BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2001-209-C – ORDER NO. 2002-77

FEBRUARY 14, 2002

In RE: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant To Section 271 of the Telecommunications Act of 1996	)))))	ORDER ADDRESSING STATEMENT AND COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996

I. INTRODUCTION

On May 16, 2001, BellSouth Telecommunications, Inc. ("BellSouth") notified the Public Service Commission of South Carolina ("Commission") of BellSouth's intention to file a Section 271 application with the Federal Communications Commission ("FCC") to seek interLATA relief in South Carolina pursuant to Section 271 of the Telecommunications Act of 1996 ("1996 Act"). Along with its Petition, BellSouth filed a new SGAT, performance measurement and penalty plans, comments, direct testimony, and other supporting materials.

A Notice of Filing was published advising interested parties of BellSouth's application and advising interested parties of the manner and time in which to submit pleadings for inclusion in the proceedings. Intervening in the proceeding were AT&T of the Southern States, Inc. ("AT&T"); United Telephone Company of the Carolinas and Sprint Communications Company, L.P. (collectively "Sprint"); South Carolina Cable Television Association ("SCCTA"); NewSouth Communications Corp. ("NewSouth"); US LEC of South Carolina, Inc. ("US LEC"); Resort Hospitality Service, Inc. ("RHS");

MCI WorldCom Communications, Inc., MCI WorldCom Network Service, Inc., and MCImetro Access Transmission Services, LLC (collectively "WorldCom"); Access Integrated Networks, Inc. ("AIN"); Southeastern Competitive Carriers Association ("SECCA"); NuVox Communications, Inc. ("NuVox"); ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"); and KMC Telecom III ("KMC").

On June 18, 2001, BellSouth filed its April, 2001, performance data and analysis. BellSouth continued to file updated performance data on a monthly basis pending further order of the Commission. Consequently, the Commission now has reviewed performance data on BellSouth for the additional three months of May, 2001 (filed 7-25-01); June, 2001 (filed 8-18-01); and July, 2001 (filed 9-18-01).

On July 9, 2001, interveners filed testimony and comments regarding BellSouth's May 16, 2001, filing. BellSouth filed its reply testimony and comments on July 16, 2001, to the filings made by the interveners on July 9, 2001. The interveners filed surrebuttal testimony on July 19, 2001, regarding BellSouth's July 16, 2001, filing. Thereafter, interveners filed rebuttal testimony and comments on August 13, 2001, to BellSouth's performance data and analysis filings made on June 18, 2001 (April 2001 data) and July 25, 2001 (May 2001 data). Evidentiary hearings were held before the Commission on July 23-27, 2001; August 23-24, 27-31, 2001; and September 10-11, 2001. At those hearings, the Commission received testimony from 13 witnesses representing BellSouth and 25 witnesses from the public and from intervening parties, in addition to 4 Commission witnesses. The hearing produced a transcript of 5324 pages and approximately 100 exhibits.

II. LEGAL AND EVIDENTIARY STANDARDS FOR ANALYZING COMPLIANCE WITH SECTION 271 COMPETITIVE CHECKLIST

Section 271(d) of the 1996 Act provides that a Bell Operating Company ("BOC") or its affiliate may apply to the FCC at any time after the date of enactment for "authorization to provide interLATA services originating in any in-region State." This section of the 1996 Act requires that the FCC issue within ninety (90) days a written determination either approving or denying the requested authorization. Moreover, Section 271(d)(2)(B) further provides as follows:

> (B) Consultation with state commissions. – Before making any determination under this subsection, the [FCC] shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

In its orders on 271 applications, the FCC has articulated the legal and evidentiary standards to be applied in analyzing compliance with the statutory requirements of section 271.

A. The Applicable Legal Standard

In order to comply with the requirements of section 271's competitive checklist, a BOC must demonstrate that it has "fully implemented the competitive checklist in subsection (c)(2)(B)." *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York,* Memorandum Opinion and Order, 15 FCC Rcd. 3953, CC Docket No. 99-295, FCC 99-404, Rel. Dec. 22, 1999. ("*BA-NY Order*"). In particular, the BOC must

demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.

Previous FCC orders addressing section 271 applications have elaborated on this statutory standard. First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself. Thus, where a retail analog exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness. For those functions that have no retail analog, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a "meaningful opportunity to compete." E.g., *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, CC Docket No. 00-65, FCC 00-238, Rel. June 30, 2000, ¶ 44 ("*SWBT-TX Order*").

The FCC does not view the "meaningful opportunity to compete" standard to be a weaker test than the "substantially the same time and manner" standard. Where the BOC provides functions to its competitors that it also provides for itself in connection with its retail service, its actual performance can be measured to determine whether it is providing access to its competitors in "substantially the same time and manner" as it does

to itself. Where the BOC, however, does not provide a retail service that is similar to its wholesale service, its actual performance with respect to competitors cannot be measured against how it performs for itself, because the BOC does not perform analogous activities for itself. In those situations, the examination of whether the quality of access provided to competitors offers "a meaningful opportunity to compete" is intended to be a proxy for whether access is being provided in substantially the same time and manner and, thus, is nondiscriminatory. *SWBT-TX Order*, ¶ 45.

B. Applicable Evidentiary Standard

The BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of Section 271, even if no party files comments challenging its compliance with a particular requirement. The evidentiary standards governing review of Section 271 applications are intended to balance the need for reliable evidence against the recognition that, in such a complex endeavor as a Section 271 proceeding, no finder of fact can expect proof to an absolute certainty. While a BOC is expected to demonstrate as thoroughly as possible that it satisfies each checklist item, the public interest standard, and the other statutory requirements, the BOC needs only to prove each element by "a preponderance of the evidence," which generally means "the greater weight of evidence, evidence which is more convincing than the evidence which is offered in opposition to it." *SWBT-TX Order*, ¶¶ 47-48.

According to the FCC, it must first be determined whether the BOC has made a *prima facie* case that it meets the requirements of a particular checklist item. The BOC must plead, with appropriate supporting evidence, facts which, if true, are sufficient to

establish that the requirements of Section 271 have been met. Once the BOC has made such a showing, opponents must produce evidence and arguments to show that the application does not satisfy the requirements of section 271, or risk a ruling in the BOC's favor. *SWBT-TX Order*, ¶ 49.

When considering filings in opposition to the BOC's application, one looks for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice. Although anecdotal evidence may be indicative of systemic failures, isolated incidents may not be sufficient for a commenter to overcome the BOC's *prima facie* case. Moreover, a BOC may overcome such anecdotal evidence by, for example, providing objective performance data that demonstrate that it satisfies the statutory nondiscrimination requirement. *SWBT-TX Order*, ¶ 50.

To make a *prima facie* case that the BOC is meeting the requirements of a particular checklist item under section 271(c)(1)(A), the BOC must demonstrate that it is providing access or interconnection pursuant to the terms of that checklist item. In particular, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality." *SWBT-TX Order*, ¶ 52.

In its Order on BellSouth's second application for interLATA relief in Louisiana, the FCC gave BellSouth further direction on its compliance with the requirements of the competitive checklist. *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana,* Memorandum Opinion and Order, 13 FCC Rcd 20599, CC Docket No. 98-121, FCC 98-271, Rel. Oct. 13, 1998 ("*Second Louisiana Order*"). While the FCC denied BellSouth's second application for interLATA relief in Louisiana, the FCC found that BellSouth had met six (6) checklist items and one subsection of a seventh item but failed to provide adequate evidence of compliance with the remaining items.

To assist BellSouth in future applications, the FCC set forth in detail the deficiencies in BellSouth's application and the actions BellSouth needed to take to address those deficiencies. In particular, the FCC highlighted BellSouth's failure to provide sufficient evidence, through performance data or otherwise, that BellSouth is providing CLECs with nondiscriminatory access to various unbundled network elements, including its Operational Support Systems ("OSS").

The particular showing required to demonstrate compliance will vary depending on the individual checklist item and the circumstances of the application. The FCC has given BOCs substantial leeway with respect to the evidence they present to satisfy the checklist. Although the FCC's orders have provided guidance on which types of evidence it finds more persuasive, the FCC has stated that "we reiterate that we remain open to approving an application based on other types of evidence if a BOC can persuade us that

such evidence demonstrates nondiscriminatory treatment and other aspects of the statutory requirements." *SWBT-TX Order*, ¶ 53. In past orders the FCC has encouraged BOCs to provide performance data in their section 271 applications to demonstrate that they are providing nondiscriminatory access to unbundled network elements to requesting carriers. The FCC has concluded that the most probative evidence that a BOC is providing nondiscriminatory access is evidence of actual commercial usage. Performance measurements are an especially effective means of providing evidence of the quality and timeliness of the access provided by a BOC to requesting carriers.

In determining whether BellSouth has satisfied each element of the competitive checklist, the Commission should rely in large part on performance data collected and submitted by BellSouth. Several parties challenge the validity of certain data submitted by BellSouth, including South Carolina performance data collected and reported pursuant to the performance measurements developed under the auspices of the Georgia Public Service Commission. At least one party argues that this Commission should wait until BellSouth's performance data is audited before finding checklist compliance. The Commission notes that the FCC has previously rejected the contention that a BOC's data are generally invalid because they have not been audited, and thus cannot be relied upon to support its application. *SWBT-TX Order,* ¶ 57.

The determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before us. There may be multiple performance measures associated with a particular checklist item, and an apparent disparity in performance for

one measure, by itself, may not provide a basis for finding noncompliance with the checklist. Other measures may tell a different story, and provide a more complete picture of the quality of service being provided. Whether applying the "substantially same time and manner" standard or the "meaningful opportunity to compete" standard, the FCC has endorsed an approach that allows examination of whether any differences in the measured performance are large enough to be deemed discriminatory under the statute. For this reason, the FCC has stated that failure of individual performance measurements does not, in itself, warrant denial of an application. *SWBT-TX Order,* ¶ 58.

Also of further importance to this proceeding is that the FCC has made it clear that not all issues raised by commentators in a 271 application need to be resolved before a finding of checklist compliance can be made. Many such issues are more appropriately resolved in other proceedings. The FCC has stated in this regard that

> There will inevitably be, at any given point in time, a variety of new and unresolved interpretive disputes about the precise content of an ILEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act. Several commentators seek to use this section 271 proceeding as a forum for the mandatory resolution of many such local competition disputes, including disputes on issues of general application that are more appropriately subjects of industry-wide notice-and-comment rulemaking. .... There may be other kinds of statutory proceedings, such as certain complaint proceedings, in which we may bear an obligation to resolve particular interpretive disputes raised by a carrier as a basis for its complaint. But the 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application.

SWBT-TX Order, ¶¶ 23-24.

In light of the above stated FCC guidelines, the Commission is of the opinion that many of the issues raised by the parties are operational in nature and do not rise to a level of concern that would impact the issue of compliance with a checklist item. Such issues should be addressed and resolved through inter-company meetings or other collaborative processes or through the arbitration or complaint process of this Commission.

Rather than focus on anecdotal accounts of discrete problems with BellSouth's performance alleged by certain parties, the Commission believes it more important to review the actual performance data submitted in response to the Commission's orders to determine whether there are in fact any systemic problems that may impede the CLECs' ability to compete in the local market. Further, issues specifically raised and decided in other Commission dockets, including the UNE cost docket, need not be decided in the context of the instant proceeding as the issues in other dockets have been briefed and argued more extensively in those dockets and should ultimately be decided therein.

After due consideration of the entire record in this matter, including the testimony, comments, and hearing exhibits, and the applicable legal standards, the Commission makes the following findings and determinations in this Docket.

III. SUMMARY OF THE COMMISSION'S FINDINGS

As discussed in more detail below, the Commission finds that BellSouth has demonstrated that it provides access or interconnection to other telecommunications carriers in accordance with the requirements of Section 271(c)(2)(B). BellSouth's compliance with each of these 14 points provides CLECs with the necessary functions of interconnection, access to unbundled network elements ("UNEs"), and the resale of

telecommunications services in order to fully compete with BellSouth in a non-discriminatory manner. BellSouth further demonstrated that it is compliant with "Track A" of Section 271 for purposes of an application with the FCC and that its SGAT meets the requirements of the Act.

IV. FINDINGS AND CONCLUSIONS

A. Compliance With Track A

BellSouth has submitted its 271 application pursuant to Section 271(c)(1)(A) of the 1996 Act, as amended, also known as "Track A." In order to satisfy Track A, BellSouth must show that it

> [H]as entered into one or more binding agreements that have been approved under section 252 of this title specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service ... to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

47 U.S.C. § 271(c)(1)(A).

BellSouth has negotiated, and this Commission has approved, over 250 interconnection, collocation, and resale agreements with CLECs in South Carolina. As of March, 2001, more than 55 CLECs (providing service to 10 or more lines) serve about 149,000 access lines in South Carolina, which represents 8.8% of the total local exchange market in BellSouth's territory. Twenty-four of these CLECs provide facilities-based

service, including Business Telecom (BTI), e.spire Communications, ITC^Deltacom, KMC Telecom, Knology, New South Communications, The Other Phone Company (AccessOne), and TriVergent (NuVox). *See Tr. Vol. I, p. 123 (Ruscilli)*; *Tr. Vol. VIII, p. 2762 (Ruscilli).*

To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers." The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier." The FCC concluded in the *Ameritech Michigan Order* that, when a BOC relies upon more than one competing provider to satisfy section 271(c)(1)(A), each carrier need not provide service to both residential and business customers. *Texas Order*, ¶ 59.

The Commission finds that BellSouth has demonstrated Track A compliance in that it has interconnection agreements with one or more competing providers of telephone exchange service. This service may be offered either exclusively over the competitors facilities, via resale, or via unbundled network elements. In this case, no party challenges BellSouth's compliance with Track A. Thus, this Commission finds BellSouth in compliance with the requirements of Track A. 47 U.S.C. § 271(c)(1)(A).

B. <u>Review of Competition in South Carolina</u>

The Commission finds that competition in the local services market is strong in South Carolina. As noted above, more than 55 CLECs (providing service to ten or more

lines) that are parties to over 250 approved interconnection, collocation, and resale agreements serve over 149,000 access lines in the State as of March, 2001, which represents 8.8% of the total local exchange market in BellSouth's territory. According to BellSouth's estimates,[1] CLECs serve approximately 18.3% of the business market and 4% of the residential market. *Tr. Vol. I, pp. 127-130 (Ruscilli).*

The Southeastern Competitive Carriers Association ("SECCA") challenges the evidence on the record of competition in South Carolina. *Tr. Vol. IX, pp. 3340-42, 3343 (Gillan).* SECCA criticizes the assumptions on line-to-trunk ratios that BellSouth makes in its Method 1 estimate, which uses the number of interconnection trunks in combination with the number of E911 listings and UNE loop/port combinations to estimate the level of CLEC competition. *Tr. Vol. IX, p. 3343 (Gillan).* However, SECCA's reworking of BellSouth's Method 1 estimates disregards without comment the CLEC E911 listings, which CLECs themselves report. These listings, which are significantly higher than the UNE loops and unbundled network element-platform ("UNE-P") numbers that SECCA uses, provide support for BellSouth's Method 1 estimate of facilities-based lines. *Tr. Vol. I, pp. 250-251 (Ruscilli).* SECCA also does not provide any actual use data from its CLEC members to support its trunk to line assumptions. Nor does SECCA offer a challenge to BellSouth's Method 2 analysis, which uses just UNE-Ps and E911 listings and excludes interconnection trunks altogether. *Id. at 253..* BellSouth's Method 2 calculation produces a more conservative estimate of CLEC competition than its Method

[1] The Commission finds that BellSouth's Method 1 as explained in the testimony of Mr. Ruscilli provides reasonable estimates of competition.

1 analysis, but the numbers generated under Method 2 are more consistent with BellSouth's Method 1 analysis than they are with SECCA's revised figures. Under Method 2, 49 CLECs serve 4% of the residential market, 16.1% of the business market, and 8.0% of the overall market, for a total of over 133,000 lines. *Id. at 253-254.* The Commission finds that any difference between the Method 1 and Method 2 estimates is not material as to the question of whether there is competition in the state. Under either measure, competition in South Carolina is strong.

Further, SECCA's revised estimate of facilities-based competition does not take into account recent FCC data. The FCC's December, 2000, biannual competition report shows that just five large CLECs in South Carolina served more than 108,000 end-user lines statewide, a number consistent with BellSouth's Method 1 estimate, rather than the revised figures SECCA submits. *Tr. Vol. I, p. 254 (Ruscilli).*

SECCA argues that there has been a drop in the level of resale entry and that this is evidence that competition in South Carolina is either stagnating or declining. *Tr. Vol. IX, pp. 3337-39 (Gillan).* SECCA bases its conclusion on a comparison of resale data reported by BellSouth in December with the data from March, 2001, presented in Exhibit JAR-8. *Id. at 3338.* However, BellSouth has shown that the numbers it reported for resale activity in December were overstated, as a result of UNE-P counts inadvertently being included in this figure. *Tr. Vol. I, pp. 257-258 (Ruscilli).* The actual decline from December to March is accounted for by the migration of some carriers from resale lines to UNE-P lines, which provide the same functionality at lower cost. *Id.; see also infra,* Checklist Item 14.

Even if SECCA's concerns about falling resale demand were true, this would not demonstrate a lack of local competition. The Commission notes that in order to determine whether a market is irreversibly open to competition, it is necessary to consider CLECs as a whole, not just one segment of competitive carriers. BellSouth has shown that total facilities-based lines have increased to over 60% in the last six months and that the number of lines served by UNE-P lines continues to grow, as well. *See Tr. Vol. I, pp. 117-118, 257-258 (Ruscilli).* More than 91,000 of the 149,000 CLEC lines are served using their own facilities, either exclusively or in combination with BellSouth's unbundled network elements. *Tr. Vol. I, pp. 114-117 (Ruscilli)*; *Tr. Vol. VIII, p. 2762 (Ruscilli).*

Moreover, competition in South Carolina is widespread. BellSouth has demonstrated that it has completed nearly 350 collocation requests in 43 wire centers. *Tr. Vol. I, pp. 88-89 (Ruscilli).* CLEC collocation is a powerful indicator of competition, because where a CLEC is collocated, it has the ability to serve numerous additional customers through access to UNEs. The record reflects that the current collocation arrangements in South Carolina allow CLECs to serve approximately 73% of BellSouth's total access lines with the CLECs' own facilities. *Id.*; *Tr. Vol. VIII, p. 2762 (Ruscilli).*

SECCA also suggests that local competition is being impeded by BellSouth's UNE rates, which SECCA contends are not cost-based. *Tr. Vol. IX, p. 3349 (Gillan).* This Commission has spent a great deal of time and effort setting UNE rates at appropriate, cost-based levels, in the extensive UNE cost dockets. *Tr. Vol. I, p. 244 (Ruscilli)*; *see e.g.* Commission Order No. 2001-1089, dated November 30, 2001, *Order*

on UNE Rates, Docket No. 2001-65-C. It is thus neither necessary nor appropriate to raise general questions in this proceeding about the cost-based nature of the rates set by the Commission. Moreover, the FCC has consistently "held that this profitability argument is not part of the section 271 evaluation of whether an applicant's rates are TELRIC-based...[t]he Act requires that [the FCC] review whether the rates are cost-based, not whether a competitor can make a profit by entering the market," and that "[q]uestions of profitability are independent of this determination."[2] *See infra Checklist Item 2, UNE Pricing.*

Finally, SECCA criticizes BellSouth's references to the CLEC Pathnet and the PathStar server technology. *Tr. Vol. IX, pp. 3347-48 (Gillan).* However, it appears that the references to the PathStar technology were given simply as anecdotal evidence of local competition and investment by competitors. *Tr. Vol. I, pp. 133-34 (Ruscilli).* The Commission's evaluation is based on the full evidence of strong, robust competition in the South Carolina local exchange market, rather than on any specific anecdotes. The Commission finds that there is evidence of substantial competition regardless of changes with a particular competitor or technology.

C. Approval of BellSouth's SGAT

In addition to negotiating and arbitrating private agreements with new entrants, the 1996 Act affords incumbent local exchange companies ("ILECs") the right to prepare and file at any time a SGAT like the one filed by BellSouth in this proceeding. *Hearing*

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[2] *Application of Verizon Pennsylvania Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Pennsylvania,* Memorandum Opinion and Order, CC Docket No. 01-138, FCC 01-269, ¶ 70 (rel. September 19, 2001) ("*Verizon-PA Order*").

Exhibit No. 2, (Ruscilli Direct Exhibits, Exh. JAR-4). Section 252(f) of the 1996 Act provides that

> A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company *generally offers* within that State to comply with the requirements of section 251 and the regulations thereunder and the standards applicable under this section.

47 U.S.C. § 252(f)(1) (emphasis supplied).

Once approved or permitted to take effect by the Commission, the SGAT can provide a vehicle for CLECs to enter the local market quickly without having to negotiate and/or arbitrate an interconnection agreement with an ILEC. The SGAT provides a set of general terms and conditions from which any competitor in South Carolina can order interconnection facilities and UNEs or can resell BellSouth services to compete with BellSouth in the local market.

In addition, a BOC may use an approved SGAT under 47 U.S.C. § 271(c)(2)(A) ("Track A"), to supplement one or more binding agreements to demonstrate full compliance with the fourteen (14) point competitive checklist under that Track. *See Evaluation of the United States Department of Justice, Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, CC Docket No. 97-121, ¶ 22-24 (May 16, 1997).

To be approved, an SGAT must comply with Section 251 and the pricing standards for interconnection, unbundled network elements, and resale contained in Section 252(d). This is the same standard applied by this Commission for approval of

arbitrated agreements. *Compare* 47 U.S.C. § 252(f)(2) *with* 47 U.S.C. § 252(e). The 1996 Act requires that BellSouth offer: number portability; dialing parity; access to telephone numbers, operator services, directory assistance and directory listings; access to rights of way; reciprocal compensation for the transport and termination of telecommunications services; interconnection at any technically feasible point; resale of retail services at an avoided cost discount; and access to unbundled network elements at rates based on cost. BellSouth shall incorporate the final rates established in Docket No. 2001-65-C into the SGAT. Thus the rates, terms and conditions of interconnection, unbundling and resale in the SGAT comply with Sections 251 and 252(d) of the 1996 Act.

