**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of<br><br>Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana | CC Docket No. _____ |

To: The Commission

# BRIEF IN SUPPORT OF APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA


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## EXECUTIVE SUMMARY

This application should serve as further confirmation that BellSouth has worked earnestly and successfully to meet all prerequisites for in-region, interLATA relief under the Telecommunications Act of 1996 (the "Act" or "1996 Act"). BellSouth has opened the local exchange in Louisiana to competition by negotiating dozens of carrier-specific interconnection agreements and filing a Statement of Generally Available Terms and Conditions that has been approved by the State public service commission. The State commission conducted an extensive evidentiary proceeding, open to all, to investigate BellSouth's compliance with the requirements of section 271. After its investigation, the State commission found that BellSouth has met the Act's requirements and that BellSouth's provision of in-region, interLATA services would serve the public interest.

As in South Carolina, for which BellSouth has a pending application for long distance authority, long distance callers in Louisiana — and particularly average residential users — pay more than they should for interLATA service because BellSouth has been excluded from the market. Potential wireline carriers in Louisiana are holding back in offering facilities-based local service to residential customers even though they can obtain interconnection and unbundled network elements from BellSouth to ease their entry. These potential competitors are focusing instead on urban business markets, where they can earn higher profits by selectively "cherry picking" BellSouth's most profitable customers.

New competitors simply sense no urgency in entering the local market in Louisiana on a broad basis. As long as BellSouth cannot offer its ordinary local customers one-stop shopping, potential competitors face little risk from holding off as well. They can ignore residential callers

in favor of more lucrative business customers, or postpone entering the local telephone business altogether, knowing that BellSouth can neither gain an advantage by selling bundled services nor take a single penny from the incumbents' interLATA profits.

With this application, BellSouth seeks to bring greater local and long distance competition to all Louisianans. Notwithstanding the limited strategic entry by wireline local carriers, BellSouth is eligible to file under Track A, 47 U.S.C. § 271(c)(1)(A), because PCS providers unaffiliated with BellSouth have commenced service over their own networks in Louisiana. Under the plain language of the Act as well as this Commission's prior decisions, these PCS carriers are "competing providers of telephone exchange service . . . to residential and business subscribers." The legislative history of section 271 further makes clear that Track A is satisfied because these wireless carriers provide a facilities-based alternative to BellSouth for local calls.

BellSouth also has fully complied with the local competition provisions of the 1996 Act. The Louisiana Public Service Commission ("Louisiana PSC") conducted a nine-month review of BellSouth's compliance with section 271. It also established separate proceedings to ensure that BellSouth's resale discount and rates for interconnection and unbundled network elements are consistent with section 252 of the Communications Act. After thorough investigation into these three dockets, the Louisiana Commission: (1) concluded that BellSouth's Statement of Generally Available Terms and Conditions makes available to competitors each of the 14 items required under the competitive checklist and (2) set a resale discount and cost-based rates and approved their inclusion in the Statement. Existing wireline carriers, PCS providers, and any other parties that seek to enter the local market in Louisiana have access to these terms under BellSouth's generic statement or their own, custom-tailored agreements.

In its review of BellSouth's eligibility for interLATA relief, the Louisiana PSC paid particular attention to competitors' access to BellSouth's operations support systems ("OSSs"). Parties such as AT&T, MCI, and the U.S. Department of Justice will claim in this proceeding that BellSouth cannot prove such access is available until competitors actually choose to avail themselves of it. Yet, after inspecting BellSouth's OSS interfaces and procedures and giving opponents an opportunity to prove alleged deficiencies in a live demonstration, the Louisiana PSC determined exactly the opposite: BellSouth's systems, the Louisiana PSC held, "do in fact work and operate to allow potential competitors full non-discriminatory access."[1]

The Louisiana PSC's findings establish BellSouth's satisfaction of all relevant requirements under sections 251 and 252 of the Communications Act and section 271's checklist. They rule out the possibility that the limited scope of local wireline competition in Louisiana is attributable to BellSouth rather than the business strategies of potential competitors.

In addition to meeting all requirements imposed by the State commission and the Act itself, BellSouth has abided by the general guidance given in this Commission's Michigan Order[2] to the fullest extent possible while still preserving BellSouth's right to have a court decide whether certain of these requirements would be consistent with the Act if applied to the facts in Louisiana. For example, this application includes extensive documentation requested by the

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[1.] Order U-22252-A, Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Dkt. U-22252, at 4-5, 15 (LPSC rel. Sept. 5, 1997) ("Compliance Order") (App. C Tab 136).

[2.] Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC No. 97-298 (rel. Aug. 19, 1997) ("Michigan Order").

Commission regarding performance data, pricing, and other matters, notwithstanding pending proceedings that bear on the legal relevance of such evidence.

