellSouth has no obligation to make available its wholesale telecommunications DSL service at the resale discount, pursuant to section 251(c)(4).

**OTHER**

Q. PLEASE RESPOND TO MS. BERGER/AT&T'S ALLEGATION ON PAGE 3 THAT NONE OF THE ISSUES DISCUSSED IN HER TESTIMONY WILL BE RESOLVED IN A TIMELY MANNER "AS A RESULT OF BUSINESS-TO-BUSINESS NEGOTIATIONS."

A. Contrary to Ms. Berger's allegation, BellSouth most certainly continues to discuss and attempt to resolve all valid issues raised by AT&T, even those that are before regulatory bodies. In certain circumstances, where legal or policy issues are involved, these matters must be discussed with policy decision makers and/or the legal department, regardless of whether these issues are before regulatory bodies. This additional but necessary step may add some time to the response period; however, BellSouth will continue to strive, in all instances, to respond to AT&T's

1 concerns in a timely and reasonable fashion.

2

3 Q. DOES BELLSOUTH HAVE PROCEDURES THAT DEAL WITH THE  
4 CONCERNS OF INDIVIDUAL ALECS?

5

6 A. Yes. BellSouth offers various avenues for dealing with individual ALEC  
7 concerns. In addition to individual Account Teams, numerous ALEC centers, and  
8 other processes that are tailored specifically for ALECs, BellSouth has established  
9 an External Response Team (“ERT”) for handling inquiries and responding to  
10 issues raised by the ALECs. In the timeframe from 1998 through mid-2001,  
11 BellSouth processed over 3000 individual ALEC ERT letters. These letters have  
12 dealt with a variety of subjects from requests for specific data to Root Cause  
13 Analysis.

14

15 Q. DOES BELLSOUTH HAVE OTHER FORUMS IN PLACE THAT DEAL  
16 WITH CONCERNS OF THE ALEC COMMUNITY AS A WHOLE?

17

18 A. Yes. BellSouth has in place several collaboratives to address ALECs’ issues and  
19 concerns. BellSouth established these collaboratives to allow BellSouth and the  
20 ALEC community to meet, identify, discuss, and resolve, on a weekly, monthly,  
21 quarterly, semiannual, or annual basis, the various substantive issues that  
22 BellSouth and the ALEC community face in a competitive market. Importantly,  
23 these collaboratives are region-wide, thereby providing the ALEC community  
24 with a single forum to address any BellSouth-specific issues or concerns they may  
25 have from any state in BellSouth’s service territory. Further, to foster a

1 cooperative environment that is focused on the resolution of issues, as opposed to  
2 advocating legal and regulatory positions, attorneys are prohibited from attending  
3 these collaboratives. To date, more than 80 ALECs have participated in these  
4 collaboratives and numerous issues that would have resulted in Commission  
5 intervention have been resolved. A summary of the collaboratives currently  
6 offered by BellSouth follows:

- 7
- 8 1. BellSouth User Groups - This collaborative consists of four groups,  
9 (UNE-P, Collocation, Resale, and Facilities Based) each of which has  
10 its own separate collaborative. The purpose of these groups is to  
11 bring BellSouth and ALECs together to resolve potential issues  
12 relating to each group prior to legal or regulatory intervention. The  
13 groups meet once a quarter, except for the UNE-P group, which meets  
14 every two months. Over 76 ALECs have participated in these  
15 collaboratives and several meetings are scheduled in the next couple  
16 of months. As information, I have attached as Exhibit CKC-7, a  
17 detailed description of each of the BellSouth User Group  
18 Collaboratives.
  - 19
  - 20 2. ALEC Inforum - In this collaborative, BellSouth, in a convention-like  
21 setting, informs ALECs of the latest information on BellSouth's  
22 products, OSS, sales and marketing initiatives, and operational issues.  
23 In addition, the collaborative also provides educational workshops and  
24 sessions, opportunities to meet and discuss issues with BellSouth  
25 Subject Matter Experts ("SMEs"), and allows ALECs to network with

1 their BellSouth account executives and other ALECs. This  
2 collaborative is generally held on an annual basis. The most recent  
3 meeting was held on July 15-17, 2001, in Atlanta. More than 275  
4 people representing over 80 ALECs attended this recent meeting,  
5 which included educational workshops and sessions offered by  
6 BellSouth addressing: (1) Local Number Portability; (2) Tariffs; (3)  
7 Lens; (4) "How to Improve Operational Efficiency"; (5) "Mergers and  
8 Acquisitions – Your Responsibilities"; (6) "How to Provide Magical  
9 Customer Service"; (7) UNE-P ; and (8) Loop Make-up. A copy of  
10 the Agenda for the recent Third Annual 2001 Summer ALEC Inforum  
11 is provided as Exhibit CKC-8.