In addition to the terms and conditions already set forth in the SGAT, the Commission hereby orders that BellSouth change the name of its proposed Self Effectuating Enforcement Mechanism ("SEEM") plan to the Incentive Payment Plan (IPP) and include the IPP, with the modifications discussed in subsection E herein, as Attachment J to the SGAT, by January 1, 2002.

The Commission finds that BellSouth's SGAT meets the requirements of the checklist and gives BellSouth a "concrete and specific legal obligation" to furnish each checklist item to competitors.

D. <u>The Regionality of BellSouth's Operations Support Systems ("OSS")</u>

The FCC has held that state commissions "can conduct successful section 271 reviews . . . by building on the work of other states in their region." *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern*

Bell Communications Services Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd. 6237, CC Docket No. 00-217, FCC 01-29, Rel. Jan. 22, 2001, ¶2 ("*SWBT-KS/OK Order*"). According to the FCC, where access to a particular checklist item, such as OSS, is provided through region-wide processes, both region-wide and state-specific evidence is considered in evaluation of that checklist item. *Second Louisiana Order*, ¶ 56. In particular, this holds true where the "OSS are essentially the same throughout [the BOC's] region." *Second Louisiana Order*, ¶ 86. The FCC requires either that a single OSS be used throughout the region or that separate OSS systems be identical. *SWBT-KS/OK Order*, ¶¶ 110-116.

The FCC has established a set of criteria to evaluate whether one state's OSS are the "same" as the OSS in another state. *SWBT-KS/OK*, ¶¶ 110-116. To be the "same," BellSouth can demonstrate either that there is shared use of a single OSS or that there is use of systems that are separate but identical. Where the systems are separate, BellSouth must demonstrate that its OSS reasonably can be expected to behave the same way in all of its states. *SWBT-KS/OK*, ¶¶ 110-116. The Commission finds that BellSouth meets each of these criteria.

In particular, BellSouth demonstrates that it has a single set of OSS that operate region-wide, with a common set of processes, business rules, interfaces, systems, and personnel. *Tr. Vol. VI, pp. 2147-53, 2288-90 (Pate)*; *Tr. Vol. IV, pp. 1542-1570 (Heartley)*. CLECs throughout the BellSouth region access its OSS through the same electronic interfaces – LENS, EDI, TAG, RoboTAG^{tm}, TAFI, and ECTA. *Tr. Vol. VI, p.*

2261 (Pate). Manual processes are divided and handled on the basis of carriers, not states, and training of personnel and coordination of activities ensure that jobs are done in generally the same manner throughout the region. *Rebuttal Testimony of Ken L. Ainsworth,* (filed July 16, 2001) *("Ainsworth Rebuttal"), pp. 8-9; Tr. Vol. IV, pp. 1561-63 (Heartley).*

Additionally, the PriceWaterhouseCoopers attestation and additional report specifically verify that the OSS systems, processes, and procedures for pre-ordering and ordering are the same. Specifically, PriceWaterhouseCoopers attested that (1) BellSouth "utilizes the same Pre-Order and Order operational support systems (OSS) throughout [its] nine-state region" and (2) BellSouth's "DOE and SONGS systems have no material differences in the functionality or performance for service order entry by the Local Carrier Service Centers (LCSC)." *See Hearing Exhibit No. 36 (Pate Exh. OSS-74).* The PriceWaterhouseCoopers report is as comprehensive as the Ernst and Young attestation relied on by the FCC in its Kansas/Oklahoma proceeding.

Just as Ernst and Young found in the SWBT-KS/OK proceeding, PriceWaterhouseCoopers found that "the interfaces and systems" BellSouth uses "process the same transactions; use the same programming code; provide the same functionality; and have the same documentation." *SWBT-KS/OK Order,* ¶ 305. In addition, BellSouth proved: (1) through the testimony of Mr. Pate that its electronic OSS are the same; (2) through the testimony of Mr. Ainsworth that the manual processes are the same region-wide; (3) through the testimony of Mr. Heartley that BellSouth uses the same processes, methods, and procedures in its network organization; and (4) through the

testimony of Mr. Scollard that BellSouth's billing systems are the same region-wide. *Tr. Vol. IV, pp. 1543-50 (Heartley)*; *see SWBT-KS/OK Order*, ¶ 113.

AT&T argues that differences exist in BellSouth's OSS within its region. *Tr. Vol. X, pp. 3619-25 (Bradbury)*. First, AT&T asserts that performance may differ from state-to-state. *Id. at 3622-23*. However, for purposes of demonstrating "sameness," BellSouth need only provide "equivalent access to all necessary OSS functions," not identical performance in every case. *SWBT-KS/OK Order*, ¶¶ 105, 117.

Second, AT&T argues that the information in the systems varies from state-to-state. *Tr. Vol. X, pp. 3623-24 (Bradbury)*. There is no indication that the FCC required this in its *SWBT-KS/OK Order*, as every state has different addresses and phone numbers. As discussed above, BellSouth demonstrated that it uses identical business rules for ordering and pre-ordering, requires completion of the same fields for local service requests, and uses the same legacy systems, other than DOE and SONGS, throughout its nine-state region. *Tr. Vol. VI, pp. 2151, 2156 (Pate)*. With respect to DOE and SONGS, independent tests by PriceWaterhouseCoopers confirmed that there are no material differences in the functionality or performance of DOE and SONGS. *See Hearing Exhibit No. 36 (Pate Exh. OSS-74)*.

Third, AT&T argues that the existence of multiple servers throughout the region will result in differing performance. *Tr. Vol. X, pp. 3624-25 (Bradbury)*. To the extent that there are separate servers for processing CLEC requests, the servers use the same programming code and are designed to operate in an indistinguishable manner. Further, the servers use the same type of hardware running identical software. *Tr. Vol. VI, p. 2291*

(Pate); *Tr. Vol. IV, p. 1560 (Heartley)*. The FCC rejected a claim similar to AT&T's in its review of the Kansas/Oklahoma application. *See SWBT-KS/OK Order*, ¶ 117 (concluding that SWBT's two order processing servers are the same because they utilize "the same type of hardware running identical software.").

Fourth, AT&T suggests that because provisioning, maintenance, and repair work groups are organized geographically, different performance will occur in different states. *Tr. Vol. X, p. 3624 (Bradbury)*. The FCC rejected similar claims by Sprint in the Kansas/Oklahoma proceeding. *Petition to Deny of Sprint Communications Co. in Joint Application of SBC Communications, et al. For Provision of In-Region InterLATA Services in Kansas and Oklahoma,* CC Docket 00-217, (filed November 15, 2000), 54-55; see *also SWBT-KS/OK Order*, ¶ 113 (factors demonstrating the regionality of the field personnel include: "common centers coordinate field work activities [throughout the region]; field personnel access the same systems and use the same procedures [throughout the region]; personnel receive common training [throughout the region]; and there is a common organization structure [throughout the region]."). BellSouth's regional work groups report to the same regional manager and follow the same guidelines. *Tr. Vol. IV, p. 1561 (Heartley)*. Although BellSouth's systems and procedures are the same, differences in performance do exist. The Commission recognizes that these differences are expected due to varying state conditions and requirements.

The Commission concludes that BellSouth's OSS are the same throughout its nine-state region. Accordingly, the Commission has relied on BellSouth's South Carolina

data in determining compliance with the competitive checklist[3] as well as information about the competitive experience in Georgia and the independent Third Party Test ("TPT") conducted under the auspices of the Georgia Commission.

E. BellSouth's Performance Measurements ("SQM") and Incentive Payment Plan (IPP)

After careful consideration, the Commission adopts BellSouth's proposed Service Quality Measurements ("SQM") and Self-Effectuating Enforcement Mechanism ("SEEM"), to be hereafter known as Incentive Payment Plan ("IPP") as discussed below, with certain modifications.

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[3] Contrary to AT&T's assertions, the Georgia Third Party Test ("TPT") need not have first been used by either the FCC or the Georgia Commission in order to support a Section 271 determination by this Commission. *Tr. Vol. X, pp. 3617-18 (Bradbury).* As the FCC has noted, "the Commission has adopted the practice of reviewing evidence from other *applications* and states." *SWBT-KS/OK Order*, ¶ 38 (emphasis added). Indeed, AT&T cites only its experience in Georgia and Florida, and WorldCom witness Ms. Lichtenberg explicitly states that Georgia evidence is relevant. *See generally Hearing Exhibit No. 73 (Jay M. Bradbury Hearing Exhibits, Exh. JMB-2 - Affidavit of Bernadette Seigler); Tr. Vol. X, p. 3735 (Bradbury)*; *Tr. Vol. IX, p. 3464 (Lichtenberg)*. Moreover, commissions in Georgia, Louisiana, and Mississippi each have relied on such data in determining that BellSouth has satisfied the requirements of Section 271. *Administrative Session Proceeding Record*, Georgia Public Service Commission (October 2, 2001) (*GA Proceeding*); *Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Subdocket E, Order No. U-22252(e) (La. P.S.C. Sept. 19, 2001) ("*LA PSC 271 Order*"); Consideration Of the Provision Of In-Region InterLATA Services By BellSouth Telecommunications, Inc. Pursuant To Section 271 of TA 96, Docket No. 97-AD-321, Final Order (Ms. P.S.C. Oct. 4, 2001) ("*MS PSC 271 Order*"). In relying, in part, on Georgia data and the TPT, the Louisiana and Mississippi Commissions each first concluded that BellSouth had demonstrated the regionality of its OSS.

Nor does the Commission's independent analysis of TPT data require it to defer to findings of other state commissions. *Tr. Vol. X, pp. 3618-19 (Bradbury).* The Commission simply is relying on all relevant information in conducting its analysis. While this analysis begins with CLEC commercial usage data for South Carolina, it may also encompass the Georgia performance measurement and TPT data as evidence of BellSouth's checklist compliance. Because the Commission concludes that BellSouth's OSS are the same region-wide, the Commission may, and should, avail itself of evidence of commercial usage, performance data, and third party testing from Georgia.

1. Performance Measurement Plan: SQM

BellSouth submitted its SQM set forth in Exhibit AJV-1 to the testimony of Mr. Varner for the purpose of determining BellSouth's compliance with the Section 271 requirements in South Carolina. *Hearing Exhibit No. 58 (Varner Hearing Exhibits, Exh. AJV-1)("Varner Exhibits"); Tr. Vol. VIII, p. 3015 (Varner).* This comprehensive SQM was adopted by the Georgia Public Service Commission in GA Docket 7892-U and includes over 2,200 measurements. *Hearing Exhibit No. 58 (Varner Exhibits, Exh. AJV-1, ii.)* These measurements are the result of several years of work, with direction provided by state commissions, the FCC, and the U.S. Department of Justice (DOJ) in addition to input from various CLECs. *Tr. Vol. IX, p. 3285 (Varner).*

The SQM is reasonable, comprehensive, and complete; it readily allows the Commission and the CLECs to monitor BellSouth's performance and to determine if BellSouth is providing nondiscriminatory service to CLECs in South Carolina. *Tr. Vol. IX, p. 3213 (Varner).* The state commissions in Mississippi, Kentucky, and Louisiana already have agreed to use this SQM for purposes of evaluating Section 271 performance in those states. *Tr. Vol. VIII, p. 2933 (Varner). Consideration Of the Provision Of In-Region InterLATA Services By BellSouth Telecommunications, Inc. Pursuant To Section 271 Of TA 96*, Docket No. 97-AD-321, (MS P.S.C. Oct. 4, 2001) (Final Order), 46-47.

The Commission, after careful consideration of the SQM, adopts the SQM in its entirety for the purposes of evaluating BellSouth's performance in South Carolina. Our conclusions are based on a review of several key elements of the SQM, specifically the performance measures and business rules definitions, data validation, and audit

procedures. Further, the Commission orders BellSouth to develop and add to the SQM plan appropriate metrics that measure and assess the responsiveness of BellSouth to CLECs' requests submitted via the Change Control Process as requested by the CLECs.

In addition, the Commission will continue to review the SQM and the IPP on a regular basis to monitor BellSouth's performance and to prevent backsliding on the part of BellSouth. To that end, the Commission orders BellSouth to submit electronically to the Commission performance data on a monthly basis beginning January 1, 2002. The performance data that BellSouth shall submit shall include both raw data and manipulated data, and documentation on calculations, aggregations, and disaggregations pursuant to which the data is captured shall be included in the submittal. The data shall be transmitted by BellSouth to the Commission on a mutually agreed upon date.

Finally, the Commission and interested parties shall conduct a review of the performance data and penalty plan every six months with the first review to be held six months after BellSouth's 271 approval by the FCC.

Reliability of BellSouth's Performance Data

BellSouth has shown that it is fully committed to rigourous, multi-level review and audit of its performance measures to ensure the validity of its data. BellSouth's systems and processes have been the subject of, and will continue to be subject to, numerous independent audits and reviews. The validity and integrity of BellSouth's data are also maintained through internal quality assurance controls and manual data validations processes within and between data processes. The Commission finds that

BellSouth's data is reliable and provides a basis upon which this Commission can assess BellSouth's performance.

The Commission concludes that BellSouth has adequately addressed CLEC concerns about BellSouth's data. For instance, AT&T contends that directory-listing orders should be included in the data, and that those orders are missing. *Tr. Vol. XII, pp. 4759-61, 4767-69 (Norris).* Directory listing orders, however, are properly excluded from the data because BellSouth has never included such orders and has never been ordered to do so. *Tr. Vol. XII, 4759-61, 4767-69 (Norris).* Similarly, AT&T contends that "dummy firm order completions ("FOCs")" should be included in the FOC timeliness measure. BellSouth explained that the relevant metric measures actual firm orders, and "dummy FOCs," which are not firm orders, are properly excluded. *Tr. Vol. VIII, p. 2877 (Varner).*[4]

AT&T also has raised questions about the exclusion of some of its orders from measurements. The Performance Measurement Analysis Platform ("PMAP") database is an enormous undertaking supported by over 200 full-time personnel, who are responsible for producing over 55 million pages of data every month. *Tr. Vol. VIII, p. 3008 (Varner).* With any undertaking of this size, minor coding mistakes and similar administrative errors will occur. AT&T describes isolated incidents of minor data problems (miscoded OCN, database problems) that were timely addressed and resolved by BellSouth. *Tr. Vol. VIII, p. 2873 (Varner); Tr. Vol. XII, p. 4816 (Norris).* While the Commission will be

[4] The Commission also notes that NuVox, the other CLEC to raise questions about the reliability of BellSouth's data, withdrew its comments on the same issues from the pending FCC docket on BellSouth's Georgia/Louisiana applications.

vigilant to ensure that these isolated incidents do not escalate into more fundamental integrity issues, the Commission recognizes that this is a dynamic process and is pleased that BellSouth has been making improvements even during the pendency of this proceeding. *Tr. Vol. XII, pp 4734-35 (Norris).* BellSouth has worked aggressively to correct any mistakes, and AT&T has acknowledged that BellSouth has been a cooperative partner with CLECs in this process. *Tr. Vol. XII, p. 4827 (Norris).* The presence of isolated discrepancies does not indicate lack of integrity in BellSouth's data collection and reporting processes, especially considering the large commitment BellSouth has made in terms of time, manpower and resources to create, support and improve the SQM and PMAP.

2. Self-Effectuating Enforcement Mechanism: SEEM

After careful consideration, the Commission adopts BellSouth's Self-Effectuating Enforcement Mechanism ("SEEM"), as set forth in AJV-2 as modified in Mr. Varner's testimony, with the following modifications, as the penalty plan for BellSouth after it receives FCC approval to provide long distance in South Carolina.

(a) The name of SEEM shall be changed to the Incentive Payment Plan ("IPP");

(b) The IPP will become effective in South Carolina effective upon BellSouth's 271 approval by the FCC;

(c) BellSouth shall develop and implement a measurement regarding the responsiveness of BellSouth to CLECs' requests under the Change Control Process;

(d) BellSouth shall include at least one payment category under Tier 1 concerning the metric(s) for the responsiveness of BellSouth to CLECs' requests under the Change Control Process; and

(e) BellSouth will include the IPP as Attachment J to the SGAT.

In addition, while not a change to the IPP, BellSouth and the Commission will reassess the payment calculation during the first six-month review of the plan. Specifically, the assessment will focus on whether the payment should be calculated from the estimator (mean) as opposed to the edge of the confidence level.

IPP is a voluntary, self-effectuating penalty plan similar to that used in other states where the FCC has granted Section 271 approval. The purpose of IPP is to prevent any "backsliding" by BellSouth in the level of service it offers to its competitors after it enters the long-distance market. IPP is a multi-tiered plan with escalating penalties for continued violations by BellSouth of a targeted subset of customer-affecting SQMs. The Commission reserves the right to review and make changes to this plan, after consultation with CLECs and BellSouth, starting six months after BellSouth begins to provide interLATA service in South Carolina.

Discussion of Proposed Penalty Plans

BellSouth's IPP is designed to meet the FCC's standards for penalty plans. *BA-NY Order,* ¶ 433 (1999). BellSouth's IPP clearly articulates the measurements and standards associated with the plan. The plan contains key performance measurements that the FCC has recognized are appropriate for a penalty plan. Under the IPP, penalties are paid for the failure to achieve a targeted subset of measures that affect customers. The IPP provides penalties up to an absolute cap of 36% of BellSouth's annual net revenues, making the consequences of BellSouth's IPP meaningful and significant. The IPP is self-executing and does not require litigation to assess penalties. In addition, the

audit requirements of the SQM provide reasonable assurances that the data are accurate. *Tr. Vol. VIII, pp. 2953-54 (Varner).*

The IPP has a two-tiered penalty structure, with Tier 1 payments made directly to CLECs and Tier 2 payments made to a state agency. The escalating fee schedule for continuing violations under IPP ensures that the penalties are meaningful and significant such as to prevent BellSouth from "backsliding" following section 271 relief.

Under IPP, penalties are paid on a per-transaction basis. BellSouth's IPP calculates the penalty by taking the dollar amount associated with any given failure and multiplying it by the number of failed transactions. Thus, the penalty payments of differing amounts reflected on AJV-2 are appropriate for measurements that, when failed, result in different degrees of impact. As noted above, the penalties can reach as high as 36% of BellSouth's annual net revenues.

The Commission recognizes that the FCC has not required adoption of a penalty plan as a prerequisite to FCC Section 271 approval but that the existence of such a plan would constitute probative evidence that grant of Section 271 authority is in the public interest. *Second Louisiana Order*, ¶ 363 ("the fact that a BOC will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry would be consistent with the public interest."); *see also SWBT-KS/OK Order*, ¶ 269. However, the Commission also acknowledges that every grant of interLATA authority by the FCC to date has included an enforcement mechanism. *Tr. Vol. VIII, p. 2941 (Varner).*

The Commission believes that IPP will fulfill the FCC's penalty plan standards, including that the penalties be meaningful and significant and will serve as a deterrent to backsliding once section 271 approval is granted, as intended by the FCC. As Dr. Spearman of the Commission staff noted, "BellSouth's proposed SEEM is very similar to the SWBT enforcement plan in Texas which has received FCC approval . . .. My analysis leads me to conclude that BellSouth's SEEM is as good as any approved by the FCC to date." *Tr. Vol. XII, pp. 4903-04 (Spearman).*

IPP is comparable to the approach used in Texas and New York and approved by the FCC with respect to assessing penalties only for a targeted set of submeasures. *See BA-NY Order*, ¶¶ 437-440. IPP penalties are paid only for failure to achieve key measures that affect customers. By offering greater remedies for certain measurements than others, the BellSouth plan recognizes that not all measurements are equally important to CLECs and their customers. It is evident that every measurement, if failed, would not have precisely the same effect on a CLEC and its customers. In contrast, the CLECs' plan assigns penalties to almost 400,000 measures and fails to account for measures that are "correlated," yielding multiple penalties for the same transaction. Moreover, the CLECs' plan assesses penalties in cases where performance results are statistically inconclusive as a result of a small number of transactions that may occur in each highly disaggregated submeasure.

The Commission believes that BellSouth's transaction-based approach, which assigns a penalty to each transaction that constitutes a violation, is more appropriate than the CLECs' measurement-based approach, which simply assigns a penalty for failure to

meet each individual measure. The transaction-based approach is scalable and escalates BellSouth's penalties based on an increased amount of transactions.

The Commission further believes that IPP should contain an absolute monetary cap of up to 36% of BellSouth's annual net revenue in South Carolina. The Commission believes that the cap is set at a level which is high enough to serve as a meaningful and significant penalty, such that BellSouth will be motivated not to have penalties against it reach this cap. At the same time, we believe that the cap and the measures included in the penalty plan (i.e., only mechanized orders) will help to deter CLECs from gaming the system in an effort to have penalties become a major revenue stream.

Nothing in the federal Communications Act of 1934, as amended, or the FCC's rules grant the Commission authority to adopt and enforce such a penalty plan without its consent. *Tr. Vol. VIII, p. 2920 (Varner).* The Commission finds that BellSouth's compliance with this plan is voluntary. However, by requiring BellSouth to include the IPP in its SGAT, the Commission ensures that BellSouth will have a legally binding obligation to pay penalties.

This Commission acknowledges that BellSouth maintains the right to modify IPP at its own discretion, subject to Commission approval, and, conversely, to consent to any revisions to IPP proposed by this Commission or CLECs prior to the revisions entering into effect.

F. <u>BellSouth Meets the Requirements of the 14-Point Competitive Checklist</u>

The Commission finds that BellSouth has satisfied each of the items in the fourteen (14) point checklist.