The benefits of granting this application are crystal clear. BellSouth has, for example, committed to establish its basic interLATA rates at least 5 percent below those of AT&T immediately upon entering the market. This discount (and ensuing competitive marketing by all carriers) would guarantee residential callers in Louisiana, who are most in need of price relief, the opportunity to realize savings from a long distance carrier they know and can trust. By 2006, fuller competition as a result of in-region, interLATA relief will create more than 7,600 new jobs in Louisiana and increase the gross state product by more than $900 million. Nationwide, residential customers would save $7 billion per year. That means that these ordinary callers are losing well over $100 million <u>every week</u> that the Commission delays section 271 relief — a price tag that should weigh heavily on this Commission.

BellSouth's entry into interLATA services will ignite competition in Louisiana's local markets as well. In particular, the major long distance carriers will no longer be able to pursue other opportunities with the assurance that BellSouth cannot sell packages of local and interLATA services consumers desire. After interLATA relief is granted, moreover, AT&T, MCI, and Sprint will be freed of all restrictions on their own bundled service packages, which will add an additional dimension to local competition.

The traditional justification for excluding Bell companies from interLATA services, and foregoing such benefits, is that they might dominate interexchange markets through cost misallocation or discrimination. Yet the 1996 Act, together with longstanding Commission

regulations, state regulations, and market realities, renders such misconduct inconceivable. The local exchange in Louisiana is open to competitors. BellSouth will start with zero market share in a long distance business dominated by entrenched incumbents with vast resources and high sunk costs, factors that make successful predation unimaginable. Commission rules and procedures have successfully protected regulated ratepayers when incumbent local exchange carriers have entered other markets adjacent to the local exchange. As the Commission has confirmed, the 1996 Act gives it ample authority to deter anticompetitive behavior and to facilitate detection of potential violations of the Act.

There can be no basis for delaying level competition by BellSouth in Louisiana, except to hold back BellSouth until potential entrants such as AT&T and MCI, who have spent the last 21 months plotting regulatory strategies instead of pursuing market entry, are willing to compete. Any such effort to manage competition would flatly violate the 1996 Act and Congress's deregulatory policies. Just as important, a failure to free BellSouth to compete would — as this application demonstrates — gravely harm the Louisiana consumers whose interests should be paramount.

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* Affidavits marked with an asterisk were originally filed with the Commission on September 30, 1997, as part of the Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, FCC Docket No. 97-208.

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| 225 | 02/05/97 | Order Denying BellSouth's Motion for Partial Stay |
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| 227 | 02/06/97 | Notice of Revised Hearing Schedule |
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| 241 | 06/20/97 | Notice of Assignment Required Filings, and Opportunity for Hearing |
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| 244 | 07/11/97 | BellSouth's Cost Studies |
| 245 | 07/18/97 | BellSouth Letter to ALJ Regarding Status Conference |
| 246 | 07/23/97 | AT&T Letter to BellSouth Proposing Changes to Scheduling |
| 247 | 07/23/97 | WorldCom Letter to ALJ in Response to BellSouth's Letter Regarding Status Conference |
| 248 | 07/25/97 | MCI Telecommunications Corporation's Motion to Extend Schedule and Require Training Regarding Cost Studies |
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| 251 | 08/01/97 | Report on July 31, 1997 Status Conference and Notice of Revised Procedural Schedule |
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| 257 | 08/26/97 | BellSouth Letter to ALJ Regarding Its Statement of Generally Available Terms and Conditions |
| 258 | 08/26/97 | LPSC's Motion to Modify Procedural Schedule |
| 259 | 09/03/97 | BellSouth's Motion and Order for Expedited Hearing on Notices of Deposition |
| 260 | 09/04/97 | Notice of Telephone Status Conference on Thursday, September 4, 1997 on Thursday, September 4, 1997 at 2:30 P.M. |
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| 262 | 09/05/97 | BellSouth's Order of Witnesses |
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| 265 | 09/08/97 | Hearing Transcript: Volume 1 |
| 266 | 09/09/97 | Hearing Transcript: Volume 2 |
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| 274 | 09/29/97 | Post Hearing Brief of BellSouth |
| 275 | 09/29/97 | Post-Hearing Brief of WorldCom, Inc. |
| 276 | 09/29/97 | Post Hearing Brief of MCI Telecommunications Corporation |
| 277 | 09/29/97 | Post-Hearing Brief of Sprint Communications Company, L.P. |
| 278 | 09/29/97 | Post-Hearing Brief of American Communication Services of Baton Rouge, Inc., American Communication Services of Louisiana, Inc., and American Communication Services of Shreveport, Inc. |
| 279 | 09/29/97 | LPSC Staff Post Hearing Brief |
| 280 | 09/29/97 | Post-Hearing Brief of Cox Louisiana Telecom II, L.L.C. |
| 281 | 09/29/97 | AT&T Communications of the South Central States, Inc.'s Post-Hearing Brief |
| 282 | 09/30/97 | AT&T Letter to LPSC Submitting Omitted Exhibits |
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| 284 | 10/17/97 | Final Recommendation of the ALJ |
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| 288 | 07/29/96 | Notice of Status Conference |
| 289 | 08/02/96 | Procedural Schedule |
| 290 | 08/13/96 | BellSouth's Motion to Convert August 20, 1996 Informal Presentation Conference to Informal Status Conference |
| 291 | 08/14/96 | AT&T's Opposition to BellSouth's Motion to Convert August 20, 1996 Informal Presentation Conference to Informal Status Conference |
| 292 | 08/14/96 | Transcript of Open Session |
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| 295 | 08/30/96 | Direct Testimony of Guy L. Cochran, Robert C. Scheye and William E. Taylor on Behalf of BellSouth |
| 296 | 08/30/96 | Direct Testimony of Joseph Gillan on Behalf of AT&T Communications of the South Central States, Inc. and WorldCom, Inc., d/b/a LDDS WorldCom |
| 297 | 08/30/96 | Direct Testimony of Patricia McFarland on Behalf of AT&T Communications of the Southern States, Inc. |
| 298 | 08/30/96 | Direct Testimony and Exhibit of Dr. Marvin H. Kahn |
| 299 | 08/30/96 | Direct Testimony of Greg Darnell on Behalf of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. |
| 300 | 09/04/96 | Report of Status Conference Procedural Schedule |