12

13 3. Line Sharing/Line Splitting Collaborative – These industry  
14 collaborative meetings consist of four distinct groups, each of which  
15 has its own collaborative: (1) Central Office Based Line Sharing –  
16 BellSouth Owned Splitter; (2) Central Office Based Line Sharing –  
17 DLEC Owned Splitter; (3) Remote Site Based Line Sharing –  
18 BellSouth Owned Splitter; and (4) Line Splitting. These  
19 collaboratives provide ALECs with an opportunity to meet with  
20 BellSouth on a regularly scheduled basis to develop by mutual  
21 agreement the processes and procedures required to implement Line  
22 Sharing and Line Splitting. In 2000 alone, the Central Office Based  
23 groups met over 70 times, and in 2001, to-date, the groups have met  
24 approximately 25 times. Approximately 12 ALECs have participated

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in this collaborative. Exhibit CKC-9 provides a description of the groups in this collaborative.

Q. CAN YOU ADDRESS SOME OF THE SPECIFIC INCIDENTS THAT ACCESS PRESENTED IN EXHIBITS ATTACHED TO MR. PAGE’S REBUTTAL TESTIMONY?

A. Yes. Before replying to several of the individual exhibits, I would note that none of the affiants that have proffered affidavits included as exhibits in the rebuttal testimony of Mr. Page have filed complaints with the FPSC.

Exhibit RP-1, page 1 of 23, of Mr. Page’s rebuttal testimony is the affidavit of Charles Vance, owner of Furniture Restoration, Inc., in Atlanta, Georgia. Mr. Vance states that, after a sales call from ACCESS, he contacted BellSouth to compare information. He further states that a BellSouth customer service representative told him that if his business switched its local telephone service to ACCESS, (1) his business would not receive any service maintenance and (2) his company would lose its yellow page listing at the end of the year (i.e. 2000). BellSouth has not been able to determine any specifics related to the alleged incident; however, such statements are contrary to the training BellSouth gives its service representatives. BellSouth’s service representatives are instructed to “compete in the marketplace solely on the merits of BellSouth products and services,” and not to disparage a competitor’s quality of service or financial



1 condition. It is BellSouth's policy to treat ALEC customers in a  
2 nondiscriminatory manner, and ALEC customers are entitled to the same level of  
3 service as BellSouth end users and are certainly entitled to maintain their listings  
4 in the Yellow Pages.

5  
6 Exhibits RP-1, pages 4 and 5 of 23, of Mr. Page's rebuttal testimony are the  
7 affidavits of Michael McDevitt and Susan Kennedy of McDevitt Air, in  
8 Savannah, Georgia. They state that McDevitt Air switched its telephone service  
9 from ACCESS to BellSouth in order to get DSL service from BellSouth. Ms.  
10 Kennedy states that, shortly after requesting to change their service to BellSouth,  
11 she received a telephone solicitation from "TeleChoice" offering a discount on  
12 local service if McDevitt Air switched its local telephone service back to  
13 BellSouth. McDevitt Air received the discount, even though it had already  
14 decided to return to BellSouth. According to BellSouth's records, McDevitt Air  
15 disconnected local service from BellSouth and connected with ACCESS on July  
16 24, 2000. McDevitt Air subsequently disconnected its service with ACCESS on  
17 March 12, 2001 and reconnected service with BellSouth on March 14, 2001.  
18 BellSouth has not uncovered any evidence to indicate that McDevitt Air was not  
19 eligible for the rates it received consistent with BellSouth's tariff and promotional  
20 offerings.