Checklist Item No. 1: Interconnection in accordance with the requirements of 251(c)(2) and 252(d)(1)

Checklist item 1 requires provision of "[i]nterconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i). Section 251(c)(2) imposes upon incumbent LECs "[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2)(A). "Such interconnection must be: (1) provided 'at any technically feasible point within the carrier's network;' (2) 'equal in quality to that provided by the incumbent to itself or . . . [to] any other party to which the carrier provides interconnection;' and (3) provided 'on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] and section 252.'" *Second Louisiana Order*, ¶ 61. Technically feasible methods of interconnection include, but are not limited to, physical and virtual collocation at the premises of an ILEC. *Id. at ¶ 62.* Section 252(d)(1) provides that a just and reasonable rate for interconnection must be nondiscriminatory and cost-based, and may include a reasonable profit. 47 U.S.C. § 252(d)(1).

a. Methods of Interconnection

BellSouth demonstrated that CLECs can interconnect to BellSouth's network through: (1) physical collocation; (2) virtual collocation; (3) assembly point arrangements; (4) fiber optic meet point arrangements; and (5) purchase of facilities from the other party. BellSouth makes these arrangements available at the line side or trunk

side of the local switch; the trunk connection points of a tandem switch; central office cross-connect points; out-of-band signaling transfer points; and points of access to UNEs. BellSouth has provisioned more than 24,000 interconnection trunks in South Carolina. *Tr. Vol. III, p. 1218 (Milner).*

No CLEC disputes that BellSouth provides interconnection at any technically feasible point in its network. However, WorldCom contends that BellSouth should bear the cost of transporting traffic originated on BellSouth's network to the competitor's point of interconnection ("POI"), even when the POI is not in the same local calling area as the BellSouth customer and the CLEC customer. *Tr. Vol. XI, pp. 4314-4409 (Argenbright).* The FCC, however, has expressly rejected this argument as a basis for a finding of noncompliance with checklist item 1. *Verizon-PA Order,* ¶¶ 100, 341.

Further, the Commission has itself addressed—and rejected—this claim. AT&T raised this claim in its arbitration with BellSouth, relying, as WorldCom now does, on the FCC's *TSR Wireless Order. See 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. 252*, Docket No. 2000-527-C ("*AT&T Arbitration*"). The Commission concluded that the *TSR Wireless Order* "does not stand for the proposition that AT&T asserts." *AT&T Arbitration*, Order No. 2001-079, p. 26. Rather, "BellSouth should not be required to deliver free of charge its local traffic outside the local service area in which the call originates." *Id.* Thus, while a CLEC "can have a single POI in a LATA if it chooses" that carrier "shall remain responsible to pay for the facilities necessary to carry calls from

distant local calling areas to that single POI. That is the fair and equitable result." *Id.* at 28. The Commission finds that WorldCom has presented no evidence that warrants reaching a different conclusion.

NuVox asserts that BellSouth is not in compliance with checklist item 1 because BellSouth does not provide cost-based interconnection for transmission and routing of NuVox's interexchange traffic. *Tr. Vol. XI, pp. 4129-30 (Willis).* NuVox believes that its interexchange traffic is "exchange access" traffic. *Id.* The FCC, however, has held that interexchange traffic is not telephone exchange service or exchange access. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, FCC 96-325, ¶¶ 190-191 (1996) ("*Local Competition Order*"). As the FCC stated, "all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to Section 251(c)(2) for the purpose of terminating calls originating from their customers *residing in the same telephone exchange (i.e., non-interexchange calls)*." *Local Competition Order*, ¶ 190 (emphasis added). Although NuVox does not provide interexchange service exclusively, the Commission concludes that it is not entitled to cost-based access for all of its services.

Further, to the extent that NuVox is carrying local exchange, rather than interexchange traffic, it may convert its lines from special access. The FCC has held that IXCs may "substitute an incumbent LEC's unbundled loop-transport combinations for special access services" only if "they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." *Implementation of the Local Competition Provisions of the Telecommunications Act of*

1996, Supplemental Order Clarification, 15 FCC Rcd 9587, ¶ 8 (2000). BellSouth states that NuVox may convert its lines from special access to the extent that they meet the FCC's restrictions. *Tr. Vol. I, p. 266 (Ruscilli).*

b. Nondiscriminatory Access to Interconnection Trunks

Checklist item 1 requires that BellSouth "provide[] competing carriers with interconnection trunking . . . that is equal in quality to the interconnection [BellSouth] provides to its own retail operations, and on terms and conditions that are just, reasonable and nondiscriminatory." *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,* Memorandum Opinion and Order, CC Docket No. 01-9, FCC No. 01-130, Rel. Apr. 16, 2001, ¶ 183 ("*Verizon-MA Order*"). In South Carolina, BellSouth has provisioned 24,198 interconnection trunks from CLECs' switches to BellSouth's switches as of March 31, 2001, and 14,018 two-way trunks (including transit traffic) to 16 different CLECs. *Tr. Vol. III, p. 1082 (Milner).* This significant degree of commercial usage indicates that CLECs can and do interconnect with BellSouth's network.

The Commission finds that BellSouth's interconnection agreements subject it to a legal obligation to provide interconnection in accordance with FCC rules, as previously held in the *Second Louisiana Order*, ¶¶ 74-75 and n.210. *See Tr. Vol. I, p. 150 (Ruscilli).* BellSouth's evidence further demonstrates that it provides access to interconnection trunks in a manner equivalent to that which it provides itself. BellSouth follows the same

installation process and uses the same equipment, interfaces, technical criteria, personnel, and service standards for both CLECs and itself. *Tr. Vol. III, p. 1217 (Milner).*

For April, May, June, and July, 2001, BellSouth met the approved standard for the Trunk Group Performance measure for trunk blocking. Regarding the benchmarks for ordering, provisioning, maintenance and repair, billing, and trunking for local interconnection trunks, BellSouth met 79% in April, 82% in May, 80% in June, and 67% in July, 2001. *Supplemental Varner Affidavit, July Monthly State Summary (September 18, 2001), Varner Exh., AJV-4, pp. 4-5.*

BellSouth explained its April, 2001, problems with the FOC timeliness performance measure for local interconnection trunks as arising when CLECs rescheduled Local Service Requests ("LSRs"). BellSouth's new procedures ensure that LSRs are completed within the specified timeframe, and it met this benchmark for May and June and for 18 of 19 FOCs in July, 2001. *Id. at Varner Exh. AJV-4, pp. 5-6.* Thus, the Commission concludes that BellSouth has resolved this issue.

In May, 2001, BellSouth missed the benchmark for service order accuracy of local interconnection trunks with ten (10) circuits or more. BellSouth notes that May was the first month that this benchmark was implemented, and it only missed the benchmark by 1%. *Id. at Varner Exh. AJV-4, p. 7.* The Commission agrees with BellSouth that 94% service order accuracy is sufficiently high that it would not detrimentally affect CLECs' ability to compete.

The Commission similarly finds that the other benchmarks missed by BellSouth do not warrant a finding of checklist noncompliance. The remaining benchmarks either

involved so little data as to be statistically inconclusive or have been addressed by new BellSouth procedures. *Id. at Varner Exh. AJV-4, pp. 5-9.*

WorldCom asserts that BellSouth is not in compliance with this checklist item because BellSouth does not use a single trunk to exchange local and intraLATA toll traffic and transit traffic with a CLEC. *Tr. Vol. I, pp. 4382-84 (Argenbright).* BellSouth explains that it used separate trunk groups to facilitate proper billing of transit and other traffic. In its *Second Louisiana Order*, the FCC stated that BellSouth "offers routing of local and intraLATA traffic over a single trunk group. Access traffic, as well as other traffic utilizing BellSouth's intermediary tandem switching function, is routed via a separate trunk group . . .. BellSouth, therefore, establishes that it has a legal obligation to provide interconnection *consistent with our rules*." *Second Louisiana Order*, ¶ 75 (emphasis added). The Commission concludes that requiring a separate trunk for transit traffic is consistent with the FCC's rules. Further, BellSouth offers the "supergroup" trunk, which includes exchange of both transit traffic and local and intraLATA toll traffic between a CLEC and BellSouth. *Tr. Vol. IV, p. 1659 (Scollard); Tr. Vol. IV, pp. 1309-10 (Milner).* This option should resolve WorldCom's concerns.

WorldCom also states that BellSouth should allow CLECs to use interconnection trunks to send access traffic to BellSouth end offices. BellSouth's failure to do so allegedly limits CLECs' ability to compete for tandem provider services, since BellSouth always provides those services. *Tr. Vol. III, pp. 4384-87 (Argenbright).* The handling of switched access traffic is governed by switched access tariffs. If CLECs delivered terminating switched access traffic to BellSouth end offices over local interconnection

trunks, BellSouth would not have the necessary information to bill for its services. Call records do not contain the information required to determine which calls originate from a particular CLEC, leaving BellSouth unable to distinguish access traffic from local traffic. WorldCom's proposed alternative would force BellSouth to rely on "self-reports" of CLECs' usage. *Tr. Vol. IV, pp. 1660-61 (Scollard)*; *Tr. Vol. I, pp. 268-273 (Ruscilli)*; *Tr. Vol. IV, pp. 1686-90 (Scollard)*. The Commission concludes that BellSouth's unwillingness to rely on CLECs' "self-reports" of usage, as proposed by WorldCom, does not constitute a failure to meet its statutory obligations.

WorldCom further states that BellSouth should be required to use the two-way trunks that it provides to CLECs. *Tr. Vol. XI, pp. 4387-88 (Argenbright)*. FCC rules require only that "[i]f technically feasible, an incumbent LEC shall provide two-way trunking upon request." 47 C.F.R. 51.305(f). Pursuant to the FCC's *Local Competition Order*, BellSouth does, in fact, provide two-way trunking where technically feasible if the CLEC does not have sufficient traffic to justify use of separate one-way trunks. *Local Competition Order*, ¶ 219. *See also Tr. Vol. I, p. 274 (Ruscilli)*. Thus, BellSouth's conduct satisfies its obligations under the FCC's rules.

NewSouth alleges that BellSouth does not properly augment trunks. *Tr. Vol. XI, pp. 4261, 4278-81 (Fury)*. BellSouth responds that the vast majority of shortcomings in trunk augmentation are due either to poor forecasting by CLECs or to a failure by the CLEC to inform BellSouth about expected spikes in traffic. As BellSouth explains, trunk forecasting involves a dialogue meant to support a common understanding of, and expectations for, planned servicing of trunks. However, BellSouth claims that many

CLECs, such as AT&T, have declined to participate in the trunk forecasting process, and no evidence has been presented to the contrary. *Tr. Vol. IV, 1354 (Milner).*

For example, BellSouth reports that NewSouth's traffic volumes on a trunk group in Baton Rouge, Louisiana almost tripled in a one-month period without any warning to BellSouth. *Tr. Vol. IV, p. 1354 (Milner).* Evidence shows that NewSouth problems led to additional delays in augmenting that trunk. BellSouth's desired due date was delayed by NewSouth. NewSouth requested a different termination point in the FOC that NewSouth returned to BellSouth for the trunk augmentation. NewSouth did not have available facilities at the termination point it originally requested. Still further delays resulted because NewSouth did not yet have any equipment collocated at the new termination point it requested. *Tr. Vol. XI, pp. 4319-4325 (Fury).* Thus, the Commission concludes that trunk blockage arising from failure to properly utilize trunk forecasting procedures does not constitute noncompliance by BellSouth with checklist item 1.

c. Collocation

The provision of collocation is an essential prerequisite to demonstrating compliance with checklist item 1. To show that it complies with its collocation obligations, BellSouth must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with Section 251(c)(6) and the FCC's implementing rules. *See Second Louisiana Order*, ¶¶ 66-71; *SWBT-TX Order*, ¶ 64. The Commission also may rely on data showing the quality of procedures for processing

applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space. *See Second Louisiana Order*, ¶ 72; *SWBT-TX Order*, ¶ 229.

BellSouth presented interconnection agreements, its South Carolina collocation tariff, and the SGAT it filed in this proceeding, which establish legally binding collocation terms and conditions, consistent with Sections 271 and 251. *Tr. Vol. IV, pp. 1370-71 (Gray)*. Regarding physical collocation, BellSouth offers caged, shared cage, cageless, remote site, and microwave collocation, at a CLEC's option. *Id. at 1368-69.* BellSouth also offers adjacent collocation if space in a particular premises is legitimately exhausted. *Id. at 1428.* Virtual collocation is also available where space for physical collocation is legitimately exhausted, or at a CLEC's request regardless of the availability of physical collocation. *Id. at 1384-87.* BellSouth also makes physical collocation available in its remote terminals. *Id at 1382.* BellSouth permits the collocation of equipment that is necessary for interconnection or access to UNEs in the provision of telecommunications services. *Id. at 1371.*

BellSouth's commercial usage and performance data demonstrate that BellSouth provides nondiscriminatory access to collocation. As of March 31, 2001, BellSouth had provisioned 335 physical collocation arrangements for over 25 different CLECs in South Carolina, with 1 virtual collocation arrangement in progress. Another 11 physical collocation arrangements were underway. In addition, CLECs are collocated in 43 of the 118 central offices in South Carolina. *Tr. Vol. III, pp. 1091-93 (Milner).*

BellSouth's binding collocation intervals meet the Average Response Time Measures for space availability, price quotes, normal physical and virtual collocation, and

extraordinary arrangements set by the South Carolina Commission. *Tr. Vol. IV, pp. 1368-69 (Gray).* Further, BellSouth has met the applicable benchmarks for *every* collocation measure and sub-metric over the past five months—March – July 2001. *Supplemental Varner Affidavit, July Monthly State Summary (September 18, 2001), Varner Exh. AJV-4, p. 4.* This type of collocation performance data is compelling evidence of compliance with the Act's interconnection requirements. *See SWBT-TX Order*, ¶ 73.

WorldCom recommends that the Commission establish physical cageless collocation intervals for BellSouth that are shorter than the intervals for provisioning physical caged collocation and virtual collocation. *Tr. Vol. XI, pp. 4171-83 (Bomer).* The performance data show that BellSouth provisions collocation within the existing time frames established by this Commission, and routinely operates within much shorter time periods. *Supplemental Varner Affidavit, July Monthly State Summary (September 18, 2001), Varner Exh. AJV-4, p. 4; Tr. Vol. IV, pp. 1485-87 (Gray).* This satisfies BellSouth's collocation interval obligations for the purposes of checklist compliance. *See SWBT-TX Order*, ¶ 73.[5]

WorldCom also questions whether CLECs had an opportunity to be heard in the Commission proceeding to establish BellSouth's provisioning interval for caged collocation. *Tr. Vol. XI, pp. 4172-80 (Bomer).* In Docket No. 1999-259-C, the

[5] BellSouth's current collocation intervals meet the requirements for Section 271 approval. The Commission notes, however, that it changed the collocation intervals for cageless collocation under ordinary conditions and extraordinary conditions in Docket No. 2001-65-C (the UNE Pricing Docket). The Commission expects BellSouth to implement those revised collocation intervals in its SGAT and its collocation tariff. The Section 271 approval granted by this Order is not dependent, however, on the new intervals.

Commission conducted an arbitration between BellSouth and ITC DeltaCom. In its order in that proceeding, the Commission required BellSouth to provision cageless collocation within ninety (90) days from receipt of a bona fide firm order. *Petition of ITC DeltaCom Communications, Inc. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Public Service Commission of South Carolina, Docket No. 1999-259-C, Order No. 1999-690 (Oct. 4, 1999). BellSouth subsequently revised its Access Services Tariff, adding a Physical Expanded Interconnection Service ("PEIS") tariff addressing caged and cageless collocation. Among other provisions, this tariff implemented the 90-day provisioning interval for cageless collocation. *Tr. Vol. IV, pp. 1415-26 (Gray).* The Commission provided interested parties the opportunity to comment, make objections, or file a complaint regarding the provisions of the PEIS tariff prior to its adoption.

In addition, WorldCom claims that BellSouth should be required to provide a firm cost quotation within fifteen days of receiving a collocation application. *Tr. Vol. XI, pp. 4182-83 (Bomer).* The Commission finds that BellSouth can support a shortened interval for cost quotations only if CLECs agree to pay BellSouth standardized pricing and site preparation fees. *Tr. Vol. IV, pp. 1429-30 (Gray).* Further, as CLECs adopt standardized collocation pricing in their Interconnection Agreements, the importance of maintaining a thirty (30) business day response interval significantly decreases. The Commission declines to require a shortened interval for firm cost quotations.

WorldCom additionally raises an issue about DC power in adjacent collocation space. *Tr. Vol. XI, pp. 4183-90, 4237 (Bomer).* FCC rules do not require the provision of

DC power to an adjacent collocation arrangement. *See* 47 C.F.R. § 51.323(k)(3); *Tr. Vol. IV, pp. 1431-37 (Gray)*. To the contrary, for purposes of Section 271, an ILEC "may have a legitimate reason to exercise some measure of control over design or construction parameters," including the imposition of "reasonable safety and maintenance requirements." *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 4761, 4786 (1999) ("*Advanced Services Order*"). BellSouth's DC power restriction is a reasonable safety requirement, permitted under the FCC's rules. The Commission further notes that BellSouth faces the same power limitations in its own adjacent collocation space and remote terminal sites. *Tr. Vol. IV, pp. 1431-37*. Thus, BellSouth is treating all CLECs in a just, reasonable, and nondiscriminatory manner. Although not required for purposes of Section 271 approval, the Commission notes that in its Order No. 2001-1089 issued in Docket 2001-65-C (the UNE Pricing Docket) the Commission held that CLECs may purchase power directly from an electric utility company.

Finally, BellSouth's current space preparation rate structure is consistent with TELRIC principles, and the rates are based on forward-looking, long-run incremental cost. This rate structure is included in BellSouth's standard interconnection agreement and several signed interconnection agreements and was reviewed by the Commission as part of its UNE Pricing Docket, Docket No. 2001-65-C. If BellSouth is required to perform a major renovation or upgrade to a central office in South Carolina to accommodate physical collocation, BellSouth is allowed to compel collocators to share in the costs of such renovations or upgrades. *Tr. Vol. IV, pp. 1441-48 (Gray)*.

With respect to allocation of security costs raised by AT&T, the *Advanced Services Order* provides only that "incumbent LECs must allocate space preparation, security measures, and other collocation charges on a pro-rated basis so the first collocator in a particular incumbent premises will not be responsible for the entire cost of site preparation."[6] The D.C. Circuit held that this "does not define the contours of a recovery mechanism, but it clearly does not foreclose mechanisms for the recovery of LECs' prudently incurred costs. Rather, the Order simply notes that state commissions are charged with the responsibility of 'determin[ing] the proper pricing methodology,' which undoubtedly may include recovery mechanisms for legitimate costs." *GTE v. FCC*, 205 F.3d 416, 427 (D.C. Cir. 2000) (upholding the cost allocation provisions of the *Advanced Services Order*). The Commission finds that BellSouth's requirement that all collocators share on a pro-rated basis in the cost of major upgrades—which arise from interconnection agreements—is a lawful cost recovery mechanism.

NewSouth contends that BellSouth charges NewSouth for power it does not use. *Tr. Vol. XI, pp. 4262-76 (Fury)*. BellSouth's South Carolina Access Tariff reflects a recurring power rate of $9.19 per –48V DC amp. BellSouth's recurring rate includes a 0.67 multiplier to take into account the fact that a CLEC would not normally use the full capacity of the protection device. BellSouth has demonstrated that this 0.67 multiplier guards against charging CLECs for power they do not use. *Tr. Vol. IV, pp. 1451-52 (Gray)*. The Commission agrees with BellSouth that NewSouth's suggestion that central office power to each CLEC's collocation arrangement be separately metered is

[6] *Advanced Services Order*, 4789-90.

technically infeasible and would be an inefficient use of ILEC and CLEC resources. *Id. at 1450-57.* Furthermore, BellSouth offers alternative arrangements that could meet NewSouth's needs. As several other CLECs have done, NewSouth could remove its battery distribution fuse bay ("BDFB") and connect to BellSouth's BDFB allowing a range of smaller fuse sizes. *Tr. Vol. IV, p. 1501 (Gray).*

For these reasons, we find that BellSouth fully complies with checklist item 1.

Checklist Item No. 2: Nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1)

For this checklist item, BellSouth is required to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under just and reasonable rates, terms, and conditions. In accordance with recent FCC decisions, the discussion here will address BellSouth's OSS, UNE combinations, and UNE pricing. The Commission finds that BellSouth provides CLECs with nondiscriminatory access to network elements in compliance with the Act and FCC orders.

a. Standard for Evaluating Sufficiency of OSS

In determining whether a BOC's OSS satisfy the statutory requirements, the FCC examines whether the BOC: (1) has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions; (2) is adequately assisting CLECs to understand how to implement and use all of the OSS functions available to them; and (3) the OSS must be "operationally ready," as a practical matter. *Second Louisiana Order*, ¶ 85; *see also BA-NY Order*, ¶ 87. For OSS functions with a retail analog, the BOC must provide access that permits CLECs to perform these

functions in "substantially the same time and manner" as the BOC. *Second Louisiana Order*, ¶ 87; *SWBT-TX Order*, ¶ 94. For OSS functions without a retail analog, such as unbundled network elements, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete." *Second Louisiana Order, ¶ 87; SWBT-TX Order*, ¶ 95.[7]

To meet the legal standard, a BOC "must demonstrate that it has developed sufficient electronic interfaces (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions." *SWBT-TX Order*, ¶ 97. Evidence of this standard includes the provision of specifications necessary for CLECs to build systems to communicate with the BOC's systems; disclosure of internal business rules and formatting information to ensure the CLECs' orders are processed efficiently; and proof of sufficient capacity to accommodate both current demand and projected demand for competing carriers' access to OSS functions. *Id.* The FCC also examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes. *Id. at ¶ 98.* The FCC has explained that it will look at the totality of the circumstances in evaluating OSS performance rather than focusing on isolated problems. *See SWBT-KS/OK Order*, ¶ 138;

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[7] Some CLECs proffered alternative tests and issues under which this Commission should evaluate BellSouth's OSS compliance. These tests are not the proper statutory analysis, and therefore, we will not consider them. *See* AT&T's witness Bradbury, explaining that the Commission should answer the following question in determining whether BellSouth's OSS interfaces have complied with the Act: "Could BellSouth conduct its business as efficiently and effectively as it does today using only the interfaces and processes that it provides to CLECs." *Tr. Vol. X, p. 3740 (Bradbury).* Similarly, NewSouth argued that this Commission should disregard BellSouth's claim of "overall performance" because NewSouth "does not offer the complete gamut of services." *Tr. Vol. XI, p. 4275 (Fury).*

Verizon-MA Order, ¶ 65. The FCC has also noted that in evaluating Section 271 compliance, it will not hold the BOCs accountable for errors caused by competing carriers. *See SWBT-KS/OK Order*, ¶ 146; *Verizon-MA Order*, ¶ 75.