| TAB | RECORD OF LOUISIANA PSC DOCKET NOS. 22020<br>Resale Pricing | |
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| 301 | 09/13/96 | Rebuttal Testimony of Patricia McFarland on Behalf of AT&T Communications of the Southern States, Inc. |
| 302 | 09/13/96 | Rebuttal Testimony of Greg Darnell on Behalf of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. |
| 303 | 09/13/96 | Rebuttal Testimony and Exhibit of Dr. Marvin H. Kahn |
| 304 | 09/13/96 | Rebuttal Testimony of Joseph Gillan on Behalf of AT&T Communications of the South Central States, Inc. and WorldCom, Inc., d/b/a LDDS WorldCom |
| 305 | 09/13/96 | Rebuttal Testimony of Guy L. Cochran, William E. Taylor, and Robert C. Scheye. |
| 306 | 09/16/96 | BellSouth's Motion for Expedited Discovery and Leave to Present Surrebuttal Testimony; and Alternatively, Motion to Continue Hearing |
| 307 | 09/16/96 | Hearing Transcript: Volume 1 |
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| 309 | 09/18/96 | Hearing Transcript: Volume 3 |
| 310 | 09/26/96 | Brief of Sprint Communications Company L.P. |
| 311 | 09/27/96 | Proposed Findings of Fact and Conclusion of Law |
| 312 | 09/27/96 | Post-Hearing Brief of BellSouth |
| 313 | 09/27/96 | Post-Trial Brief of AT&T |
| 314 | 09/27/96 | Post-Hearing Brief of MCI Telecommunications Corporation |
| 315 | 09/27/96 | Post-Hearing Brief filed by the Small Company Committee of the Louisiana Telephone Association |
| 316 | 09/27/96 | Brief of the Public Service Commission |
| 317 | 09/27/96 | Post-Hearing Brief of WorldCom, Inc. d/b/a/ LDDS WorldCom |
| 318 | 09/27/96 | Post Hearing Comments Submitted on Behalf of Global Tel*Link |

| TAB | RECORD OF LOUISIANA PSC DOCKET NOS. 22020<br>Resale Pricing | |
|---|---|---|
| 319 | 09/27/96 | Original Post-Hearing Brief of the Louisiana Cable Telecommunications Association |
| 320 | 09/27/96 | MCI Telecommunications Corporation's Proposed Findings of Fact and Conclusions of Law |
| 321 | 10/01/96 | Reply Brief of Sprint Telecommunications Company L.P. |
| 322 | 10/02/96 | Reply Brief of AT&T |
| 323 | 10/02/96 | Reply Brief of the Louisiana Public Service Commission |
| 324 | 10/02/96 | Post-Hearing Reply Brief of BellSouth |
| 325 | 10/02/96 | Post-Hearing Reply Brief of MCI Telecommunications Corporation |
| 326 | 10/09/96 | Recommendation Setting Wholesale Discount Rate at 20.72% |
| 327 | 10/14/96 | BellSouth's Exception to Administrative Law Judge's Recommendation and Request for Oral Argument |
| 328 | 10/16/96 | Transcript of Open Session |
| 329 | 11/12/96 | Order Setting Resale Rates |
| 330 | 12/17/96 | Notice of Opportunity to Comment |
| 331 | 01/09/97 | Comments on Behalf of Global Tel*Link, Inc. |
| 332 | 01/10/97 | MCI Telecommunications Corporation's Opposition to the Filing of BellSouth's Exception to Administrative Law Judge's Recommendation and Request for Oral Argument |
| 333 | 01/10/97 | Opposition to Filing of Exception by BellSouth |