21  
22 Finally, Exhibit RP-1, pages 20 and 21 of 23, of Mr. Page's rebuttal testimony is  
23 the affidavit of Mr. Daniel Becton, President of Planogramming Solutions, Inc., in  
24 Jacksonville, Florida, a customer of ACCESS, and the only Florida specific  
25 affidavit. On April 23, 2001, Mr. Becton was contacted by a James Presson, who

1 identified himself as a BellSouth representative and attempted to convince Mr.  
2 Becton to switch his service back to BellSouth while using disparaging comments  
3 about the financial condition of ACCESS. Similarly, Mr. Page's rebuttal  
4 testimony provides also Exhibit RP-1, pages 22 and 23 as the affidavit of Mr.  
5 Jimmie Smith, Office Administrator of DANA, Inc., in Atlanta, Georgia, a  
6 customer of ACCESS. On April 24, 2001, Mr. Smith was contacted by a  
7 Samantha Wright, who identified herself as being "with BellSouth." Ms. Wright  
8 attempted to convince Mr. Smith to transfer his local telephone service back to  
9 BellSouth while using disparaging comments about ACCESS' financial  
10 condition. Neither James Presson nor Samantha Wright is an employee of  
11 BellSouth. Rather, they both worked for an authorized sales agent of BellSouth,  
12 which BellSouth has since terminated. In any event, however, it is against  
13 BellSouth policy for an employee or a sales agent to disparage a competitor,  
14 including discussing a competitor's financial condition. Again, as mentioned  
15 above, BellSouth has implemented procedures to strengthen the training of its  
16 employees and sales agents about BellSouth's policy.

17  
18 Q. PLEASE RESPOND TO MR. GILLAN'S COMMENTS AT PAGE 4 ABOUT  
19 STRUCTURAL SEPARATION, AND HIS REMARK AT PAGE 27 THAT  
20 "THE COMMISSION MUST BE PREPARED TO INCREASE ITS  
21 VIGILANCE AND REGULATORY OVERSIGHT—OR, MORE SIMPLY,  
22 ADOPT A STRUCTURAL APPROACH THAT WOULD ALIGN  
23 BELLSOUTH'S INCENTIVES WITH THE COMMISSION'S OBJECTIVE OF  
24 A COMPETITIVE LOCAL MARKET."

25

1 A. The FPSC is considering the issue of structural separation in another proceeding.  
2 Structural separation is not a requirement of Section 271, as evidenced by the fact  
3 that Congress considered the operations for which structural separation is required  
4 in Section 272, and did not include separation of an ILEC's retail and wholesale  
5 telecommunications operations in those requirements. In addition, the FCC has  
6 never made structural separation a requirement for Section 271 approval.

7  
8 However, in this docket, BellSouth is asking the FPSC to adopt a performance  
9 measurement and remedy plan. BellSouth is legally obligated to provide ALECs  
10 with nondiscriminatory access to BellSouth's network. The performance plan and  
11 remedies that the FPSC establishes will provide additional incentive for BellSouth  
12 to comply with its obligations. Additional regulatory oversight, as suggested by  
13 Mr. Gillan, is unnecessary.

14  
15 Q. MR. SAREM'S TESTIMONY ON PAGES 3 AND 4 MENTION THAT A  
16 CRITICAL COMPONENT OF A COMPETITIVE TELECOMMUNICATIONS  
17 ENVIRONMENT IS THE NEED FOR REASONABLE WHOLESALE PRICES,  
18 AND APPROPRIATE PERFORMANCE MEASUREMENTS AND  
19 PENALTIES. PLEASE RESPOND.

20  
21 A. Mr. Sarem acknowledges that BellSouth has met its obligation under the Act to  
22 open its network and to provide nondiscriminatory access to competitors. The  
23 additional factors identified by Mr. Sarem are in fact being addressed by the  
24 FPSC. First, as Mr. Sarem recognizes, the FPSC has recently issued an order in  
25 its generic UNE cost docket. While Mr. Sarem is correct that BellSouth, and

1 numerous other parties, have sought reconsideration on certain portions of the  
2 order, there is no reason to doubt that the FPSC's commitment to cost-based rates  
3 will be reflected in the ultimate outcome. Next, the FPSC is currently considering  
4 the issue of performance measures and enforcement mechanisms which will be  
5 designed to provide additional incentives for BellSouth to meet its obligation and  
6 prevent any backsliding on these obligations once BellSouth is granted 271 relief.  
7 Therefore, Mr. Sarem's endorsement of BellSouth's entry into the long distance  
8 market is appropriate.

9

10 Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?

11

12 A. Yes.

13 (#411813)

14

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18