Further, the FCC has repeatedly emphasized that "[t]he most probative evidence that OSS functions are operationally ready is actual commercial usage." *Second Louisiana Order*, ¶ 86; *see also* ¶ 92; *see also SWBT-TX Order*, ¶ 98. Moreover, in assessing operational readiness for South Carolina's application, the Commission may rely on commercial usage of its OSS in South Carolina and other states because BellSouth demonstrated that its OSS are the same throughout its region.

In the *Second Louisiana Order*, the FCC found that while BellSouth's second Louisiana application showed significant process toward meeting the statutory requirements, it had not demonstrated that it was providing nondiscriminatory access to the pre-ordering function and ordering interface. *Second Louisiana Order*, ¶¶ 90-103. Since the *Second Louisiana Order*, BellSouth has addressed all of the FCC's concerns. In particular, BellSouth has developed electronic interfaces and manual interfaces that give CLECs equivalent access to BellSouth's OSS functions. *See generally Tr. Vol. VI (Pate), Tr. Vol. VII (Pate), Ainsworth Rebuttal.*

As discussed below, we conclude that, since the time of the *Second Louisiana Order*, BellSouth has made significant enhancements and improvements to its OSS. BellSouth has developed electronic interfaces and manual interfaces that give CLECs equivalent access to BellSouth's OSS functions. In addition, BellSouth's OSS are

operationally ready. In sum, BellSouth provides CLECs with nondiscriminatory access to OSS in compliance with the Act and FCC orders.

b. The Georgia TPT.

In addition to evidence of actual commercial usage in each state, the FCC has recognized the use of third party testing ("TPT") results in providing additional evidence of checklist compliance, particularly the "operational readiness" of OSS. Given that BellSouth operates its OSS on a region-wide basis, we agree that the results of the Georgia TPT can provide evidence where "actual commercial usage is unavailable at significant volumes." *Tr. Vol. VIII, p. 2794 (Varner).*

In Georgia, KPMG issued a favorable Final Report and an opinion letter summarizing its conclusions. After evaluating BellSouth across 1,173 criteria [and additional criteria later requested by the Georgia Public Service Commission ("GPSC")], KPMG concluded that BellSouth satisfied 96% of the testing criteria, that 2% of the tests had not yet been completed, and that BellSouth failed to satisfy only 2% of the criteria. *Id. at 2793.*

BellSouth demonstrated that in the few areas in which BellSouth did not satisfy the KPMG test criteria, "BellSouth has proactively addressed and resolved all material issues raised by the not-satisfied criteria." *Tr. Vol. VI, p. 2333 (Pate); see generally Tr. Vol. VIII, pp. 2771-3000 (Varner); Tr. Vol. VI, pp. 2161-2307 (Pate).* Moreover, "KPMG noted that the Georgia Public Service Commission would be able to monitor these exceptions on an ongoing basis, through the performance measures and in

performance plans to address such issues." *Tr. Vol. VI, p. 2333 (Pate).* This Commission believes it can do the same.

This proceeding, however, generated arguments from CLECs regarding which BellSouth third party test, if any, should be employed by this Commission, as well as whether these tests were substantively and procedurally valid. For example, AT&T repeatedly argues that BellSouth manipulated the test design to its favor, that the results are unfavorable, and that the test is invalid. *Tr. Vol. XII, pp. 4710-4742 (Norris); Tr. Vol. X, pp. 3871-3912 (Bell).*

We disagree. The Georgia test plan was mandated by the GPSC and was drafted based on the parameters set by the GPSC. *Tr. Vol. VI, p. 3204 (Pate).* Both the GPSC and the CLECs reviewed the plan, and CLECs were given an opportunity to comment on the plan before it was approved. *Id. at 2304-05.* As Dr. Spearman confirms, the Georgia TPT is similar to those conducted by Verizon and Southwestern Bell and approved by the FCC. *Tr. Vol. XII, pp. 4892-95 (Spearman).* AT&T's own witness, Ms. Norris, conceded during cross-examination that the Georgia third-party test met the minimum requirements of the FCC. *Tr. Vol. XIII, pp. 5139-40 (Norris).* Further, the statistical test used by KPMG in Georgia is the same as the test used by KPMG in New York, where Section 271 relief has been granted. *Tr. Vol. VI, pp. 2306-07 (Pate).* Moreover, "BellSouth has proactively addressed and resolved all material issues raised by the not-satisfied criteria" in the test. *Id. at 2333.*

Therefore, we conclude that the Georgia TPT is useful in providing additional evidence of BellSouth's OSS commercial readiness.

c. Nondiscriminatory Access to OSS

CLECs need nondiscriminatory access to an incumbent's OSS to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers. *SWBT-TX Order*, ¶¶ 92-93. We find that BellSouth provides nondiscriminatory access to its OSS for preordering, ordering, provisioning, maintenance and repair, and billing.

Pre-Ordering

Pre-ordering is the exchange of information between BellSouth's systems and the CLEC to assist the CLEC in interacting with its end-user customers. Pre-ordering activities enable the CLEC to submit complete and accurate service requests to BellSouth. In its *Second Louisiana Order*, the FCC found that BellSouth did not carry its burden of proving that it provided nondiscriminatory access to OSS pre-ordering functions. Specifically, the FCC found certain deficiencies in BellSouth's pre-ordering interfaces, including that CLECs could not integrate pre-ordering and ordering interfaces, and a lack of nondiscriminatory access to due dates. As we discuss below, we find that BellSouth has rectified the deficiencies identified in the *Second Louisiana Order* and has further modified its OSS to comply with obligations that have arisen since 1997.

Actual commercial usage demonstrates that CLECs are using BellSouth's pre-ordering interfaces. For example, CLECs submitted 688,930 region-wide pre-ordering transactions in January, 2001, 933,308 region-wide pre-ordering transactions in February, 2001, and 1,140,909 region-wide pre-ordering transactions in March, 2001, via LENS and TAG, respectfully. *Tr. Vol. VI, p. 2042 (Pate)*. More recently, in July, 2001, CLECs

submitted 1,503,282 region-wide pre-ordering transactions. *Supplemental Varner Affidavit, July Monthly State Summary (September 2001).*

Application-to-Application Interfaces and Integration. The FCC has held that a BOC must provide pre-ordering functionality through an application-to-application interface to enable CLECs to "conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC." *See SWBT-KS/OK Order,* ¶ 120. The FCC criticized BellSouth in the *Second Louisiana Order* for not having an "application-to-application" interface and because the access BellSouth provided CLECs to the pre-ordering function was not integrated with ordering functions as it is for BellSouth's retail operation. *Second Louisiana Order,* ¶ 96.

We conclude that BellSouth has addressed the FCC's previously expressed concerns and now provides integratable interfaces. BellSouth offers CLECs three different interfaces that provide real time access to the same pre-ordering databases utilized by BellSouth's retail operations: (1) Telecommunications Access Gateway ("TAG"); (2) RoboTAG™; and (3) Local Exchange Navigation System ("LENS"). These interfaces support each of the three modes of competitive entry, namely competitor-owned facilities, unbundled network elements, and resale.

TAG provides CLECs a standard Application Programming Interface ("API") to BellSouth's pre-ordering, ordering, and provisioning OSS. RoboTAG™ provides a standardized, browser-based interface to the TAG gateway that resides on a CLEC's LAN server and thereby eliminates the need for CLECs to develop and maintain their own TAG interface. LENS is a human-to-machine, web-based graphical user interface

("GUI") to the TAG gateway. LENS uses TAG's architecture and gateway and therefore has TAG's pre-ordering and ordering functionality for resale and UNEs. BellSouth provides CLECs with all the technical specifications necessary for integrating these BellSouth interfaces with the CLECs' own systems. Thus, BellSouth has met the requirements established by the FCC.

Response Times. AT&T alleges that BellSouth's answering times for CLECs are slower than the answering times for BellSouth's retail customers. *Tr. Vol. X, pp. 3642-43 (Bradbury).* The performance data demonstrate, however, that BellSouth has made considerable improvement in answering times, largely due to the creation of a new Local Carrier Service Center ("LCSC"), which enables BellSouth to answer calls faster and more effectively. *Ainsworth Rebuttal*, p. 7. Indeed, during the hearing, AT&T admitted that there has been an eight-fold reduction in answering times from January through May, 2001. *Vol. XI, pp. 4100-00 (Berger).* Moreover, the performance data show that CLEC answering times for July, 2001, were significantly better (59.15 seconds) than the average answering times for BellSouth's retail customers in the Retail Service Center (199.33 seconds). *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).* We therefore conclude that BellSouth responds to CLECs in a nondiscriminatory manner in compliance with the statutory requirements.

AT&T also criticizes the pre-ordering response times for Customer Service Records ("CSRs") via LENS. *Tr. Vol. X, pp. 3640-42 (Bradbury).* However, we are satisfied that BellSouth has addressed this issue by releasing an upgrade to the CSR format and retrieval response time on July 28, 2001. *Tr. Vol. VI, pp. 2204-05 (Pate).* We

expect that this upgrade, Release 9.4, will expedite the response interval for CSRs and should address any concerns expressed by the CLECs. BellSouth thus demonstrates that its pre-ordering response times are nondiscriminatory.

WorldCom asserts that it is experiencing slow or downgraded responses from TAG. *Tr. Vol. IX, p. 3472 (Lichtenberg).* As noted in the hearing, however, WorldCom was making a separate request through the TAG security service for each transaction it submitted even though the TAG security server was not designed to handle requests in this manner. *Tr. Vol. X, pp. 3571-72 (Lichtenberg).* According to Ms. Lichtenberg's testimony, WorldCom has since remedied the way it submits requests through TAG which should address WorldCom's concerns. *Id.* Any slow response time with respect to MCI's assertion, therefore, cannot be attributed to BellSouth, and we therefore find that BellSouth's responses comply with the statutory requirements. *Tr. Vol. VI, p. 2203 (Pate).*

Parsing. AT&T and WorldCom have also criticized BellSouth for not providing CSR information parsing[8] to CLECs in the same manner as it provides it to its retail operations. *Tr. Vol. X, pp. 3631-35 (Bradbury)*; *Tr. Vol. IX, p. 3502 (Lichtenberg)*; *Tr. Vol. X, p. 3550 (Lichtenberg).* The FCC has explained that BOCs are not required to perform parsing on their side of the interface. Indeed, we note that the FCC has specifically rejected this same argument in approving SWBT's Section 271 application for Texas. *SWBT-TX Order, n.413.* We therefore conclude that BellSouth satisfies the

[8] Parsing breaks down the information contained in the CSR into certain fields from a stream of data received from BellSouth.

FCC's requirements because it provides CLECs the ability to parse CSRs themselves, as SWBT does in Texas.

However, in the interest of continuing to further the development of local competition, and although we recognize that this functionality is not required for 271 approval, the Commission hereby orders BellSouth to provide fully parsed CSRs no later than the date 271 approval is granted by the FCC for South Carolina. The 271 approval granted by this Order is not contingent on the implementation of CSR parsing.

LENS Outages. AT&T further alleges that LENS suffers outages and is not functional for periods of time. *Hearing Exhibit No. 73 (Jay M. Bradbury Hearing Exhibits, Exh. JMB-2 - Affidavit of Bernadette Seigle,* ¶ 43). While BellSouth acknowledges that LENS experienced outages between March 1, 2001 and June 30, 2001, we note that LENS was available 97.27%, 98.2%, 92.77% and 96.45% of the time in March, April, May, and June, 2001, respectively. *Tr. Vol. VI, p. 2286 (Pate).* BellSouth also has procedures in place to ensure that CLECs are notified of all such outages if the outages cannot be resolved within 20 minutes. *Tr. Vol. VI, p. 2286 (Pate).* Like the FCC, this Commission looks at the totality of the circumstances in judging OSS performance. *See, e.g., SWBT-KS/OK Order*, ¶ 138; *Verizon-MA Order*, ¶ 65. We find that under the totality of the circumstances test, BellSouth satisfies its Section 271 obligations by providing nondiscriminatory access to pre-ordering functions.

Access to Due Dates. In the *Second Louisiana Order*, the FCC held that BellSouth did not provide parity in access to due dates because of delays in returning a firm order confirmation ("FOC") to CLECs. *Second Louisiana Order*, ¶¶ 104-106. In

addition, the FCC expressed interest in the deployment of a due date calculator. We find that BellSouth has remedied the FCC's concerns by providing CLECs with access to due dates and FOCs in a timely and nondiscriminatory manner. For FOC timeliness, we find that BellSouth has shown that it is providing service at parity for all performance measures with the exception of xDSL (Mechanized and Partially-Mechanized) and Design (Non-Mechanized). *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).* We note that BellSouth has introduced an automatic due date calculation functionality in LENS and TAG, and further enhanced the electronic due date calculator on June 4, 2001. *Tr. Vol. VI, p. 2200 (Pate).* Based on these changes, we find that BellSouth has established not only that access is nondiscriminatory, but also that calculation of due date intervals for CLEC end users and BellSouth retail customers are computed using the same guidelines.[9] *Tr. Vol. VI, p. 2046 (Pate).*

AT&T alleges that BellSouth's pre-ordering OSS does not provide accurate due date calculations for all products and further asserts that due to a BellSouth design error, BellSouth does not preserve a due date for CLEC orders that fall out for manual handling. *Tr. Vol. X, pp. 3637-39 (Bradbury).* We find that BellSouth has made significant changes to its pre-ordering interfaces and has implemented an electronic due date calculator in LENS that allows CLECs to view an installation calendar and obtain an automatically-calculated estimated due date. *Tr. Vol VI, p. 2200 (Pate).* In addition, while the initial KPMG test identified a problem calculating the due date through TAG, BellSouth quickly remedied this problem as demonstrated by KPMG's retesting of the due date

[9] The exception is UNEs, which BellSouth does not use in its retail operations.

calculator in TAG. *Tr. Vol. VI, pp. 2202-03 (Pate).* We therefore find that BellSouth's due date calculations comply with the statutory requirements.

We note that other due date delays cited by AT&T can occur if CLEC representatives are not adequately trained. The FCC has continually held that BOCs are not accountable for errors caused by competing carriers' mistakes and, therefore, such errors are not a part of this Commission's evaluation of BellSouth's Section 271 compliance. *See e.g., SWBT-KS/OK Order,* ¶ 146; *Verizon-MA Order,* ¶ 75. Because we find that BellSouth provides CLECs with extensive documentation and training for its OSS, we conclude that CLEC-caused errors in the placement of orders through use of improper procedures are not BellSouth's responsibility. *Tr. Vol. pp. 1990-92 (Pate).*

Loop Makeup Information. BellSouth provides CLECs with nondiscriminatory access to the same detailed information about the loop contained in the Loop Facility Assignment and Control System ("LFACS") that is available to BellSouth retail units. BellSouth has established that, using the functionality in TAG, RoboTAG™, or LENS, CLECs have access to cable and pair, loop status (such as SP, WKG, CT, CF), loop length by segment, length by gauge, 26 gauge equivalent loop length, quantity and location of load coils, loop makeup status, length of loop that is copper or fiber, location and length of bridge taps by occurrence, and the build out capacity, resistance and offset, and can create and cancel reservations for new or spare facilities. *Tr. Vol. VI, pp. 2051-53 (Pate).* Actual commercial usage also supports BellSouth's compliance. In May, 2001, CLECs made 3685 electronic loop makeup inquiries, with 98.7% of the queries completed within one minute. *Tr. Vol. VI, p. 2212 (Pate).* More recently, in July, 2001,

CLECs submitted 5,290 regional electronic queries for loop makeup information, and BellSouth completed 100% of those queries within five minutes. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).* Based on this evidence, we are persuaded that BellSouth provides CLECs with nondiscriminatory access to loop makeup information.

Ordering and Provisioning

Ordering and provisioning are the processes by which a CLEC requests facilities or services from BellSouth and then receives information, such as a confirmation, that the order has been accepted. 47 C.F.R. §51.5. We note that, in addition to TAG, RoboTAG™, and LENS, BellSouth provides CLECs another industry-standard electronic ordering interface: EDI. In 2000, CLECs sent 2,886,673 LSRs to BellSouth electronically. In the first nine months of 2001, CLECs have already sent 2,806,182 LSRs to BellSouth electronically. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).* As we explain in detail in the sections that follow, we conclude that BellSouth provides nondiscriminatory access to the ordering and provisioning functionalities of OSS.

Order Flow-Through. We find that BellSouth has addressed the FCC's concerns, stated in the *Second Louisiana Order*, regarding BellSouth's flow-through for ordering and provisioning. *Second Louisiana Order*, ¶¶ 107-110. Indeed, KPMG's evaluation of BellSouth's ordering interfaces' flow-through and overall functionality and scalability demonstrated that BellSouth satisfied all of the test criteria. In addition, BellSouth's performance data provide further evidence of its compliance. We also note that, as the

FCC has recognized, a relatively low flow-through rate for certain types of orders is not, in and of itself, an indication that CLECs are being denied access to BellSouth's ordering systems. *SWBT-TX Order*, ¶¶ *179-183.*

We find that BellSouth's provision of FOCs and reject notices in a timely manner, particularly in the partially mechanized and manual categories, is compelling evidence of nondiscriminatory performance. *SWBT-TX Order,* ¶¶ *179-183.* For example, during the month of July, 2001, Partially Mechanized FOC Timeliness and Reject Interval for UNE orders, with the exception of xDSL, met the respective benchmark for each of these measurements more than 95% of the time. In addition, 19 of the 21 measurements for Non-Mechanized FOC Timeliness and Reject Interval of UNE orders in South Carolina were above the respective benchmark during the same period. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).*

In its most recent Section 271 Order, the FCC set forth its criteria and rationale for evaluating flow-through. *See generally, Verizon-PA Order.* Specifically, the FCC explained that, although Verizon's total average flow-through was only 54 to 66.5 percent, that performance was acceptable because: (1) Verizon demonstrated an improvement in its flow-through performance; (2) the performance levels were consistent with levels in previously approved applications for New York and Massachusetts; and (3) some competing carriers achieved higher flow-through rates than others. *Verizon-PA Order*, ¶ 49.

We are persuaded that BellSouth satisfies the FCC's flow-through test. We also find that BellSouth is committed to improving and providing flow-through for many

types of CLEC service requests. *Tr. Vol. X, pp. 3658-59 (Bradbury).* We note that the FCC understands and accepts that not all CLEC service requests flow through. Indeed, the FCC has recognized that some service requests properly could be designed to fall out for manual processing. *Verizon-MA Order, ¶¶ 79-81; SWBT-TX Order,¶¶ 180-183; BA-NY Order*, n.488. BellSouth has defined and published the types of service requests that do not flow through and has documented supporting reasons for such. *Tr. Vol. VI, p. 2228-29 (Pate).* Manual entry of such complex orders is the same whether the customer belongs to a CLEC or BellSouth. *Tr. Vol. VI, p. 2087 (Pate).* The Commission notes that BellSouth continues to implement additional flow-through improvements on its own and in conjunction with the Flow-Through Improvement Task Force, has either installed, or is planning to install, 12 flow-through improvement items. *Tr. Vol. VI, pp. 2238-41 (Pate).* Therefore, we conclude that BellSouth's improvement efforts demonstrate its commitment to competition and Section 271 compliance.

We disagree with the numerous arguments advanced by AT&T and WorldCom regarding BellSouth's "excessive" use of manual processing to handle CLEC orders. *Tr. Vol. X, p. 3600 (Bradbury)*; *Tr. Vol. IX, p. 3465 (Lichtenberg).* We conclude that these allegations are overstated since designed manual fall-out affects only 8-9% of all electronic LSRs, and any manual processing from errors affects only 11-13% of electronic LSRs. *Tr. Vol. VI, pp. 2232-33 (Pate).* Further, as noted above, the FCC has consistently stated that, to be in compliance with nondiscriminatory access to OSS, a BOC does not have to provide for electronic ordering of all products and services. *Tr. Vol. VI, p. 2229 (Pate).* Moreover, BellSouth's performance data demonstrate that

BellSouth provides CLECs a high level of service on partially mechanzied and manual orders. Therefore, we find that BellSouth's processing is consistent with the FCC's requirements.

Order Reject Interval. If there is a CLEC error in a submitted order, BellSouth will request clarification from the relevant CLEC. During the pendency of this proceeding, BellSouth changed its policy pursuant to Order of the GPSC such that BellSouth now holds the order in its system for thirty days while awaiting a response from the CLEC. We find that this policy change addresses WorldCom's concern.