# APPENDIX D

| TAB | DESCRIPTION | |
|---|---|---|
| 1 | 10/1/97 | Transcript of Open Session (LPSC §271 Docket and BellSouth/AT&T Arbitration Docket) |
| 2 | 10/22/97 | Transcript of Open Session (LPSC Cost Docket) |
| 3 | 11/3/97 | Affidavit of David Barron |
| 4 | 1/29/97 | Order U-22146 (BellSouth/Sprint Arbitration) |
| 5 | 11/4/97 | Declaration of William Denk |
| 6 | 10/28/97 | Affidavit of Aniruddha Banerjee |
| 7 | 11/4/97 | Affidavit of Silas Lee |
| 8 | BellSouth OSS Interface Presentation (Videotape) | |
| 9 | General Subscriber Service Tariff Excerpt | |
| 10 | Private Line Services Tariff Excerpt | |

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | |
|---|---|
| In the Matter of<br><br>Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana | CC Docket No. _____ |

To: The Commission

## BRIEF IN SUPPORT OF APPLICATION BY BELLSOUTH FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN LOUISIANA

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 271(d)(1), BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, "BellSouth") hereby seek authorization to provide interLATA services originating in the State of Louisiana, including all services treated as such under 47 U.S.C. § 271(j). BellSouth has satisfied each of the four requirements for approval of its application. Part I of this Brief explains that BellSouth has received state approval of interconnection agreements under which it is providing interconnection and network access to facilities-based providers of telephone exchange service in accordance with section 271(c)(1)(A). Part II shows that BellSouth provides these facilities-based carriers and all competitive local

exchange carriers ("CLECs")[1] interconnection and network access in accordance with the fourteen-point competitive checklist of section 271(c)(2)(B). Part III confirms that BellSouth will abide by the safeguards of section 272.[2] Part IV demonstrates that approving BellSouth's application "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). This Brief and supporting affidavits are available in electronic form at <http://www.bellsouthcorp.com>.

Pursuant to section 271(d)(2)(B) — which provides state commissions a formal consultative role on local issues in section 271 proceedings — the Louisiana PSC established a docket in December 1996 to consider BellSouth's eligibility to provide interLATA services in its State. Compliance Order at 1-4. That docket involved discovery, hearings, and evidentiary submissions from such parties as AT&T, MCI, Sprint, WorldCom, the Louisiana Cable Telecommunications Association, ACSI, Cox Fibernet, the Telecommunications Resellers

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1. We use the term "CLECs" to refer to both potential and actual competitors, consistent with the Commission's use of this term. See Memorandum Opinion and Order, Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, FCC No. 97-128, ¶ 35 (rel. June 26, 1997) ("Oklahoma Order").

2. BellSouth intends to offer in-region, interLATA services in Louisiana through BellSouth Long Distance, Inc., which will operate in accordance with the requirements of section 272. However, all references to BellSouth Long Distance, Inc. should be understood to encompass any affiliate of BellSouth Telecommunications, Inc. (or its successors or assigns that provide wireline telephone exchange service) that operates consistent with this application's representations regarding the future activities of BellSouth Long Distance, Inc. The Commission should confirm when it approves this application that no further authorization, under section 214 or otherwise, is necessary for these entities to commence providing in-region, interLATA and international services in Louisiana.

Association, and the Communications Workers of America. Id. at 1 n.1, 3 n.7. All interested parties had a chance to present their views and examine BellSouth's evidence, although many chose to waive that opportunity. For instance, the U.S. Department of Justice did not participate and CompTel withdrew from the proceeding rather than disclose whose interests it truly represents. Id. at 1 n.1.

The state commission adduced evidence, evaluated the credibility of witnesses who were exposed to cross examination under oath, and reached conclusions on a nearly 6,200-page record that included over 3,800 pages of testimony. The record of the Louisiana PSC's proceedings, including the Compliance Order issued at the conclusion of those proceedings, is reproduced as Appendix C of this application. See also App. D at Tab 1 (Oct. 1, 1997 transcript).

In its Compliance Order, the Louisiana PSC provided a review of BellSouth's checklist offerings, paying special attention to the pricing requirements of the Act and OSS access, which was the subject of a live technical demonstration before the commissioners. Id. at 4-15. The commission concluded that BellSouth's Statement of Generally Available Terms and Conditions ("Statement") — as modified in accordance with the Louisiana PSC's instructions — meets each of the 14 checklist requirements.

In addition to its assessment of BellSouth's checklist compliance, the Louisiana PSC determined that "BellSouth's entry into the long distance market will further the Act's goal of assuring that consumers get the full benefit of competition" and will serve the public interest. Compliance Order at 14. "[T]he evidence presented," said the State commission, "mandates a finding that consumers in Louisiana, both local and long distance, would be well served by

BellSouth's entry into the long distance market." Id. These determinations by the expert agency responsible for overseeing telecommunications markets in Louisiana provide the proper starting point for this Commission's review of BellSouth's application.

Finally, to carry out its responsibilities under section 252, the PSC established separate cost proceedings to establish rates for interconnection, unbundled network elements, and resale. The Louisiana PSC's cost proceedings were as thorough as its docket under section 271. Before establishing a discount rate in its Resale Order, the Louisiana PSC held extensive proceedings, considered detailed cost studies, and consulted an independent expert.[3] Likewise, before issuing its Pricing Order (on interconnection and UNE rates) on October 24, 1997,[4] the Louisiana PSC considered cost studies, supporting briefs, and live testimony from 33 witnesses representing BellSouth and its competitors, and hired an outside consultant to conduct an independent analysis and testify before the commission. Pricing Order at 1-4. Briefs, transcripts, cost studies, orders, and other relevant portions of the records of these two dockets are reproduced in Appendix C of this application, at Tabs 198-333; see also App. D at Tab 2 (Oct. 22, 1997 transcript).

These proceedings, together with other State proceedings conducted to oversee local interconnection negotiations under sections 251 and 252 of the Telecommunications Act, constitute an extraordinary commitment of resources by the Louisiana PSC. Although opponents

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[3.] Order No. U22020, Review and Consideration of BellSouth's Resale Cost Study Submitted Pursuant to Section 1101(D) of the Louisiana PSC Local Competition Regulations, Dkt. No. U-22-2 (LPCS issued Nov. 12, 1996) (App. C at Tab 329).

[4.] Order No. U-22022/22093-A, Review and Consideration of BellSouth's TSLRIC and LRIC Cost Studies Submitted Per Sections 901.C and 1001.E of the LPSC Local Competition Regulations, Dkt. Nos. U-2202/22093 (LPSC issued Oct. 24, 1997) (App. C at Tab 285).

of this application predictably will attempt to disparage the Louisiana PSC's methods and findings, that is only because these parties' arguments were found meritless after full investigation. The Louisiana PSC has performed its responsibilities under section 271 with diligence and thoroughness; if there are supposed gaps in the record before the Louisiana PSC, that is solely because parties failed to present their evidence or ask their questions when invited to do so. This Commission must not countenance efforts to end-run the investigations of state commissions that are most familiar with the facts and best positioned to determine local competition issues. It should, instead, accord the findings of the Louisiana PSC the deference to which they are properly entitled under section 271.

## III. BELLSOUTH MAY PROCEED UNDER TRACK A

BellSouth has opened its local markets in Louisiana to competitors both by negotiating agreements with individual CLECs and by obtaining State approval of terms and conditions for access and interconnection that are generally available to all CLECs in the State. While wireline CLECs have limited their facilities-based entry in Louisiana in order to pursue the most economically attractive opportunities, BellSouth nonetheless is eligible to apply for interLATA relief under Track A based on its interconnection agreements with several wireless carriers. These local carriers have seized the opportunities available to all CLECs in Louisiana.

### A. BellSouth Has Taken All Required Steps to Open Local Markets in Louisiana

BellSouth has done its part to facilitate competitive entry in Louisiana by negotiating agreements with individual CLECs and offering interconnection and network access through its Statement of Generally Available Terms and Conditions.

*1. BellSouth Has Negotiated Agreements with Numerous CLECs*

BellSouth's negotiators have devoted countless hours to fielding CLEC requests and negotiating arrangements that meet individual CLECs' needs. As a result of these efforts, BellSouth has signed more local interconnection agreements than any other incumbent LEC. Indeed, BellSouth was responsible for finalizing about 45 percent of all Bell company agreements as of July 1997. Woroch Aff. ¶ 41 (App. A at Tab 15).