Order Status Notices and Average Installation Intervals. In the *Second Louisiana Order*, the FCC found that BellSouth failed to provide CLECs with timely access to ordering functionality, specifically order rejection notices, FOC notices, average installation intervals, order completion notices, and order jeopardy notices. *Second Louisiana Order*, ¶¶ 117-133. BellSouth has implemented performance measurements that specifically track the timeliness of ordering notifications to CLECs. Moreover, BellSouth has provided this Commission with performance data pursuant to these measurements that demonstrate that BellSouth provides such notices in a timely manner. For example, for all UNE orders submitted in July, 2001, BellSouth provided a mechanized FOC or Reject within the objective time frame in 6 of the 10 product categories. Of the four measures missed, BellSouth was within 3% for three of those measures. In addition, a partially mechanized or non-mechanized FOC or Reject was provided within the objective time frame in 27 of the 31 product categories for these two measurements. *Supplemental Varner Affidavit, July Monthly State Summary (filed*

September 18, 2001). We also note that, according to the FCC, absent evidence of discrimination or competitive harm, "a BOC's failure to return a few FOCs in a timely manner appears to have little competitive impact." *SWBT-KS/OK Order,* ¶ 134 (where a BOC misses benchmarks by small margins, such current performance disparities have a negligible competitive impact).[10]

Moreover, in July, 2001, the CLEC aggregate installation performance for Residence < 10 Circuits Dispatch of only 1.61% missed appointments was less than the installation missed appointments performance for BellSouth's retail customers of 5.73%. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).* Further, the CLEC aggregate repair performance for Residence < 10 Circuits Dispatch of 0.00% missed appointments was better than the missed appointments performance of 5.46% for BellSouth's retail customers. *Id.*

Ordering and Provisioning Functionality for UNEs. In the *Second Louisiana Order,* the FCC expressed concern that BellSouth did not provide CLECs with the ability to order combinations of UNEs where the CLEC does the combining. *Second Louisiana Order*, ¶¶ 141. BellSouth has remedied this concern because CLECs can order individual UNEs or UNE-P electronically via EDI, TAG, RoboTAG, or LENS. In addition, since the *Second Louisiana Order,* BellSouth has modified its systems to enable CLECs to

[10] The FCC also found SBC to be in compliance with the statute even though it had "not satisfied the six-hour benchmark in two of the last four months in [Kansas and Oklahoma]" (noting that while "SWBT has returned manual rejection notices, on average, between three and nine hours in Kansas and between three and ten hours in Oklahoma.... [a]bsent any clear evidence of discrimination or competitive harm, we find that this performance also demonstrates compliance with our requirements." *SWBT-KS OK Order*, ¶ 142.

order both initial and subsequent partial migrations electronically. Accordingly, we conclude that CLECs have sufficient ability to order combinations of UNEs.

AT&T, WorldCom, and NewSouth maintain that BellSouth's procedures for UNE-P conversion cause loss of dial tone to customers. *Hearing Exhibit No. 73 (Jay M. Bradbury Hearing Exhibits, Exh. JMB-2 - Affidavit of Bernadette Seigle,* ¶ 9); *Tr. Vol. IX, p. 3501 (Seigler); Tr. Vol. IX, p. 3466 (Lichtenberg)*; *Tr. Vol. XI, 4273-74 (Fury).* However, we agree with BellSouth that these arguments do not demonstrate systemic problems but rather isolated instances. As WorldCom's witness Ms. Lichtenberg noted during the hearing, BellSouth provisions 99% of UNE-P conversions without any loss of dial tone. *Tr. Vol. IX, p. 3522 (Lichtenberg).* We also note that BellSouth has completed refresher training for all LCSC representatives to ensure that end users do not lose dial tone service or experience other errors during UNE-P conversion. *Ainsworth Rebuttal, p. 18.* Based on this evidence, we find that BellSouth's procedures for UNE-P conversion are nondiscriminatory and comply with the statutory requirements.

Although not required for 271 compliance but to further the development of local competition, the Commission orders BellSouth to implement the Single C ordering process for UNE-P conversions. The Single C order process will eliminate instances where the disconnect order ("D order") is implemented before a new connect order ("N order") for UNE-P conversions. The Single C order process shall be implemented by BellSouth no later than the date 271 approval is granted by the FCC for South Carolina.

WorldCom also argues that some orders were erroneously rejected because the representatives failed to recognize the proper UNE-P transaction type or that the product

code was not added to the order by BellSouth representatives during manual processing. *Tr. Vol. IX, p. 3457-70 (Lichtenberg).* We are satisfied that BellSouth has addressed this problem by providing refresher training for all LCSC representatives on May 18, 2001. *Ainsworth Rebuttal, p. 18.* We would expect that BellSouth will continue to provide such refresher training in the future, as it is needed.

Capacity. BellSouth's production environment has sufficient capacity to process current and projected order volumes. BellSouth's extensive commercial usage of its OSS, in conjunction with the data demonstrating the performance of those systems, demonstrates that BellSouth's systems have sufficient capacity to process current and projected volume. For example, according to the Georgia TPT, while BellSouth typically sees 15,000-20,000 LSRs per day in production, the TPT tested normal and peak volumes of 35,000-45,000 LSRS per day. *Tr. Vol. VI, pp. 2078-80 (Pate).* We find that this testing demonstrates that BellSouth's systems can meet future CLEC transaction workloads. In addition, since the Georgia TPT, BellSouth has increased the capacity of its production environment, and BellSouth routinely performs extensive volume tests to ensure that BellSouth's production environment has sufficient future capacity in compliance with its statutory requirements.

We also note that actual commercial usage demonstrates that BellSouth's systems have the capacity to process high volume orders. For example, while WorldCom does not currently serve South Carolina, WorldCom entered the Georgia market on May 15, 2001, and already has over 40,000 customers, gaining 10,000 residential customers in the first 6 weeks alone. *Tr. Vol. IX, p. 3507*; *Tr. Vol. IX, p. 3465 (Lichtenberg).* BellSouth's

systems easily processed these high-volume orders. In the year 2000, CLECs sent 2,886,673 LSRs electronically. In 2001, BellSouth's systems easily processed 272,114 LSRs in January, 255,162 LSRs in February and 291,083 LSRs in March 2001. *Tr. Vol. VI, 2058-59 (Pate).* We find that these numbers demonstrate that BellSouth's systems can and do process the LSRs electronically submitted by CLECs and provide CLECs with a meaningful opportunity to compete.

We also find AT&T's argument that EDI outages undermine BellSouth's claims regarding production capacity without merit. *Tr. Vol. X, p. 3680 (Bradbury).* Rather, we agree with BellSouth that the outages have no relation to EDI's capacity and that the EDI outages occurred on rare instances because one of BellSouth's EDI vendors notified BellSouth it would no longer serve as BellSouth's EDI translator. We are satisfied that BellSouth takes all outages seriously, has worked diligently to make the transition as smooth as possible, and has created an on-site team that is available 24 hours per day, 7 days per week to monitor the transition process and minimize any problems. *Tr. Vol. VI, p. 2280 (Pate).* We also note that once the transition is completed, CLECs will enjoy new capabilities, as EDI will be able to process multiple jobs simultaneously and faster. We therefore find that the outages do not reflect EDI's ability to process future orders and to handle increased volume.

Maintenance and Repair

BellSouth provides CLECs with access to maintenance and repair functions in substantially the same time and manner as it offers them to its retail units. *BA-NY Order*, 4069-70. BellSouth offers such access through its Trouble Analysis Facilitation Interface

("TAFI") and Electronic Communication Trouble Administration ("ECTA"). Below, we address specific CLEC assertions regarding the adequacy of BellSouth's maintenance and repair OSS and conclude that BellSouth satisfies this aspect of checklist item 2.

AT&T alleges that TAFI and ECTA are not equivalent to the systems utilized by BellSouth's own retail operations. *Tr. Vol. X, p. 3680 (Bradbury).* Notably, the FCC does not require BOCs to provide a machine-to-machine maintenance and repair interface. As explained in the FCC's *BA-NY Order*, although BOCs must provide "maintenance and repair functionality in substantially the same time and manner that it provides the functionality to itself," this standard does not require BOCs to provide an integratable, application-to-application interface for maintenance and repair. *BA-NY Order*, ¶¶ 214-216. Pursuant to this standard, the FCC determined that Bell Atlantic had satisfied its checklist obligation even though it did not offer CLECs an application-to-application interface. *Id.* More recently, in the *SWBT-TX Order*, the FCC reaffirmed that position, stating, "a BOC is not required, for the purpose of satisfying checklist item 2, to implement an application-to-application interface for maintenance and repair functions." *SWBT-TX Order*, n.565.

Similar to Bell Atlantic in New York, BellSouth satisfies the maintenance and repair checklist obligation because it provides CLECs with access to maintenance and repair functions in substantially the same time and manner as it offers them to its retail customers. Specifically, BellSouth's retail units use TAFI, which BellSouth also provides to CLECs. AT&T is requesting a trouble reporting arrangement that BellSouth itself does not have and which no other CLEC has requested. *Tr. Vol. VI, p. 2041 (Pate).*

We find further support for our conclusion in a 1999 letter from Mr. Lawrence Strickling, Chief of the FCC's Common Carrier Bureau. *Hearing Exhibit No. 36 (Pate Exh. OSS-82).* In that letter, Mr. Strickling clarified that the FCC's *Second Louisiana Order* did *not* conclude that TAFI's lack of integration constituted a failure to provide nondiscriminatory access. To determine nondiscriminatory access to maintenance and repair functions, the FCC reviews performance data reflecting the timeliness of the BOC's interfaces used for maintenance and repair functions, the timeliness of its repair work, and the quality of the repair work. *See Verizon-MA Order,* ¶ 96. BellSouth's repair interfaces are available for CLECs. In July, 2001, CLEC TAFI was available 100% of the time, and BellSouth answered CLEC calls to the maintenance center in less time than it took to answer BellSouth retail calls. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).* Therefore, because BellSouth provides equivalent maintenance and repair OSS to CLECs by providing CLECs with exactly the same TAFI maintenance and repair functionality as is provided to its retail operations, BellSouth satisfies its checklist obligation.

NewSouth and KMC argue that CLEC end users experience troubles at a higher rate than BellSouth and that repeat troubles and unsatisfactory repair are chronic. NewSouth claims that the repeat trouble rate for UNE Design, UNE Loops and Enhanced Extended Links consistently exceeded 50%. *Tr. Vol. XI, p. 4260 (Fury).* We find that BellSouth provided adequate evidence that it met the applicable performance standards for June and July, 2001, satisfying 14 out of 16 and 18 out of 18 of the UNE maintenance and repair measurements in those months, respectively. *Supplemental Varner Affidavit,*

July Monthly State Summary (filed September 18, 2001). Additionally, in most cases, there are fewer repeat troubles on CLEC end-user lines than on BellSouth end-user lines. Of particular significance, BellSouth's performance met the applicable analog in July for all products, with the exception of PBX dispatch. *Id.* Based on these data, we find that BellSouth and CLECs experience troubles at virtually the same rate. We also find that BellSouth repairs problems in virtually the same time that it takes to repair problems for its retail customers with the exception of UNE ISDN. As for UNE ISDN, with only 9 UNE ISDN orders in July, there is an insufficient sample size to measure BellSouth's performance for CLECs on this product accurately. The Commission will continue to monitor BellSouth's performance in these areas.

Billing

BellSouth provides billing to competitors on a nondiscriminatory basis, in accordance with the 1996 Act and the FCC's and this Commission's requirements. *Tr. Vol. IV, p. 1628 (Scollard).* BOCs must provide competitive LECs with: (i) complete, accurate and timely reports on the service usage of their customers and (ii) complete, accurate and timely wholesale bills. *Verizon-PA Order*, ¶ 13. BellSouth satisfies the FCC's billing criteria by providing CLECs usage data in three ways: (1) the Optional Daily Usage File (ODUF), (2) the Access Daily Usage File (ADUF), and (3) the Enhanced Optional Daily Usage File (EODUF). *Tr. Vol. IV, pp. 1644-45 (Scollard).* These data allow a CLEC to process call records in its billing systems in substantially the same time and manner that BellSouth processes these types of records in its own systems. *Tr. Vol. VI, pp. 1989-90 (Pate).*

In July, 2001, BellSouth's invoice accuracy for CLECs exceeded that for BellSouth's retail units with the exception of UNEs. In addition, BellSouth provided invoices faster to CLECs than to BellSouth retail units in July. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).*

AT&T alleges instances of duplicative billing after customers have left BellSouth. *Tr. Vol. X, p. 4044 (Berger).* The Commission finds, however, that AT&T's allegations do not demonstrate any failure by BellSouth to meet its billing-related obligations. First, the Commission agrees with Mr. Ainsworth's explanation that the alleged duplicative bill is often a proper final bill from BellSouth, which is necessary to close the account. *Ainsworth Rebuttal, pp. 3-4.* Second, if the CLEC does not transfer all of the end-user's services, BellSouth, acting properly, will continue to bill for the remaining services provided by BellSouth, and the customer will receive bills from both BellSouth and the CLEC for the services each company is providing. Third, duplicate billing also may be caused by the CLECs themselves; if a CLEC improperly ports a number, billing by BellSouth continues until the porting discrepancy is resolved. Fourth, in some cases, duplicate bills are due to systems problems that similarly impact BellSouth and CLECs. BellSouth has addressed duplicate billing concerns by working within the various collaboratives to investigate and resolve these issues. *Ainsworth Rebuttal, pp. 3-4.*

Change Management Process

To satisfy the Section 271 requirements, a BOC must show that it provides CLECs with information and specifications for its systems and interfaces so that the CLECs are able to develop and modify their systems and procedures to access the BOC's

OSS functions. *SWBT-KS/OK Order*, ¶ 166. Thus, a BOC must demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and ... is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *SWBT-KS/OK Order*, ¶ 166; *See also, BA-NY Order*, ¶ 102; *SWBT-TX Order*, ¶ 106. As part of this demonstration, the FCC gives "substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time." *SWBT-KS/OK Order*, ¶ 166.

We conclude that BellSouth's change management process, known as the Change Control Process ("CCP"), meets the requirements of this checklist item. Specifically, we find that: (1) BellSouth provides information relating to the change management process that is clearly organized and readily accessible to CLECs; (2) CLECs had substantial input in the design and continued operation of the change management process; (3) the change management plan defines a procedure for the timely resolution of change management disputes; (4) an adequate testing environment is available; and (5) the documentation BellSouth makes available for the purpose of building an electronic gateway is effective and useable. *Tr. Vol. VI, pp. 1969, 2011-40 (Pate)*. *SWBT-TX Order*, ¶ 108.

We are also persuaded that BellSouth is committed to addressing CLEC concerns initiated through the CCP. For example, during the last 18 months, BellSouth has implemented 58 enhancements to its systems in response to CCP requests. *Tr. Vol. VIII, p. 2718 (Pate)*. BellSouth also keeps CLECs adequately informed of the status of CCP

requests. As WorldCom noted during the hearing, BellSouth provides almost a daily listing of change management status. *Tr. Vol. X, p. 3575 (Lichtenberg)*. We believe that BellSouth will continue to work closely with CLECs, even after receiving 271 approval, and respond to their requests and concerns initiated through the CCP. *Tr. Vol. VIII, pp. 2717-18 (Pate)*.

Although not required for 271 approval, in response to CLEC concerns, the Commission orders BellSouth to implement a metric assessing BellSouth's responsiveness to CLEC-initiated changes submitted to the CCP. Further, the Commission orders BellSouth to include at least one payment category for the effectiveness of the CCP under Tier 1 of the IPP.

As discussed in detail below, based on BellSouth's performance data and the testimony presented to us, we conclude that BellSouth's change management process, embodied in its written Change Control Process ("CCP") document, satisfies the requirements of this checklist item.

Alleged "Veto" Power. The FCC requires that competing carriers have "substantial input" in the design and operation of the change management process. *BA-NY Order, 4011-12*. The FCC has made clear that this standard requires BOCs to "accommodate a variety of interests with any given change release," but that, invariably, some competing carriers will be "less than satisfied with any given change." *Id.*

AT&T argues that BellSouth has used its alleged veto power over the written CCP document to favor BellSouth-initiated changes. *Tr. Vol. X, pp. 3691-93* (*Bradbury*). The evidence shows that as of May 4, 2001, BellSouth has implemented (or is in the

process of implementing) 85 CLEC-initiated change requests, but has implemented (or begun implementing) only 48 BellSouth-initiated change requests. *Tr. Vol. VI, p. 2038 (Pate).* We are satisfied, based on the record before us, that BellSouth and the CLECs have made a concerted effort to incorporate all reasonable requests for change in the CCP.

Additionally, BellSouth has provided CLECs with "substantial input in the design and continued operation of the change management process." We note that BellSouth first sought CLEC input into the CCP in October, 1997, and has held numerous meetings with CLECs since that time. *Id.* The steering committee that developed, approved, and signed the original BellSouth Electronic Interface Change Control Process ("EICCP") was comprised of representatives of AT&T, WorldCom, Sprint, e.spire, LCI, and Intermedia. *Tr. Vol., VI, p. 2007 (Pate).*

The current CCP document specifies the procedures BellSouth must follow when reviewing change requests. We are satisfied that where BellSouth has declined to adopt a CLEC change request, it has provided a valid reason for its decision, such as that the proposed change: (1) is counter to the industry standard; (2) is not currently feasible; or (3) would require BellSouth to make a substantial financial investment for limited potential utilization by the CLEC community as a whole. *Id. at 2168.* Finally, the dispute resolution mechanism in the CCP document allows any party to seek mediation of a dispute or to file a complaint with the Commission relating to any dispute arising under the plan. Thus, it is ultimately the Commission that has the veto power, or the final say with regard to issues related to the CCP.

BellSouth's Compliance With The Requirements Of The CCP. AT&T also alleges that BellSouth does not treat CLEC change requests pursuant to the CCP's requirements and makes changes to its OSS without adhering to the CCP. The record does not support AT&T's arguments. We find that BellSouth has consistently given CLECs an opportunity to provide "substantial input" in the CCP. We are satisfied that the CCP protects the rights of CLECs since it includes escalation and dispute resolution procedures that CLECs may utilize if they feel that BellSouth has contravened the requirements of the CCP.

The Commission will continue to monitor the CCP. The Commission believes that the CCP should focus, to the extent possible, on mediation as the principle vehicle for resolution of disputes. Therefore, the Commission Staff is hereby ordered to develop, in consultation with the other parties to this proceeding, a model mediation process to be used in conjunction with the dispute resolution component of the CCP should a dispute be escalated to this Commission. Further, BellSouth is ordered to submit to the Commission, on a monthly basis, the minutes, or other documentation, of the CCP meetings.

Alleged Failure to Meet Stated CLEC Needs. AT&T alleges that BellSouth has failed to meet a number of stated CLEC needs, by, *inter alia*, (1) not establishing a "go/no go decision point"; (2) not providing parsed CSRs; (3) not implementing change requests; (4) not giving CLECs an opportunity to meet with BellSouth decision-makers; (5) not maintaining a stable test environment; and (6) not providing CLECs with an adequate opportunity to test changes prior to implementation. *Tr. Vol. X, pp. 3688-98*

(*Bradbury*). We find that these allegations do not undermine the overall sufficiency of BellSouth's change management process. We address below AT&T's primary claims, including the allegations involving the "go/no go" decision point, testing, and the introduction of new interfaces.

"Go/No Go" Decision Point. AT&T claims that the CCP lacks a "go/no go" decision point provision, which would ensure that CLECs are not forced prematurely to cut over to a new release. *Tr. Vol. X, pp. 3702* (*Bradbury*). While we agree that BellSouth's CCP document does not contain a specific "go/no go" provision, we believe that the CCP document is adequate because it does include a notification schedule designed to keep CLECs up to date on the implementation of new interfaces and program release upgrades. *Tr. Vol. VI, p. 2179 (Pate)*. Moreover, BellSouth has a versioning policy to support CLECs. BellSouth supports two versions of interface programs at all times (*i.e.*, the "current" version and the "new" version). BellSouth, thereby, allows CLECs to retain the "current" version. *Tr. Vol. VI, pp. 2179-80 (Pate)*. In addition, in June, 2001, BellSouth and the CLECs agreed to incorporate a new release management schedule into the latest version of the CCP in order to increase the advanced notification CLECs receive regarding implementation of new interfaces and program releases. *Id. at 2179.*

Testing Environment. BOCs must provide CLECs with "a testing environment that mirrors the production environment in order for competing carriers to test the new release." *SWBT-TX Order*, ¶ 132. The FCC requires that ILECs provide a CLEC "with access to a stable testing environment to certify that [its] OSS will be capable of

interacting smoothly and effectively with [the ILEC's] OSS." *Id.* We find that BellSouth's current test environment and its new optional CLEC Application Verification Environment ("CAVE") satisfy the FCC's requirements.

BellSouth provides CLECs with two types of open and stable testing environments that satisfy the FCC's requirements. The first of these testing environments is used when CLECs shift from a manual to an electronic environment, or when the CLEC is upgrading its electronic interface from one industry standard to the next. This environment allows CLECs to perform various types of testing, including: (1) application connectivity testing; (2) API testing; (3) application testing; (4) syntax testing; (5) validity testing; and (6) service readiness testing. *Tr. Vol. VI, pp. 1978, 2031-33, 3036 (Pate).* In the *KPMG Georgia Test*, KPMG found that, in connection with OSS-99, BellSouth satisfactorily provided functional testing environments to CLECs for all supported interfaces, thereby demonstrating that the testing environment is stable and capable of certifying whether a CLEC's OSS will interact smoothly and effectively with an ILEC's OSS. *Supplemental Test Plan*, CM-2-1-6, p. VII-A-22.

BellSouth's new CAVE mirrors BellSouth's production environment. We are satisfied that CAVE is adequate and that BellSouth's case-by-case determinations about whether a minor release will be available for CAVE testing by CLECs satisfies the requirements of this checklist item, particularly since BellSouth informs the CLECs of its determinations on a case-by-case basis. *Tr. Vol. VI, p. 2195 (Pate).*

BellSouth undertook carrier-to-carrier beta testing with a vendor that provided TAG interfaces to five CLECs in April, 2001. *Id.* Moreover, CAVE is now available to

any CLEC to test LENS Release 9.4, and CLECs need not perform carrier-to-carrier beta testing of CAVE before using it. *Id. at 2195.* CAVE is an optional testing environment that provides CLECs with choices and capabilities beyond those required by any FCC rule or policy.