In Louisiana, BellSouth has executed approved agreements with 70 different telecommunications carriers. See Wright Aff. Attach. WLPE-A. BellSouth's 76 State-approved agreements and the Louisiana PSC orders and notices approving them are reproduced in Appendix B of this application.[5] All the agreements except BellSouth's agreements with AT&T

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[5] The Louisiana PSC formally approved agreements between BellSouth and the following CLECs: Advanced Tel, Inc.; American Communications Services, Inc. (Separate Interconnection and Resale Agreements); American MetroComm Corporation (Interconnection Agreement); AT&T Telecommunications of the Southern Central States; AT&T Wireless Services, Inc.; BellSouth Cellular Corporation; Comm. Depot, Inc.; Communication Brokerage Services, Inc.; Competitive Communications, Inc.; DeltaCom, Inc.; FiberSouth, Inc.; GNet Telecom, Inc.; Hart Communications; ICG Telecom Group, Inc.; Interlink Telecommunications of Florida, Inc.; Intermedia Communications, Inc.; KMC Telecom, Inc.; LCI International Telecom Corporation (Separate Resale and LIDB Storage Agreements); National Tel (Interconnection Agreement) Powertel, Inc.; Tie Communications, Inc.; TriComm, Inc.; Unidial Communications, Inc.; US LEC of North Carolina L.L.C.; U.S. Long Distance, Inc; WinStar Wireless, Inc.

In addition, if the Commission dockets an interconnection agreement and no protest or intervention is filed, the agreement is deemed approved after the 90 day period for Commission review has expired. See generally Affidavit of David Barron (App. D at Tab 3); 47 U.S.C. § 252(e)(4). Agreements between BellSouth and the following CLECs became approved in this fashion: ACCESS Integrated Networks, Inc.; ALEC, Inc.; Alliance Telecommunications, Inc.; American MetroComm Corporation (Resale Agreement); Annox, Inc.; AXSYS, Inc. (Separate Interconnection and Resale Agreements); BTI Telecommunications, Inc.; Centennial Cellular Corporation; Comm South Companies, Inc.; Communication Options Southern Region, Inc.; Cybernet Group; Davco, Inc.; Data & Electronic Services, Inc.; Diamond Telephone; Don-Mar

and Sprint were completed entirely without the need for arbitration. Relevant portions of the Louisiana PSC's record and that Commission's decision in the AT&T/BellSouth arbitration (which had not been appealed as of November 5, 1997) are reproduced in Appendix C (at Tabs 143-197). The Sprint/BellSouth arbitration covered only 8 issues, after an additional 42 were resolved by the parties through stipulation. A copy of that decision (which was not appealed) is provided at Tab 4 of Appendix D. There are no outstanding requests by any CLEC for arbitration with BellSouth in Louisiana.

As Professor Woroch, Executive Director of the Consortium for Research on Telecommunications Policy at the University of California, Berkeley, notes, BellSouth's agreements "go beyond the statutory minimum in promoting competition in Louisiana" and "reveal attempts by [BellSouth] to support robust, productive transactions typical of commercial relationships found in almost any industry." Woroch Aff. ¶¶ 43, 47. They stand as powerful evidence that "local exchange markets in Louisiana are open to competitors, and will remain open." Id. ¶ 9.

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Telecommunications, Inc.; EZ Phone, Inc.; Interstate Telephone Group; Inter-World Communications; JETCOM, Inc.; Louisiana Unwired, Inc.; MERETEL COMMUNICATIONS L.P.; National Tel (Resale Agreement); Netel, Inc.; NEXTEL Communications, Inc.; NOW Communications, Inc.; OmniCall, Inc.; Preferred Carrier Services, Inc.; Preferred Payphones, Inc.; PrimeCo Personal Communications, L.P.; RGW Communications, Inc.; Robin Hood Telecommunications; Shell Offshore Services Company, Inc.; SouthEast Telephone, Ltd. (Separate Interconnection and Resale Agreements); Southern Phon-Reconnek, Inc.; Sprint Spectrum, L.P.; Sterling International Funding, Inc. d/b/a Reconex; Supra Telecommunications, Inc.; Teleconex, Inc.; Telephone Company of Central Florida; Teleport Communications Group ("TCG"); Tele-Sys, Inc.; Tel-Link, L.L.C. d/b/a TEL-LINK, L.L.C. and Tel-Link of Florida, L.L.C.; TTE, Inc.; U.S. Dial Tone, Inc.; US Telco, Inc.; Wright Businesses, Inc.

*2. BellSouth Has Obtained State Approval of Its Statement*

BellSouth has also actively invited entry by CLECs in Louisiana through its Statement, which sets out specific terms and conditions under which BellSouth offers to provide interconnection and access to its network, as well as resale opportunities, on a nondiscriminatory basis to any requesting CLEC. It "assures that efficient firms can enter the local exchange markets in Louisiana and offers them . . . every conceivable commercial opportunity so as to maximize the likelihood that efficient entrants will succeed." Id. ¶ 5. In order to ease entry by CLECs (particularly smaller CLECs) that do not want to negotiate carrier-specific terms, and to establish a useful model for carriers that do want to negotiate, the Statement sets out these offerings in "as straightforward and simple" a way as possible. Varner Aff. ¶ 13 (App. A at Tab 14).