We therefore conclude that BellSouth satisfies the FCC's requirements for change management. We encourage BellSouth and the CLECs to continue to work together through the CCP to resolve disputes and enhance BellSouth's systems and, if necessary, to use the dispute resolution process to seek the involvement of this Commission.

d. UNE Combinations

To demonstrate that it offers access to UNE combinations in compliance with checklist item 2, BellSouth must show that it "provides access to UNEs in a manner that allows requesting carriers to combine those elements" and "provides access to preexisting combinations of network elements." *SWBT-KS/OK Order,* ¶ 171. We conclude that BellSouth discharges its obligation to provide access to UNE combinations. Specifically, BellSouth provides access to UNE combinations where the network elements are already combined, in accordance with 47 C.F.R. § 51.315(b). In such cases, the UNE combinations are offered at TELRIC-based rates, contained in Attachment A to BellSouth's SGAT (*Exh. JAR-4*). Where elements are not already combined, BellSouth will combine them for a requesting CLEC for an additional charge. Alternatively, the CLEC may choose to combine UNEs using virtual or physical collocation, an assembly point arrangement, or any other technically feasible method agreed to upon *bona fide* request. *See Tr. Vol. I, pp. 157-158, 280-290 (Ruscilli).*

BellSouth has no legal obligation to combine UNEs that are not already combined, let alone to do so at TELRIC-based rates, as this Commission has expressly held:

> BellSouth is not required to combine network elements that are not in fact already combined in its network. ... BellSouth is obligated to provide combinations ... only where such combinations currently, in fact, exist and are capable of providing service at a particular location. ... [I]f IDS wants BellSouth to combine unbundled network elements that are not already combined, BellSouth is entitled to charge IDS market-based rates for doing so.

See Petition of IDS Telecom, LLC for Arbitration of a Proposed Interconnection Agreement, Public Service Commission of South Carolina, Order No. 2001-286, 18-19 (April 3, 2001) ("*SCPSC IDS Order*"). That holding is fully consistent with the FCC's pronouncements on this issue. The FCC rule that would have required BellSouth to combine UNEs that are not already combined (47 C.F.R. § 51.315(c)) was vacated by the Eighth Circuit, in a decision that is currently before the Supreme Court. *Iowa Util. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997); *Iowa Util. Bd. v. FCC,* 219 F.3d 744 (8th Cir. 2000) (declining to reinstate Rule 51.315(c), *cert. granted*, *Verizon Communications, Inc. v. FCC*, 121 S. Ct. 877 (2001) *et al.* No other FCC rule requires BellSouth to combine UNEs that are not already combined. While Mr. Guepe apparently refers to 47 C.F.R. § 51.315(b), that rule states only that an ILEC shall not "separate requested network elements that the incumbent currently combines." As this Commission has recognized, "currently combines" means elements that are *actually* combined at the location where the CLEC seeks to provide service, not elements that may be combined elsewhere in the ILEC's network. *UNE Remand Order,* ¶ *480* (declining to "interpret rule 51.315(b) as

requiring incumbents to combine unbundled network elements that are 'ordinarily combined' ....").

We further find that BellSouth's imposition of so-called "glue charges" for combining UNEs that are not already combined is not discriminatory. When BellSouth establishes new connections for its own retail customers, it recovers its costs of doing so through non-recurring charges. As Mr. Ruscilli explained, "We actually do physical work to put those two components together. And appropriately we bill customers installation charges for doing that." *Tr. Vol. I, pp. 282-283, 391, 48 (Ruscilli)*. Likewise, BellSouth assesses "glue charges" on CLECs for combining currently uncombined UNEs in order to recover its costs of doing so. *Id. at 282*.

Finally, BellSouth's recovery of its costs for combining currently uncombined elements is not anticompetitive. *Guepe, 15; Tr. Vol. IX, pp. 3355* (*Gillan*). For sustainable, economically rational competition to develop, competitors must bear the relevant costs of entry; subsidizing entry in the manner sought by CLECs in this proceeding would deter investment by BellSouth and CLECs alike. BellSouth, in sum, is complying with its obligation to provide access to combinations of unbundled network elements.

Nevertheless, in Docket No. 2001-65-C, the Commission ordered BellSouth to provide both currently combined and new UNE combinations at cost-based rates. The Commission's decision from Docket No. 2001-65-C should address the concerns of CLECs voiced in this proceeding.

e. UNE Pricing

BellSouth demonstrates that it provides access to interconnection and unbundled network elements in accordance with the pricing standards in Section 252(d)(1). Section 252(d)(1) requires that the rates for interconnection and network elements be based on cost and may include a reasonable profit. The FCC's pricing rules require rates for interconnection and network elements to be based on the total element long run incremental cost ("TELRIC") methodology. The Commission established BellSouth's current cost-based, TELRIC compliant rates in Docket Nos. 97-374-C, 2000-0122-C and 2001-65-C.

BellSouth's SGAT provides rates for UNEs and interconnection. *See Hearing Exhibit No. 2 (Ruscilli Exh. JAR-4, Attach. A).* BellSouth will include the rates established in Docket No. 2001-65-C in its SGAT.

WorldCom challenges BellSouth's decision to switch its UNE rate methodology from a historical network design statistical sample to a scorched node costing methodology. *Tr. Vol. XI, p. 4367 (Darnell).* WorldCom suggests that BellSouth switched models because its previous statistical sample was invalid. However, the Commission concludes that the switch was not an indication of any deficiency in the older model, which fully satisfied the FCC's TELRIC principles. BellSouth showed that the previous sampling method was very labor intensive and that the new model likely will require fewer resources. The new model also may prove to be more useful because it is not dependent on having a representative sample for each specific type of loop.

SECCA suggests that BellSouth's current UNE rates cannot be cost-based since BellSouth could not operate in South Carolina if it was forced to lease its existing network at the current rates. *Tr. Vol. IX, pp. 3350-51* (*Gillan*). The FCC has "held that this profitability argument is not part of the Section 271 evaluation of whether the rates are TELRIC-based. The Act requires that we review whether the rates are cost-based, not whether a competitor can make a profit by entering the market." *Verizon-MA Order,* ¶ 41 (footnotes omitted). Further, the Commission agrees with BellSouth that Mr. Gillan's results are based on impracticable assumptions.

Checklist Item No. 3: Nondiscriminatory access to poles, ducts, conduits, and rights-of-way in accordance with the requirements of Section 224

Section 271(c)(2)(B)(iii) provides that an ILEC must offer "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [ILEC] at just and reasonable rates in accordance with the requirements of Section 224." The Commission has held previously that BellSouth complied with this checklist item. Additionally, in the *Second Louisiana Order*, the FCC held that BellSouth demonstrated that it has established nondiscriminatory procedures for access to poles, ducts, conduits, and rights-of-way. *Second Louisiana Order*, ¶¶ 171-183.

No party has raised any concerns with respect to checklist item 3. Moreover, BellSouth continues to offer in various negotiated interconnection agreements, and in Section III of the SGAT, nondiscriminatory access to poles, ducts, conduits and rights-of-way in a timely fashion at rates that are just and reasonable. BellSouth's actions and performance remain consistent with the showing previously made to the Commission and

the FCC upon which both regulatory agencies made the determination that the statutory requirements for checklist item 3 were met.

We conclude that BellSouth demonstrates that it provides nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates in accordance with Section 271(c)(2)(B)(iii).

Checklist Item No. 4: Local loop transmission from the central office to the customer's premises, unbundled from local switching and other services

Section 271(c)(2)(B)(iv) requires that BellSouth offer "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." The unbundled loop is a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wiring owned by the incumbent LEC. 47 C.F.R. § 51.319(a)(1).

a. Local Loops

The local loop is an unbundled network element that must be provided on a nondiscriminatory basis pursuant to Section 251(c)(3). BellSouth makes several loop types available to CLECs (*e.g.*, SL1 and SL2 voice grade loops; 2-wire ISDN digital grade loops; 2-wire ADSL loops). *Tr. Vol. III, pp. 1112-13 (Milner).* In addition, BellSouth provides CLECs with unbundled loops served by Integrated Digital Loop Carrier ("IDLC") technology. *Id. at 1114-16.* BellSouth also allows CLECs to purchase additional loop types through the bona fide request ("BFR") process. *Id. at 1113.* BellSouth's submissions indicate that it allows CLECs to access unbundled loops at any

technically feasible point, and provides local loop transmission of the same quality as it provides to itself and uses the same equipment and technical specifications used by BellSouth to serve its own customers. *Id. at 1111-13.* As of March 31, 2001, BellSouth has provided 13,661 unbundled local loops to CLECs in South Carolina and over 317,527 unbundled local loops to CLECs in BellSouth's nine-state region. *Id. at 1113.* BellSouth indicates that the vast majority of these loops were provisioned with number porting. *Id. at 1198.*

BellSouth's performance data show that it is providing local loops in compliance with Section 271. For stand alone loops, the FCC examines the average Order Completion Interval ("OCI"); Missed Installation Appointments; Trouble Reports After Provisioning; and Mean Time To Repair. *Verizon-MA Order,* ¶ 162. For OCI, BellSouth reported CLEC activity in 5 sub-metrics related to UNE loops in July, 2001. BellSouth met or exceeded the retail analog in all 5 of the categories.

For Missed Installation Appointments, BellSouth met or exceeded the retail analog for all sub-metrics for which CLEC data were reported in July, 2001. BellSouth's performance for loops on Percent Provisioning Troubles in 30 Days is equally good. In July, BellSouth met or exceeded the retail analog for 3 of the sub-metrics with CLEC data. Finally, for Missed Repair Appointments and Maintenance Average Duration in July, BellSouth met or exceeded the retail analog for 11 of 14 sub-metrics for which there was CLEC activity.

For loop-port combinations, in July, 2001, BellSouth met or exceeded the retail analog for OCI and Missed Installation Appointments for 9 sub-metrics within these

measures. BellSouth performed equally well on Percent Provisioning Troubles Within 30 Days meeting or exceeding the retail analog for three of the four loop/port sub-metrics where there was CLEC activity in June, 2001, and one of the two loop/port sub-metrics where there was CLEC activity in July. In addition, BellSouth met or exceeded the Maintenance Average Duration retail analog for both loop/port combination sub-metrics in July. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).*

b. Hot Cuts

Hot cuts involve the conversion of an existing BellSouth customer from BellSouth's network to the network of a competitor by transferring the customer's in-service loop over to the CLEC's network. *Tr. Vol. III, pp. 1123-30 (Milner).* As the FCC noted, "[t]he ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period." *SWBT-TX Order*, ¶ 256.

BellSouth has implemented three hot-cut processes, two involving order coordination and one that does not. *Tr. Vol. III, p. 1123 (Milner).* The first process, a time-specific cutover, includes order coordination between BellSouth and the CLEC. For this first process, the CLEC requests both the due date and a specific time for the cutover to commence. The second process, a non-time specific cutover, also includes order coordination with BellSouth. For this process, however, the CLEC requests the date for the cutover. Before the cutover, the CLEC and BellSouth agree to a specific time for the

cutover to commence. Under the third process, the CLEC specifies the date on which the cut is to occur but leaves the time of the cutover to BellSouth's discretion. *Tr. Vol. III, pp. 1123-24 (Milner).*

BellSouth's performance data for July, 2001, show that BellSouth met the benchmark for every single hot-cut provisioning sub-metric. In addition, BellSouth completed 100% of the hot cuts on time-specific SL2 loops and non-time specific SL2 loops in less than fifteen minutes. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).*

BellSouth engages in ongoing communications with CLECs regarding hot cuts to ensure that any problems that develop can be readily addressed. BellSouth demonstrated that CLECs frequently communicate with their account teams regarding day-to-day operational needs. Other groups, such as the change control process group, facilitate CLECs' participation in the advancement of hot cut processes. *TR. Vol. IV, pp. 1346-49 (Milner).*

KMC alleges that it has experienced problems when it supplements a conversion order to change the due date and BellSouth processes the disconnect portion of the order on the original due date. *Tr. Vol. IX, pp. 3441-42 (Gregory)*; *Tr. Vol. IX, p. 3419 (Sausen).* BellSouth attributes part of the problem to KMC's supplementing or making changes to its LSRs very close to the original due date. As BellSouth has informed KMC, if KMC were to contact BellSouth's Customer Wholesale Interconnection Network Services ("CWINS") center when KMC supplements the due date less than 24 hours before the original due date, it would reduce greatly the likelihood of an early

disconnect. *Tr. Vol. III, p. 1206 (Milner).* Further, BellSouth and KMC have been holding monthly operational meetings for the past two years. *Id. at 1207.* The Commission concludes that BellSouth's procedures give KMC the opportunity to resolve any hot-cut problems. Thus, KMC's complaint of isolated occurrences does not warrant a finding of noncompliance for this checklist item.

KMC also complains about chronic outages. *Tr. Vol. 3442-43 (Gregory)*; *Tr. Vol. IX, pp. 3420-22 (Sausen).* The record shows that BellSouth maintains a chronic problem resolution group in the BellSouth CWINS center to work with CLECs to identify and resolve chronic troubles. Further, BellSouth's and KMC's monthly operational meetings provide a forum to investigate and resolve issues as they may arise. *Ainsworth Rebuttal, pp. 27-29.* However, KMC cancelled this meeting for June, July, and August 2001, and did not respond to BellSouth's request for a September meeting. BellSouth states that KMC also has never reported outages at these meetings on the scale it now claims is occurring. *BellSouth Late Filed Hearing Exhibit No. 67.* Finally, when BellSouth completes repairs of outages affecting CLEC customers, BellSouth gives the CLEC the opportunity to do cooperative testing to ensure that the problem was adequately resolved. *Tr. Vol. III, p. 830 (Ainsworth).* Thus, the Commission again concludes that BellSouth's procedures give KMC the opportunity to resolve these concerns. Isolated occurrences do not support a finding of noncompliance for this checklist item.

Further, the data submitted by KMC is inadequate to substantiate the trouble rates and other statistics in a manner that would allow BellSouth to respond. *Tr. Vol. IX, pp. 3434-35 (Sausen).* KMC's Late Filed Exhibit No. 65 does not include PON numbers,

order numbers, dates, end-user locations, or any information that would allow BellSouth to conduct any type of an investigation. BellSouth's performance data show only one premature trouble reported for KMC in June, 2001. Thus, the Commission finds that BellSouth's conversion rate for KMC was 97.3%, not 18.75% as Ms. Sausen suggested. *BellSouth Late Filed Hearing Exhibit No.* 67.

The Commission finds that BellSouth has met, and in some cases gone beyond, the explicit requirements delineated by the FCC for hot cuts. BellSouth has demonstrated that it "provisions hot-cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption." *BA-NY Order*, ¶ 291; *See also Verizon-MA Order*, ¶ 152; *SWBT-KS/OK Order*, ¶ 204.

c. Access to Sub-loop Elements

A sub-loop unbundled network element is an existing portion of the loop that can be accessed at accessible points on the loop. This includes: any technically feasible point near the customer premises, such as the pole or pedestal, the network interface device ("NID"), or minimum point of entry to the customer's premises; the feeder distribution interface; the Main Distributing Frame; remote terminals; and various other terminals. *Tr. Vol. III, p. 1118 (Milner).*

In addition to the unbundled loops themselves, BellSouth offers CLECs nondiscriminatory access to sub-loop elements. *Id. at 1118-19.* No CLEC challenges BellSouth's provision of access to sub-loop elements. BellSouth offers loop concentration/multiplexing; loop feeder; loop distribution; intrabuilding network cable; and network terminating wire as sub-loop elements. *Id.* CLECs can request additional

sub-loop elements via the bona fide request process. As of March 31, 2001, BellSouth has provided CLECs over 500 sub-loop elements region-wide. *Id. at 1119.*

d. Access to xDSL-Capable Loops

A BOC must "provision[] xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations." *SWBT-KS/OK Order*, ¶ 185. In its Texas 271 decision, the FCC commended the Texas state commission for developing comprehensive measures to assess SWBT's performance in provisioning xDSL-capable loops and related services in Texas. *SWBT-TX Order*, ¶ 283. BellSouth submitted comparable performance data, specific to xDSL loops, demonstrating that it is providing CLECs with nondiscriminatory access to such loops.

BellSouth offers CLECs a variety of unbundled loops that may support DSL services. These loop types are ADSL-capable loop; HDSL-capable loop; ISDN loop; Universal Digital Channel ("UDC"); Unbundled Copper Loop ("UCL"), Short and Long; and UCL-Nondesign ("UCL-ND"). *Tr. Vol. III,p. 996 (Latham).* As of March 31, 2001, BellSouth had provisioned 314 two-wire ADSL loops and 5 two-wire HDSL loops in South Carolina. *Tr. Vol. III, p. 1122 (Milner).*

For pre-ordering of xDSL-capable loops, BellSouth offers CLECs access to loop make-up information ("LMU") through electronic and manual processes. BellSouth further demonstrates that CLECs have access to the same information as BellSouth's retail operations, in the same manner and within the same time frames. *Tr. Vol. III, pp. 1007-08 (Latham)*; *see also SWBT-KS/OK Order*, ¶ 122; *SWBT-TX Order*, ¶¶ 165-167.

As of March, 2001, CLECs made 46 electronic queries for LMU in South Carolina, and 4,283 region-wide. *Tr. Vol. III, p. 1121 (Milner).*

In addition, BellSouth offers its Loop Qualification System ("LQS") to Network Service Providers to enable them to inquire electronically as to whether basic local exchange lines will support BellSouth's wholesale ADSL service. LQS provides the CLEC with an unguaranteed response as to whether an existing telephone number is served by a loop that will support ADSL service.

To further enable CLECs to provide high-speed data services to their end users, CLECs have the option of selecting the precise loop conditioning they desire through BellSouth's Unbundled Loop Modification ("ULM") process. The ULM process removes any devices that may diminish the capability of the loop to deliver high-speed switched wireline capability. CLECs only pay for the level of conditioning they select. BellSouth provides ULM upon request for an unbundled loop, regardless of whether or not BellSouth offers advanced services to the end-user customer on that loop. *Tr. Vol. III, pp. 1007-08 (Latham).* Through March, 2001, CLECs in South Carolina had made 7 requests for loop conditioning, and CLECs region-wide had made 59 requests. *Tr. Vol. III, pp. 1118 (Milner).*

The Commission finds that BellSouth is meeting its obligation to provide xDSL-compatible loops. With respect to timeliness of loop installation, in July, BellSouth provisioned xDSL loops without conditioning in 4.76 days. In addition, BellSouth met or exceeded the retail analog for Percent Missed Installation Appointments for xDSL where there was CLEC activity. BellSouth not only delivers service in a timely manner, it does

so with the same quality of service BellSouth provides for its retail orders. The Percent Provisioning Troubles Within 30 Days for xDSL in July was less than 4.26% for CLEC order and 5.46% for BellSouth retail orders. *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001).*

When CLECs did experience trouble on xDSL-capable loops, BellSouth handled the troubles in the same time and manner as it handled the troubles for its retail units. BellSouth met or exceeded the retail analog for Missed Repair Appointments for both xDSL sub-metrics in July. Further, the Maintenance Average Duration for CLECs was the same as or shorter than BellSouth retail for all xDSL sub-metrics for July.

US LEC questions BellSouth's unbundled loop modification ("ULM") additive charge when applied to xDSL loops that do not require conditioning. *Tr. Vol. III, pp. 1025-28 (Latham).* BellSouth generally conditions loops ten pair at a time. When a CLEC orders a single pair of xDSL loops that require conditioning, BellSouth only charges the ULM additive charge for conditioning the pair the CLEC ordered, although BellSouth conditions ten pair at that time. To recover the cost of conditioning the other pairs of loops, BellSouth subsequently imposes the ULM additive charge on CLECs ordering those now-conditioned loops. *Id.* Imposing the ULM for each pair of xDSL loops is an equitable means of distributing the costs of conditioning loops among those benefiting from that conditioning.

e. Line Sharing

Line-sharing allows CLECs to provide high-speed data service to BellSouth voice customers. BellSouth must provide line-sharing in accordance with the obligations set

forth in the FCC's *Line-Sharing Order* and *Line-Sharing Reconsideration Order*. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20912 (1999) (*"Line Sharing Order"*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, 15 FCC Rcd 385 (1999) (*"Line Sharing Reconsideration Order"*). BellSouth has produced evidence showing that it has complied fully with these requirements. *Tr. Vol. III, pp. 876-891 (Williams).*

BellSouth provides access to the high frequency portion of the loop as an unbundled network element. Like SWBT, BellSouth developed the line-sharing product in a collaborative effort with CLECs and is continuing to work cooperatively with the CLECs on an ongoing basis to resolve issues as they arise. *Id. at 876.* The pre-ordering, ordering, provisioning, and maintenance and repair processes for the line-sharing product are very similar to the processes for xDSL-capable loops. *Id. at 886-89.* For loop makeup information, the process is the same whether the CLEC wishes to obtain an xDSL-capable loop or the high frequency portion of the loop. *Id. at 884-85.* As of April 1, 2001, while BellSouth had not provisioned any line-sharing arrangements in South Carolina, BellSouth had provisioned 2,542 such arrangements region-wide. *Id. at 877-889.*

BellSouth makes line-sharing available to a single requesting carrier, on loops that carry BellSouth's plain old telephone service ("POTS"), so long as the xDSL technology deployed by the requesting carrier does not interfere with the analog voice band

transmissions. BellSouth allows line-sharing CLECs to deploy any version of xDSL that is presumed acceptable for shared-line deployment in accordance with FCC rules and that will not significantly degrade analog voice service. *Id. at 877.*

f. Line Splitting

BellSouth demonstrates that it facilitates line-splitting between CLECs using UNEs acquired from BellSouth in full compliance with the FCC's rules. *Tr. Vol. III, pp. 891-94 (Williams).* BellSouth offers the same arrangement to CLECs as that described by the FCC in the *SWBT-TX Order* and the *Line-Sharing Reconsideration Order. SWBT-TX Order*, ¶¶ 323-329. Specifically, BellSouth facilitates line-splitting by CLECs by cross-connecting a loop and a switch port to the collocation space of either the voice CLEC or the data CLEC. The CLECs may then connect the loop and the switch port to a CLEC-owned splitter and split the line themselves. *Id.*

AT&T notes that BellSouth will not charge CLECs UNE-P rates for a line splitting arrangement. *Tr. Vol. III, pp. 930-931 (Williams).* However, BellSouth shows that its conduct is consistent with FCC precedent. The FCC repeatedly has held that "if a competing carrier is providing voice service using the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport, to *replace its existing UNE-P with a configuration that allows provisioning of both data and voice services*." *Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Further Notice Of Proposed Rulemaking In CC Docket No. 98-147, Sixth

Further Notice Of Proposed Rulemaking In CC Docket No. 96-98, ¶ 19 (rel. Jan. 19, 2001) (emphasis added); *see also Verizon-PA Order*, ¶ 197; *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*, Memorandum Opinion And Order, CC Docket No. 01-100, ¶ 53 (rel. July 20, 2001) (*Verizon-CT Order*); *SWBT-KS/OK Order*, ¶ 225; *SWBT-TX Order,* ¶ 325. Thus, the FCC recognized that once the loop and port are used to provide line splitting, as opposed to a simple voice arrangement, the "UNE-P" no longer exists. The arrangements are fundamentally different. It would, therefore, be unreasonable for BellSouth to charge the same rate for line splitting that it charges for a UNE-P for voice service. *Tr. Vol. III, pp. 930-931; 991-992 (Williams).*

Similarly, the FCC has rejected any requirement that the BOC own the splitter in a line splitting arrangement. This claim, raised by AT&T, is belied by the fact that no BOC in any state for which Section 271 authority has been granted owns the splitter in a line splitting arrangement. *Id. at 932-39.* Furthermore, the FCC has ruled that the ILEC is *not* required to do so. *SWBT-TX Order,* ¶ 327 ("we reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P"). In addition, the FCC has rejected AT&T's contention that BellSouth's policy to provide the splitter in a line sharing arrangement but not in a line splitting arrangement is somehow "discriminatory." *SWBT-TX Order,* ¶ 329. [11]

[11] Moreover, in Docket No. 2001-65-C, the Commission ordered BellSouth to provide the splitter upon request of a CLEC, although this is not required for 271 approval.

WorldCom and AT&T criticize BellSouth's unwillingness to permit line splitting between itself and a CLEC providing voice services. *Tr. Vol. XI, pp. 4369-70 (Darnell)*; *Tr. Vol. III, p. 936 (Williams)*. The FCC has several times rejected CLEC arguments on this point. *See, e.g., Line Sharing Reconsideration Order*, ¶ 26; *SWBT-TX Order*, ¶ 330. BellSouth is not required to provide DSL services on CLEC loops.

Checklist Item No. 5: Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services

Section 271(c)(2)(B)(v) of the competitive checklist requires an ILEC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." Interoffice transmission facilities include both dedicated transport and shared transport. *Second Louisiana Order*, ¶ 201. Dedicated transport is defined as "incumbent LEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 U.S.C. 51.319(d)(1)(i). Shared transport is defined as "incumbent LEC transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC's network." 47 U.S.C. 51.319(d)(1)(ii).

The Commission has held previously that BellSouth complied with this checklist item. Moreover, BellSouth continues to provide, through its various negotiated interconnection agreements and in Section V of the SGAT, dedicated and shared

transport between end office switches, between tandem switches, and between tandem switches and end office switches. BellSouth also has demonstrated that it has procedures in place for the ordering, maintenance and provisioning of dedicated and shared transport. *Tr. Vol. I, pp. 180-181 (Ruscilli).*

WorldCom alleges that BellSouth does not provide, as a UNE, dedicated transport that (1) connects two points on a CLEC's network (*e.g.,* two switches, two network nodes or a network node and a switch), or (2) connects a point on a CLEC's network to a point on the network of a different CLEC where the facilities to provide such UNEs are currently in place. *Tr. Vol. XI, pp. 4389-90 (Argenbright).* MCI asserts that the FCC has required ILECs to provide unbundled transport in the ILEC's existing network. *Id. at 4390* (citing *Local Competition Order*). As BellSouth states, however, the FCC has specifically excluded transport between other carriers' locations. *Tr. Vol. I, p. 290 (Ruscilli).* The FCC, in the *Local Competition Order*, held that ILECs are not required to offer, and clearly are not required to construct, dedicated transport facilities between CLEC network locations. *Local Competition Order*, 15718; *UNE Remand Order,* ¶ 324; *see also Tr. Vol. I, p. 290 (Ruscilli).*

In light of the foregoing, the Commission finds BellSouth in compliance with this checklist item.

Checklist Item No. 6: Local switching unbundled from transport, local loop transmission, or other services

Checklist item 6 obligates ILECs to provide "local switching unbundled from transport, local loop transmission, or other services." In the *BA-NY Order*, the FCC stated that, in order to meet checklist item 6, an ILEC must demonstrate "that it provides

(1) line-side and trunk-side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared trunk ports; (6) unbundled tandem switching; (7) usage information for billing exchange access; and (8) usage information for billing reciprocal compensation." *BA-NY Order,* ¶ 346.

In the *Second Louisiana Order*, the FCC explained that to comply with the requirements of unbundled local switching, an ILEC must also make available trunk ports on a shared basis and routing tables resident in the ILEC's switch, as necessary to provide access to shared transport functionality. *Second Louisiana Order*, ¶ 209; *SWBT-TX Order*, ¶ 338. The FCC also said that an ILEC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring CLECs to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch. *Id.*

In the *Second Louisiana Order*, the FCC concluded that BellSouth proved that it provides, or can provide, the line-side and trunk-side facilities of the switch, the basic switching function, trunk ports on a shared basis, and unbundled tandem switching. *See Second Louisiana Order*, ¶¶ 210-215, 228-229. We find that BellSouth continues to provide unbundled switching in accordance with the requirements of the FCC. BellSouth provides CLECs unbundled switching capability with the same features and functionality available to BellSouth's own retail operations, in a nondiscriminatory manner. *Tr. Vol. VI, pp. 1333-35 (Milner).*

Although the FCC raised several concerns in the *Second Louisiana Order* regarding BellSouth's ability to meet its burden of proof with respect to three specific

requirements of this checklist item, we find that BellSouth's filings in this proceeding demonstrate that it has remedied the FCC's concerns with these requirements. First, BellSouth now provides all vertical features that the switch is capable of providing whether or not BellSouth offers a particular feature on a retail basis. *Tr. Vol. III, p. 1135 (Milner).* Second, BellSouth makes available two methods of customized routing: Advanced Intelligent Network ("AIN") and Line Class Codes ("LCC"). *Tr. Vol. III, p. 1221 (Milner).* Third, BellSouth provides usage information via the Access Daily Usage File ("ADUF"), which provides the CLEC with records for billing interstate and intrastate access charges (whether the call was handled by BellSouth or an interexchange carrier) or reciprocal compensation charges to other LECs and interexchange carriers for calls originating from and terminating to unbundled ports. *Tr. Vol. IV, p. 1645 (Scollard).*

Notably, no CLEC has challenged BellSouth's compliance with this checklist item. In light of this fact, and the evidence in the record, we conclude that BellSouth has demonstrated that it provides CLECs with unbundled local circuit switching in compliance with checklist item 6.

Checklist Item No. 7: Nondiscriminatory access to 911 and E911 services, directory assistance, and operator call completion services

a. 911 and E911 Services

Section 271(c)(2)(B)(vii) requires an ILEC to provide "[n]ondiscriminatory access to -- 911 and E911 services." The FCC has previously concluded that BellSouth meets this requirement. *See Second Louisiana Order*, ¶¶ 236-238. BellSouth continues to provide access to 911 and E911 services in a manner consistent with that previously

presented to this Commission and the FCC. Finally, no commenter has raised any concerns with respect to 911 and E911 services. Thus, we conclude that BellSouth demonstrates that it provides nondiscriminatory access to 911 and E911 in accordance with Section 271(c)(2)(B)(vii)(I).

b. Directory Assistance/Operator Services

In order to comply with checklist item 7, BellSouth must also show that it provides access to Directory Assistance ("DA") and operator services ("OS") so that CLECs' customers can obtain telephone numbers and operator call completion services on a nondiscriminatory basis. 47 U.S.C. § 271(c)(2)(B)(vii). Relatedly, Section 251(b)(3) imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and all telephone toll service] to have nondiscriminatory access to ... operator services, directory assistance, and directory listings, with no unreasonable delays." In the *UNE Remand Order*, the FCC removed directory assistance and operator services from the list of required unbundled network elements. *UNE Remand Order*, ¶ 441-42.

The FCC concluded in the *Local Competition Second Report and Order* that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider or (2) the identity of the telephone service provider for a customer whose directory listing is requested." *Second Louisiana Order*, ¶ 241, citing 47

U.S.C. § 51.217(c)(3); *Local Competition Second Report and Order*, ¶ 130-35. The FCC specifically noted that the phrase "nondiscriminatory access to operator services" means that "a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0', or '0 plus' the desired telephone number." *Id.*

BellSouth provides directory assistance services and operator call completion services to CLEC customers at a level of quality that is at least equal to that which BellSouth provides to itself. *Tr. Vol. III, pp. 1147-49 (Milner).* Calls from a CLEC customer served by a BellSouth switch reaches the CLEC's choice of operator services or directory assistance platforms through customized routing provided by BellSouth. Although, in the *Second Louisiana Order*, the FCC found slight deficiencies with BellSouth's offer of customized routing, the FCC believed that BellSouth's Advanced Intelligent Network ("AIN") method of providing customized routing had "the potential to meet the requirements of the *Local Competition First Report and Order*." The FCC nevertheless discounted it for purposes of BellSouth's second application because AIN was not then being currently offered. *Second Louisiana Order*, ¶ 222. BellSouth now offers its AIN solution for customized routing to any CLEC that wishes to use it. *Tr. Vol. III, p. 1139 (Milner).* Thus, BellSouth has remedied the FCC's concern.

The FCC further indicated that BellSouth's line class code ("LCC") solution for customized routing would have been acceptable had BellSouth been able to demonstrate adequately that CLECs can order this option efficiently. Specifically, the FCC held that "BellSouth should not require the competitive LEC to provide the actual line class codes,

which may differ from switch to switch, if BellSouth is capable of accepting a single code region-wide." *Second Louisiana Order*, ¶ 224. In compliance with this obligation, BellSouth will implement one routing pattern per region for a CLEC customer. In addition, although it is not required to do so, BellSouth voluntarily will provide a single routing pattern on a statewide basis. This single routing pattern (whether region-wide or state-wide) can be to a BellSouth platform (branded or unbranded), a CLEC platform, or a third-party platform. *Tr. Vol. III, p. 1208 (Milner).*

If, on the other hand, the CLEC chooses to have different routing options for different customers served out of the same switch, BellSouth will handle such requests on a manual basis. In this scenario, the CLEC will provide information on the LSR designating the appropriate exception routing plan to be used to direct the call. The FCC specifically recognized that CLECs who wish to have multiple routing patterns in the same switch should bear the obligation to populate the requisite LCCs on the LSR. The FCC held as follows:

> We agree with BellSouth that a competitive LEC must tell BellSouth how to route its customer calls. If a competitive LEC wants all of its customers' calls routed in the same way, it should be able to inform BellSouth, and BellSouth should be able to build the corresponding routing instructions into its systems just as BellSouth has done for itself. If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LECs to include in its order an indicator that will inform BellSouth which selective routing pattern to use.

Second Louisiana Order, ¶ 224. The Commission finds that BellSouth provides customized routing in full compliance with FCC orders and the Act.

Moreover, BellSouth has shown that it provides CLECs access to the Directory Assistance Access Service ("DAAS") and the Directory Assistance Call Completion service ("DACC") via trunks connecting the CLEC's point of interface with the BellSouth platform. *Tr. Vol. III, p. 1147 (Milner).* As of March 31, 2001, CLECs in South Carolina had 141 directory assistance trunks in place between CLEC switches and BellSouth's platform. *Id. at 1148..*

BellSouth also provides CLECs with access to Directory Assistance Database Service ("DADS") to allow CLECs to use BellSouth's subscriber listing information to set up their own directory assistance services. *Id.* In addition, BellSouth provides CLECs with access to Direct Access to Directory Assistance Services ("DADAS"), which gives CLECs direct access to BellSouth's directory assistance database so that CLECs may provide directory assistance services. The Commission finds that all information contained in BellSouth's listing database for its own end users, CLECs' end users, and independent LECs' end users is available to CLECs in the same manner as it is available to BellSouth itself. *Id. at 1149.*

The FCC has stated that in future applications, if BellSouth chooses to rely on performance data to demonstrate its compliance with this checklist item, "it should either disaggregate the data or explain why disaggregation is not feasible or is unnecessary to show nondiscrimination." *Second Louisiana Order*, ¶ 245. BellSouth has demonstrated that disaggregation of performance data related to directory assistance and operator services is unnecessary because BellSouth's provision of directory assistance and operator services to CLECs is parity by design. *Tr. Vol. III, p. 1152 (Milner).* The flow

of service orders to directory assistance or operator services platforms is exactly the same regardless of the source of the service order. *Id.* Because there is no differentiation between calls from BellSouth's retail customers and calls from CLECs' customers, there is no need to disaggregate performance data between the types of calls.

Additionally, as ordered by the FCC, BellSouth has demonstrated that it provides subscriber listing information in its directory assistance database in a way that allows CLECs to incorporate that information into their own databases. *Second Louisiana Order*, ¶ 249. BellSouth now provides a requesting carrier with all the subscriber listings in its operator services and directory assistance databases except listings for unlisted numbers.

AT&T attempts to show that BellSouth does not satisfy the requirements of checklist item 7 because it allegedly does not provide customized routing. *Tr. Vol. X, pp. 3730-31* (*Bradbury*). AT&T concedes that BellSouth has proposed certain technologies and has implemented procedures that provide CLECs access to customized OS/DA routing. *Id. at 3729, 3733*. Nonetheless, AT&T claims that BellSouth fails to provide customized routing for any CLEC in its territory "as a practical matter." *Id. at 3731*. AT&T also asserts that BellSouth has never provided methods and procedures necessary to order customized OS/DA routing for particular customers and criticizes the BellSouth document that details the procedures for establishing a default customized routing plan as "confusing, inadequate, and impossible to implement." *Id. at 3734*.

AT&T is the only party that has complained about customized routing. *Tr. Vol. III, p. 1208 (Milner)*. AT&T's concerns have been addressed by BellSouth, both through

direct negotiations with AT&T and in multiple arbitration proceedings. *Id.* That BellSouth provides customized routing in compliance with checklist item 7 has been confirmed in several orders issued by the state regulatory bodies that have been involved in these arbitration proceedings. *Id.* BellSouth and AT&T have reached agreement on a procedure that would entail one default routing plan per state with multiple pre-assigned routing options. *Id. at 1208-09.* The multiple routing options will be built into the BellSouth switches where CLEC service is requested, and those switches are able to route the OS/DA traffic for AT&T end users to different platforms, as prescribed by AT&T. *Id. at 1209.* The routing as prescribed by AT&T will be the default routing for its end users for each of those classes of service. *Id.*

The Commission finds that BellSouth has expended much time and effort to ensure that AT&T can utilize customized routing. BellSouth has provided information on its CLEC website that enables AT&T and other CLECs to order customized routing and has provided AT&T with detailed ordering procedures, procedures that AT&T concurred with during negotiations with BellSouth. *Id. at 1210.*

In light of the foregoing, we find that the evidence presented in this proceeding shows that BellSouth provides nondiscriminatory access to customized routing to CLECs, both as a legal and as a practical matter, under terms and conditions that are just, reasonable, and nondiscriminatory, all in accordance with FCC rules. Thus, the Commission finds that BellSouth is fully compliant with this checklist item requirement.

Checklist Item No. 8: Nondiscriminatory provision of white pages directory listings

Section 271(c)(2)(B)(viii) requires BellSouth to provide "[w]hite pages directory listings for customers of the other carrier's telephone exchange service." BellSouth must provide white page listings for competitors' customers with the same accuracy and reliability that it provides for its own customers and with nondiscriminatory appearance and integration. *BA-NY Order*, ¶ 359. BellSouth's actions and performance at this time are consistent with the showing previously made to this Commission and the FCC upon which this Commission and the FCC made the determination that the statutory requirements for the checklist item were met. *Tr. Vol. I, pp. 202-203 (Ruscilli)*; *Second Louisiana Order*, ¶¶ 253 - 259.

Access Integrated alleges that BellSouth omitted, or threatened to omit, some customers from directory listings. *Hearing Exhibit No. 63 (Rodney Page Hearing Exhibits, Exh. A)*. In support of this allegation, Access Integrated submitted two affidavits of customers, prepared by Access Integrated counsel, that contain complaints regarding BellSouth's provision of directory listing policies. *See Id., Exh. C, D*. We note that neither of these affiants is a resident of South Carolina nor have they filed complaints with this Commission. BellSouth responds that the alleged events described in these two affidavits, if accurate, were random occurrences, and were resolved with corrective measures or were clearly contrary to BellSouth's policies, procedures, and training. *Ainsworth Rebuttal*, p. 29. This Commission is persuaded by BellSouth's evidence that Access Integrated's claims of these two isolated incidents are not indicative of the overall provision of directory listing services by BellSouth. *Id.*

Thus, the Commission concludes that BellSouth has met this checklist item.

Checklist Item No. 9: Nondiscriminatory access to telephone numbers

Section 271(c)(2)(B)(ix) requires that an ILEC must offer "nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers" until the date by which telecommunications numbering administration guidelines, plan, or rules are established, and after that date, "compliance with such guidelines, plan, or rules." Previously, the FCC has found that BellSouth met this competitive checklist requirement, *Second Louisiana Order*, ¶ 262, and no CLEC has questioned BellSouth's compliance. Since that time, NeuStar has assumed all the responsibilities of the North American Numbering Plan Administrator ("NANPA"). *Tr. Vol. I, pp. 203-204 (Ruscilli).* BellSouth no longer has any responsibility for the assignment of central office codes (NXXs) or for NPA relief planning. *Id.* This Commission notes that, although BellSouth is no longer a central office code administrator and no longer performs any functions with regard to number administration or assignment, BellSouth offers through its agreements, as well as its SGAT, nondiscriminatory access to telephone numbers. *Id. at 206.* For these reasons, we find that BellSouth demonstrated that it complies with checklist item 9.

Checklist Item No. 10: Nondiscriminatory access to databases and associated signaling necessary for call routing and completion

Section 271(c)(2)(B)(x) requires BellSouth to offer "[n]ondiscriminatory access to databases and associated signaling necessary for call routing and completion." In the *Local Competition First Report and Order*, the FCC identified signaling networks and call-related databases as network elements and concluded that LECs must provide for the

exchange of signaling information between LECs necessary to exchange traffic and access call related databases. *See* 47 C.F.R. § 51.319.

BellSouth offers CLECs the very same access to signaling and call-related databases as BellSouth uses, allowing calls to or from CLEC customers to be set up just as quickly and routed just as efficiently as calls to or from BellSouth customers. BellSouth therefore complies with the requirements for affording nondiscriminatory access to these components of BellSouth's network.

a. Signaling Networks

When a CLEC purchases unbundled local switching from BellSouth, it automatically obtains the same access to BellSouth's switching network as BellSouth provides itself. *Tr. Vol. III, pp. 1166-67 (Milner).* BellSouth provides nondiscriminatory access to its signaling networks, including Signal Transfer Points ("STP"), Signaling Links, and Service Control Points ("SCP"). *Id. at 1166.* BellSouth provides Signaling System 7 ("SS7") network service to CLECs for their use in furnishing SS7-based services to their own end users or to the end users of another CLEC that has subtended its STP to the signaling network of the interconnecting CLEC. *Id. at 1167-68.* As of April 24, 2001, five CLECs had connected directly to BellSouth's signaling network in South Carolina. *Id. at 1168.*

b. Call-Related Databases

BellSouth provides CLECs with nondiscriminatory access to a variety of call-related databases. Specifically, BellSouth offers access to its Line Information database ("LIDB"); Toll Free Number database; Local Number Portability database; Calling Name

Delivery database ("CNAM"); Advanced Intelligent Services Feature database; and the 911/E911 databases. In addition, BellSouth provides access to a Service Control Point ("SCP"), which is a network element where call related databases reside. SCPs also provide operational interfaces to allow for provisioning, administration, and maintenance of subscriber data and service application data. *Tr. Vol. III, pp. 1168-71 (Milner).* Each of these databases is available to a requesting CLEC in the same manner and via the same signaling links to the databases that are used by BellSouth for itself. BellSouth maintains that all of the information in these databases is kept in accordance with the confidentiality requirements of 47 U.S.C. § 222.

BellSouth's region-wide LIDB processed more than 1.5 billion queries from CLECs and others during the period from January, 1997, through December, 2000. As of April 1, 2001, BellSouth had 70 CNAM customers, consisting of both CLECs and independent LECs, across BellSouth's region. From January, 1997, through March 31, 2001, CLECs and other service providers across BellSouth's region completed approximately 8.2 billion queries to BellSouth's Toll Free Number database. *Id. at 1169-74.*

Both the Commission and the FCC in its *Second Louisiana Order* ruled that BellSouth had demonstrated that it satisfies the requirements of checklist item 10. *Second Louisiana Order*, ¶ 267. We note no CLEC has filed comments questioning BellSouth's compliance. The Commission concludes that BellSouth has once again demonstrated that it complies with checklist item 10.