Pursuant to section 252(f) of the Act, the PSC approved BellSouth's Statement in its Compliance Order on September 5, 1997. That approval required BellSouth to make several revisions to the Statement, including changes to the Statement's procedure for truing-up rates for interconnection and unbundled network elements ("UNEs") after completion of the Louisiana PSC's cost proceeding. See Compliance Order at 5 (summarizing required revisions). The required changes have been made and, as explained below, the Statement also has been revised in light of the Louisiana PSC's October 24 Pricing Order. A revised Statement that reflects all relevant Louisiana PSC decisions has been approved by the State commission and is provided as an exhibit to the Affidavit of Alphonso Varner. Varner Aff. ¶ 8 & Ex. AJV-1.

### B. PrimeCo, Sprint Spectrum, and MereTel Are Operational Track A Competitors

Although BellSouth does not have complete information regarding the activities of all CLECs in Louisiana, BellSouth does have ample information to know that its agreements with three wireless carriers — PrimeCo Personal Communications ("PrimeCo") and Sprint Spectrum in New Orleans, and MereTel Communications in Baton Rouge — qualify BellSouth to file this application for authority to provide interLATA services in Louisiana under section 271(c)(1)(A), or "Track A."

Where a BOC relies upon the presence of a facilities-based competitor to support a Track A application, that unaffiliated carrier must: (1) have an "agreemen[t] that has 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;" (2) be a "competing provide[r] of telephone exchange service (as defined in section 153(47)(A) of this title), but excluding exchange access;" (3) serve residential and business subscribers; and (4) offer service exclusively or predominantly over its own telephone exchange service facilities. 47 U.S.C. § 271(c)(1)(A). PrimeCo, Sprint Spectrum, and MereTel meet all four requirements in Louisiana.

The PCS providers' satisfaction of the first, third and fourth criteria requires no extended discussion. The BellSouth/PrimeCo interconnection agreement was effective April 1, 1997, see App. B at Tab 28, received state approval id.; Wright Aff. ¶ 115, and has been implemented through actual interconnection. Wright Aff. ¶ 9. Likewise, the BellSouth/Sprint Spectrum agreement was effective April 14, 1997, see App. B at Tab 30, received approval, id.; Wright Aff. ¶ 111, and has been implemented through actual interconnection, Wright Aff. ¶ 9. The

BellSouth/MereTel agreement was effective July 15, 1997, see App. B at Tab 66, became approved, Wright Aff. Attach. WLPE-A; Barron Aff., and has been implemented through actual interconnection, Wright Aff. ¶ 119.

PrimeCo, Sprint Spectrum, and MereTel serve both "residential and business subscribers" in Louisiana. Id. ¶¶ 9, 111, 113-115, 118; see Denk Report, Attach. MARC Study at 2 (App. D at Tab 15); PrimeCo News Release, PCS Subscribers Are Full of Surprises, Aug. 19, 1997 <http://www.primeco.com> (see PrimeCo Primer, News). Because these carriers offer service exclusively over their own facilities — including cell sites, switches, and wireline network connections — the "facilities-based" requirement of Track A is satisfied as well. See Wright Aff. ¶¶ 9, 117, 119.

The only remaining issue is whether PrimeCo, Sprint Spectrum, and MereTel are "competing providers of telephone exchange service" for purposes of section 271(c)(1)(A). As explained below, the plain language of this phrase encompasses PCS providers as well as wireline providers. While that should end the inquiry, market evidence confirms that PrimeCo and Sprint Spectrum (and almost certainly MereTel as well) do compete in an economic sense with BellSouth's wireline operations for local customers in Louisiana.

*1. PCS Service Is "Telephone Exchange Service"*

While exchange access and cellular service are expressly excluded from the definition of "telephone exchange service" for purposes of section 271,[6] PCS service is not. Section 271 defines "telephone exchange service" by reference to section 3(47)(A) of the Communications

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6. Exchange access is excluded by name; cellular is excluded by reference to 47 C.F.R. § 22.901.

Act, 47 U.S.C. § 153(47)(A), which in turn defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge."[7]

PCS service satisfies this definition by offering service over a radio-based network equivalent to an ordinary wireline exchange, for a non-distance-sensitive "airtime" charge. This is confirmed by the last sentence of section 271(c)(1)(A); that sentence provides that technically and commercially similar cellular service "shall not be considered telephone exchange servic[e]" for purposes of Track A, indicating such wireless service would otherwise qualify. Finally, section 221(b) of the Communications Act, 47 U.S.C. § 221(b), specifically deprives the Commission of jurisdiction over "telephone exchange service" furnished by "mobile, or point-to-point radio," thus confirming that mobile service can be telephone exchange service.[8]

The Commission recently held that cellular and PCS services are "telephone exchange service."[9] Although it relied expressly upon section 3(47)(B) — which is not relevant under

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[7.] Commission regulations defining the same term, promulgated as part of the Commission's implementation of the 1996 Act, track the statute verbatim. See 47 C.F.R. § 51.5.