Checklist Item No. 11: Number portability

Section 271(c)(2)(B)(xi) requires that BellSouth comply with the number portability regulations adopted pursuant to Section 251, which states that all LECs must "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2). The evidence presented in this proceeding shows that BellSouth has implemented a comprehensive process to provide local number portability in conformance with the FCC regulations; BellSouth provides interim number portability to competing carriers through remote call forwarding, direct inward dialing, and directory number routing indexing. Permanent local number portability works by utilizing a centralized database that houses all ported numbers and provides proper routing of calls to and from these numbers. *Tr. Vol. VIII, pp. 2905* (*Varner*). The Commission finds that, by providing local number portability, BellSouth has enabled customers of facilities-based CLECs to retain existing telephone numbers "without impairment in quality, reliability, or convenience," in accordance with all applicable statutes and regulations. 47 U.S.C. § 153(30).

BellSouth's performance data demonstrate that BellSouth is providing nondiscriminatory access to number portability. The Commission finds that BellSouth has met the benchmarks for these measures in nearly all cases. For example, for all order types, mechanized, partially mechanized and non-mechanized, BellSouth met the LNP benchmark for Reject Interval and FOC Timeliness in July, 2001. With respect to provisioning, BellSouth missed one of three LNP installation appointments sub-metrics

in July, 2001.[12] Thus, the evidence shows that BellSouth provides number portability without causing any impairment in quality, reliability, or convenience to CLEC customers.

Access Integrated asserts that BellSouth claimed that certain numbers, which had been requested by a customer of Access Integrated, were unavailable even though the numbers allegedly were disconnected or were temporarily out of service when Access Integrated called the specific numbers. *Hearing Exhibit No. 63 (Rodney Page Hearing Exhibits, Exh. A)*. The evidence shows that BellSouth's number assignment policy used to administer telephone numbers for itself, its end users, its affiliates, and CLECs is the same. *Ainsworth Rebuttal*, p. 30. Under BellSouth's number assignment policy, there is a 90-day waiting period before residential numbers that have been disconnected are made available for reassignment. The mandatory waiting period for business numbers is one year. Although Access Integrated is apparently correct in that the customer migrated back to BellSouth, the Commission notes that BellSouth did not allow the customer to have the numbers previously requested by Access Integrated because the numbers were on intercepts and were cycling in the waiting period. *Ainsworth Rebuttal*, p. 31.

For its part, AT&T testified that when a telephone number is ported to AT&T, the number is sometimes erroneously reassigned to a new BellSouth line. *Tr. Vol. X, p. 4044 (Berger)*. This does not appear to be a widespread problem, as BellSouth was not notified of this issue in its current form until the last quarter of 2000. Once BellSouth was notified of the problem, the evidence shows that BellSouth was determined to

[12] Per BellSouth's request, the Commission did not rely on the LNP Disconnect Timeliness data.

resolve this issue quickly, and BellSouth devised an interim manual solution by January, 2001. *Ainsworth Rebuttal*, p. 2. BellSouth is currently pursuing a permanent software solution. Nevertheless, to ensure that ported numbers will not be mistakenly reassigned, BellSouth has affirmed that the manual workaround will continue until it has implemented a permanent software solution. *Ainsworth Rebuttal*, p. 2. Additionally, BellSouth began working with all CLECs to verify all numbers that have been ported since January, 2000. The review for AT&T was completed on May 23, 2001, and BellSouth does not expect that this problem will reoccur. *Ainsworth Rebuttal*, pp. 2-3. BellSouth committed to resolving the problem of reassigned numbers as soon it was notified. Thus, the Commission concludes that this issue does not rise to a level to warrant a finding of noncompliance.

AT&T also alleges that its customers continue to receive bills from BellSouth even after having been switched from BellSouth. *Tr. Vol. X, pp. 4044-45 (Berger)*. The Commission notes that BellSouth acknowledges that duplicate billing does, on occasion, occur. *Ainsworth Rebuttal*, p. 3. However, AT&T has failed to bring to the Commission's attention the fact that CLECs can be the source for the duplicate billing. *Ainsworth Rebuttal*, p. 3. It is clear to the Commission that where a CLEC does not transfer all of its customers' services or where the CLEC does not properly complete the porting of all telephone numbers associated with the LSR, BellSouth will continue to bill until the discrepancies created by the CLEC are resolved. *Ainsworth Rebuttal*, p. 3.

The Commission notes that occurrences of improper reassignment of numbers and duplicate billing are rare, which is evidenced by the fact that AT&T has not provided the

Commission any specific examples to support its allegations. *Id. at 1205.* Moreover, BellSouth has implemented an efficient process by which the CLEC can resolve any such matters. The Commission therefore finds that BellSouth complies with this requirement of checklist item 11.

AT&T maintains that some business customers occasionally lose the ability to receive calls from BellSouth customers. *Tr. Vol. X, pp. 4039-42 (Berger).* BellSouth asserts that it utilizes triggers for the majority of port orders, while acknowledging that for some directory numbers that cannot be handled mechanically (*i.e.*, using a trigger order), such as Direct Inward Dialing ("DID") to a Private Branch Exchange ("PBX") referenced by AT&T, BellSouth has in place a process that calls for the formation of a Project Team to handle the conversion. *Tr. Vol. III, p. 1212 (Milner).* BellSouth also asserts that it has established specific Project Managers to address those orders that are large and complex in order to ensure accurate, timely conversion for all CLECs, including AT&T. *Id.*

AT&T's complaints about lost incoming calls are serious. BellSouth responded by sending a letter to AT&T on August 25, 2000, in which BellSouth explained its policy of handling DID conversions and requested a list of the Purchase Order Numbers ("PONs") in question to enable the Project Team to investigate the issues allegedly affecting AT&T and work through the resolution of the problems. *Id. at 1214.* To date, AT&T has not responded to BellSouth's request and has not provided BellSouth with any additional information. The Commission notes with interest that AT&T chose to raise the issue in these proceedings without providing any specific information that would be

useful in making a factual determination. *Id.* This Commission will not find noncompliance based on speculative allegations unsupported by evidence. Thus, the Commission finds that BellSouth has satisfied this requirement of checklist item 11.

AT&T also alleges that, where a customer chooses to migrate only some of its lines to a CLEC, BellSouth does not properly port the customer's number, especially if it happens to be the main number used by BellSouth for billing. *Tr. Vol. X, pp. 4045-46 (Berger).* In these situations, if the customer later wants to change features or call in a repair, AT&T maintains that BellSouth may not be able to process the request. *Tr. Vol. X, pp. 4045 (Berger).* However, because AT&T has not provided any concrete examples in support of its allegations, BellSouth has not been able to specifically address AT&T's concerns other than to say that BellSouth successfully conducts partial migrations for CLECs without any interruption to the end user's service every day. *Ainsworth Rebuttal*, p. 4. The evidence on the record in these proceedings shows that CLECs carrying out a partial port must inform BellSouth on the LSR which billing number will be ported and which telephone number the customer wishes to use as BellSouth's new billing number. *Ainsworth Rebuttal*, pp. 4-5. If this information is not provided by the CLEC, the efficiency of the partial port process will be affected. *Ainsworth Rebuttal*, p. 5. BellSouth cannot be blamed for problems caused by CLECs. Thus, the Commission finds that AT&T's allegations are not supported by evidence and warrant no further attention.

AT&T also alleges that only two BellSouth representatives are trained to handle LNP issues. *Tr. Vol. X, 4027-28 (Berger).* The Commission does not find AT&T's

arguments persuasive. The evidence shows that BellSouth employs over 400 persons who are highly trained in LNP processes in order to provide assistance before AT&T or any other CLEC accepts responsibility of the ported number. *Ainsworth Rebuttal, p. 26.* To further assist AT&T, BellSouth has created an additional center that focuses on resolving post-port problems, which is staffed by 13 highly trained employees. *Id.* BellSouth also has implemented a process to handle emergency situations on a 24 hour, 7 day a week basis. *Id.* Finally, the evidence shows that AT&T is in control of when a number ports. The Commission therefore finds that AT&T's assertion does not support a finding of noncompliance with this checklist item.

Checklist Item No. 12: Nondiscriminatory access to services or information necessary to implement local dialing parity in accordance with the requirements of Section 251(b)(3)

Checklist item 12 requires an ILEC to provide "nondiscriminatory access to such services or information necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3)." Local dialing parity ensures that CLECs' customers are able to place calls within a given local calling area by dialing the same number of digits as a BellSouth end user without unreasonable dialing delays. In the *Second Report and Order*, the FCC held "that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19430, 71 (1996). No CLEC has questioned BellSouth's compliance with this checklist item.

CLEC end users are not required to use access codes or to dial additional digits to complete local calls to BellSouth customers and visa versa. *Tr. Vol. III, pp. 1182-83 (Milner).* End user customers of CLECs that are being served via the UNE platform have available local dialing plans in the same manner as BellSouth's retail customers. The interconnection of the BellSouth network and the network of the CLEC is seamless from the end user perspective. BellSouth's actions and performance at this time are consistent with the showing previously made to this Commission and to the FCC, upon which both regulatory agencies made the determination that the statutory requirements for the checklist item were met. *Second Louisiana Order*, n.251; *Tr. Vol. III, pp. 1182-83 (Milner).* BellSouth thus has demonstrated that it complies with checklist item 12.

Checklist Item No. 13: Reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2)

The FCC stated in its *BA-NY Order* that an ILEC complies with checklist item 13 when "it (1) has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and (2) is making all required payments in a timely fashion." *BA-NY Order*, ¶ 376. BellSouth has established in this proceeding that it has in place reciprocal compensation arrangements, which are set forth in its binding interconnection agreements. Also, BellSouth has shown that it makes timely payments pursuant to these compensation arrangements. The Commission notes that no CLEC in this proceeding has complained that BellSouth fails to make timely payments or otherwise fails to satisfy the two-pronged test set forth by the FCC in its *BA-NY Order*. In addition, the record shows that BellSouth has modified its reciprocal compensation language to ensure that it complies with the FCC's Order on Remand, dated April 27, 2001, in CC Docket No. 96-

98 and No. 99-68. The Commission therefore finds that BellSouth complies fully with Section 252(d)(2).

Nevertheless, WorldCom argues that BellSouth cannot satisfy checklist item 13 without treating Foreign Exchange ("FX") traffic as local traffic subject to the payment of reciprocal compensation. *Tr. Vol. XI, pp. 4400-09 (Argenbright).* On January 16, 2001, this Commission held:

> BellSouth is only required to deliver traffic at no charge within a local service area, and as the typical "virtual NXX" traffic terminates outside the local service area, BellSouth is not required to deliver that "virtual NXX" traffic at no charge.
>
> ...BellSouth is not obligated to carry this traffic at no cost. [Rather], BellSouth is entitled to compensation for carrying this traffic.[13]

Tr. Vol. I, pp. 300-301 (Ruscilli). Reciprocal compensation, which is required by Section 251(b)(5), is appropriate only for local traffic. *Id. at 302.* Both BellSouth and CLECs agree that carriers are permitted to assign NPA/NXX codes in any manner desired, including outside the local calling area or rate center with which the codes are associated. *Id. at 301.* However, as repeatedly affirmed by the FCC, and contrary to WorldCom's assertions, the determination of whether a call is local depends on the physical location of the calling and called parties; that is, the end points of a call determine the jurisdiction of

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[13] Several State Commissions agree, having found that FX traffic is not local service and that reciprocal compensation should not apply to FX traffic. *Tr. Vol. I, pp. 304-05 (Ruscilli).* For example, the Texas PSC found that SBC satisfied checklist item 13 even though SBC does not treat FX traffic as local traffic subject to the payment of reciprocal compensation. *SBC-TX Order*, 18538-39; *Arbitration Award, Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Telecommunications Act of 1996*, Texas Public Service Commission Docket No. 21982 (July 2000) ("The Commission finds that to the extent that FX-type and 800 traffic do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation"). *See also Tr. Vol. I, p. 306 (Ruscilli)* (discussing a similar decision by the Maine PUC).

the call, not the NPA/NXX dialed. *Id. at 305.* Thus, the Commission finds that if WorldCom chooses to provide its numbers outside the local calling area, which it is entitled to do, calls originated by BellSouth end users to those numbers are not local calls, and reciprocal compensation does not apply. *Id. at 301.*

WorldCom also argues that BellSouth does not comply with checklist item 13 because BellSouth requires that a CLEC must provide both geographic comparability and similar functionality in order to be entitled to compensation at the tandem interconnection rate. *Tr. Vol. XI, pp. 4395-4400 (Argenbright).* WorldCom argues that CLECs should qualify for the higher tandem interconnection rate by showing only geographic comparability. *Id. at 4398.*

This issue was addressed by the Commission in its AT&T Arbitration Order. The Commission ruled that a CLEC qualifies for the tandem switching rate only if it serves a geographic area comparable to the geographic area served by BellSouth's tandems and performs the functions of a tandem switch for local transfer.[14] The FCC subsequently released a Notice of Proposed Rule Making ("NPRM"), which accompanied an Order on Remand.[15] The FCC suggested in the NPRM that Section 51.711(a)(3) of the FCC rules requires only that the comparable geographic area test be met before a CLEC is entitled to the tandem interconnection rate for local call termination. BellSouth has acknowledged in this proceeding that the FCC's April 27, 2001, NPRM may be

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[14] *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*, 32 (rel. January 30, 2001).

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd. 9151 (2001).

interpreted to mean that a CLEC need only demonstrate geographic comparability to receive the tandem interconnection rate.

Pursuant to the FCC order, the Commission finds that the relevant test for determining whether a CLEC is entitled to the higher tandem interconnection rate is the "geographic comparability" test. Thus, WorldCom would be entitled to the higher tandem interconnection rate if it could show that it provides service in South Carolina. Nevertheless, WorldCom does not provide any services in South Carolina and therefore does not satisfy the geographic comparability test.

In addition, the FCC, in its Order on Remand, allowed individual ILECs to exchange all 251(b)(5) traffic at the FCC-designated ISP compensation rates rather than at state-approved or state-negotiated rates. *Tr. Vol. I, p. 299.* BellSouth has chosen to exchange all traffic that falls under Section 251(b)(5) at the FCC rates for ISP traffic and consequently offers to pay for all 251(b)(5) traffic at the designated ISP compensation rates. *Id.* Thus, the Commission holds that the issue of whether WorldCom serves a geographic area comparable to BellSouth's tandem switch is relevant only to the extent that WorldCom declines BellSouth's offer to exchange 251(b)(5) traffic at the same rate as ISP traffic. *Id.* Because WorldCom does not provide any 251(b)(5) traffic in South Carolina, it cannot decline or accept such traffic at any rate.

Checklist Item No. 14: Telecommunications services are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3)

In order to satisfy checklist item 14, BellSouth must allow CLECs to resell its retail telecommunications services on a nondiscriminatory basis. *See SWBT-TX Order,*

¶ 387. The Commission finds that BellSouth complies with this checklist item. In particular, BellSouth has shown that it provides services for resale to CLECs in South Carolina in substantially the same time and manner as for its retail customers. For example, based on the South Carolina *Supplemental Varner Affidavit, July Monthly State Summary (filed September 18, 2001)* with the new FOC Timeliness Benchmark of >=85% FOCs within 18 hours, BellSouth was in parity for all Partially Mechanized resale products and all UNE products except xDSL, which was not of a statistically significant sample size. *Id.* Moreover, for June and July, 2001, BellSouth was in parity for the LNP < 10 Circuits Dispatch and LNP > 10 Circuits Non-Dispatch for the Missed Installation Appointments sub-metrics. *Id.* In July, 2001, BellSouth met the applicable benchmark for resale Reject Interval and FOC Timeliness in 17 of the 20 categories for which data was reported. *Id.*.

SECCA asserts that this Commission must ensure that BellSouth makes available for resale at a wholesale discount its xDSL services, as per the order issued by the United States Court of Appeals for the District of Columbia ("D.C. Circuit") in *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) ("*Ascent*"). *Tr. Vol. IX, pp. 3353, 3356* (*Gillan*). The Commission finds SECCA's analysis of the *Ascent* decision unpersuasive. The *Ascent* decision deals with regulatory relief granted by the FCC regarding resale of advanced services conducted through the separate affiliate established in the Ameritech-SBC merger. The D.C. Circuit Court ruled that an ILEC may not "sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly owned affiliate." *Tr. Vol. I, p. 310 (Ruscilli)*. This is not at

issue here. The Commission finds that BellSouth, unlike SBC, does not provide xDSL through a separate affiliate, and this ruling in no way requires BellSouth to resell its advanced data services at a wholesale discount. *Id. at 314.*

The D.C. Circuit has in fact issued a more recent decision that, in the view of this Commission, directly rules in favor of BellSouth, confirming that xDSL services provided to ISPs are not offered "at retail" and thus need not be offered for resale at a wholesale discount. *Tr. Vol. I, pp. 311-313 (Ruscilli).* Additionally, in paragraph 393 of the *BA-NY Order*, addressing Bell Atlantic's ADSL Access Tariff offering, the FCC stated, "we agree with Bell Atlantic that it is not required to provide an avoided-cost discount on its wholesale ADSL offering because it is not a retail service subject to the discount obligations of Section 251(c)(4)." *Tr. Vol. I, p. 313 (Ruscilli)* (citing the *BA-NY Order*, ¶ 393). Based on the FCC's position and the rulings of the D.C. Circuit, the Commission finds that BellSouth is in compliance with the FCC's requirements with respect to resale of advanced services.

Finally, SECCA alleges that BellSouth's winback promotions are used to evade BellSouth's resale obligations. *Tr. Vol. IX, p. 3339* (*Gillan*). There is, however, no factual support for SECCA's allegation in the record. To the contrary, the Commission finds that the evidence submitted in these proceedings shows that BellSouth, immediately upon being notified of this issue, suspended its outbound winback efforts pending a review into those processes and programs. *Tr. Vol. I, p. 321 (Ruscilli).* The review investigated CLECs' allegations regarding disparagement of competitors and possible misuse of wholesale information by BellSouth's retail units. The Commission finds that

BellSouth has implemented steps to assure compliance with all BellSouth internal policies regarding sales and marketing practices as well as applicable statutory and regulatory requirements. *Tr. Vol. I, p. 322 (Ruscilli)*. However, the Commission does agree that having a prior relationship with customers may give BellSouth some slight advantage in the event of a WinBack-type situation. Therefore, in Order No. 2001-1036, dated October 29, 2001, the Commission ruled that BellSouth shall be prohibited from engaging in any WinBack-type activities for ten calendar days from the date that service has been provided to a customer by a CLEC. This prohibition included the exchange of information within divisions at BellSouth related to notice that certain end users have requested to switch local service providers. Also, BellSouth is prohibited from including any marketing information in its final bill sent to customers who have switched local service providers.

This Commission previously found BellSouth in compliance with checklist item 14. None of the assertions raised by the parties are sufficient to warrant a finding of noncompliance with this checklist item. Therefore, the Commission finds that BellSouth continues to meet the requirements of this checklist item.

IT IS THEREFORE ORDERED THAT:

1. BellSouth meets the Track A requirements as contained in Section 271(c)(1)(A) of the 1996 Act.

2. BellSouth's SGAT satisfies the requirements of Sections 251 and 252(d) of the Telecommunications Act of 1996, and is hereby approved under Section 252(f) of the 1996 Act.

3. BellSouth's SQM is adopted as the permanent SQM until such time as the Commission or BellSouth choose to revisit these standards.

4. BellSouth shall rename its Self Effectuating Enforcement Mechanism ("SEEM") to the Incentive Penalty Plan ("IPP") with the modifications ordered herein and incorporate the IPP as Attachment J to its SGAT.

5. The IPP shall become effective in South Carolina upon BellSouth's 271 approval by the FCC.

6. BellSouth shall include in the SQM appropriate metrics that measure and assess BellSouth's responsiveness to CLEC-initiated changes submitted to the Change Control Process ("CCP"), and BellSouth shall include at least one payment category under Tier 1 of the IPP for assessing the effectiveness of the CCP regarding CLECs.

7. The Commission will continue to review the SQM and the performance of the IPP on a regular basis in order to monitor BellSouth's performance and to prevent backsliding on the part of BellSouth. Beginning on January 1, 2002, and continuing on a monthly basis thereafter, BellSouth shall submit performance data to the Commission, and such submittal shall be in electronic format. The performance data that BellSouth shall submit shall include both raw and manipulated data. Further, documentation on calculations, aggregations, and disaggregations pursuant to which the data is captured shall be included in the submittal. The data shall be transmitted by BellSouth to the Commission on a mutually agreed upon date.

8. Every six months, the Commission shall conduct a review of the performance data and the IPP, after consultation with the various parties in this Docket. The initial review shall be conducted six months after BellSouth's 271 approval by the FCC for South Carolina.

9. Within the first six month review period, BellSouth, in cooperation with the Commission, shall reassess the payment calculation of the IPP. Specifically, the assessment shall focus on whether the payment should be calculated from the estimator (mean) as opposed to the edge of the confidence interval.

10. The CCP submitted by BellSouth is approved, including the dispute resolution component. The CCP should focus, to the extent possible on mediation as the principle vehicle for resolution. To that end, the Commission Staff is hereby ordered to develop, in consultation with the other parties to this proceeding, a model mediation process to be used in conjunction with the dispute resolution component of the CCP should a dispute be escalated to this Commission. Further, BellSouth is ordered to submit to the Commission, on a monthly basis, the minutes, or other documentation, of the CCP meetings.

11. BellSouth complies with the fourteen (14) point competitive checklist contained in Section 271(c)(2)(B)(i)-(xiv) of the 1996 Act.

12. BellSouth shall provide fully parsed CSRs no later than the date 271 approval is granted by the FCC for South Carolina.

13. BellSouth shall implement the Single C ordering process for UNE-P conversions, and such Single C ordering process shall be implemented no later than the date 271 approval is granted by the FCC for South Carolina.

14. BellSouth's application for Section 271 authority to provide interLATA services in South Carolina is hereby approved.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)