[8.] This section predates the 1996 Act, which added new language to the definition of "telephone exchange service" as section 3(47)(B). Accordingly, radio services must qualify as telephone exchange service under the prior definition of "telephone exchange service" (current section 3(47)(A)), which is referenced in section 271(c)(1)(A).

[9.] First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15999-16000, ¶ 1013 (1996) ("Local Interconnection Order"), modified on reconsideration, 11 FCC Rcd 13042 (1996), vacated in

section 271(c)(1)(A) — the Commission relied implicitly on section 3(47)(A), by noting Track A's carve-out of cellular service: "[I]f Congress did not believe that cellular providers were engaged in the provision of telephone exchange service," the Commission observed, "it would not have been necessary to exclude cellular providers from this provision."[10] Because the cellular carve-out of Track A applies only to section 3(47)(A), the Commission thus necessarily imputed to Congress a judgment that wireless service qualifies as telephone exchange service under that section — and therefore section 271(c)(1)(A) as well.

*2. Track A Does Not Require That the Competitor's Service Be Equivalent in Every Respect to the BOC's*

Having brought PCS within Track A through the definition of "telephone exchange service," Congress did not take it outside Track A through the statute's reference to a "competing provider." Although the Commission has not fully interpreted this phrase in the context of section 271(c)(1)(A), it has stated that, to be a competing provider to the BOC, a competitor need not meet "any specified level of geographic penetration" or have any particular market share, but rather must "be said to be an actual commercial alternative to the BOC"[11] and "actually be in the market and operational (i.e., accepting requests for service and providing such service for a

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part, Iowa Utils. Bd. v. FCC, 120 F.3d 754 (8th Cir. 1997), modified, 1997 U.S. App. LEXIS 28652 (8th Cir. Oct. 14, 1997).

10. Id. 11 FCC Rcd at 16000, ¶ 1014.

11. Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC No. 97-298, at ¶¶ 76-78 (rel. Aug. 19, 1997) ("Michigan Order").

fee)."[12] PrimeCo, Sprint Spectrum, and MereTel satisfy both the plain statutory requirement and the Commission's gloss on that test.

Looking first to the structure of the Act, the fact that PCS providers may qualify as "competing providers" under section 271(c)(1)(A) is demonstrated by Congress's use of the phrase "competing providers" elsewhere in the 1996 Act. Section 251(b)(3) imposes upon incumbent LECs a duty to provide "competing providers of telephone exchange service" dialing parity and nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings.[13] In implementing this provision, the Commission has broadly defined "competing provider" to mean "a provider of telephone exchange . . . services that seeks nondiscriminatory access from a [LEC] in that LEC's service area."[14] This definition includes requesting PCS providers; indeed, PrimeCo, Sprint Spectrum, and MereTel have all negotiated for access to telephone numbers, directory listings and directory assistance, operator services, and dialing parity in Louisiana.[15] In light of the canon that language used in more than one place in a

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12. Id. ¶ 75

13. Likewise, section 251(b)(4) requires incumbent LECs to give "competing providers of telecommunications services" access to poles, ducts, conduits, and rights-of-way.

14. 47 C.F.R. § 51.217(a)(1).

15. PrimeCo Agreement §§ X, XI, XVI.E; Sprint Spectrum Agreement §§ XI, XII, XVII.E; MereTel Agreement §§ XI, XII, XVII.E; see also Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19430, ¶ 71 (1996) ("Dialing Parity Order") ("We anticipate that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251.").

statutory scheme must be read the same way each time it appears,[16] it follows that the phrase "competing provide[r] of telephone exchange service" should be read by the Commission to encompass PCS providers for purposes of Track A as well.

The legislative history of Track A confirms this. As originally drafted by the House Commerce Committee, the provision that became section 271(c)(1)(A) specified that a Track A carrier must be "an unaffiliated competing provider of telephone exchange service that is comparable in price, features, and scope" to the BOC's service.[17] Cellular services were deemed by the Committee not to satisfy this requirement of comparability, and so they were expressly excluded from Track A.[18] Subsequently, however, the underscored language of the Committee bill was removed on the House floor.[19] This was no technical change: Representative Bryant objected, without success, that the deletion would make a "big major change" and unreasonably ease BOC entry into long distance.[20]

As finally enacted, section 271(c)(1)(A) requires only that a facilities-based provider of telephone exchange service (other than exchange access) "actually be in the market" and compete for customers in a geographic locale served by the BOC. Michigan Order ¶ 75. This ensures, for

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16. See, e.g., Ratzlaf v. United States, 510 U.S. 135, 143 (1994); Atlantic Cleaners & Dyers, Inc. v. United States, 286 U.S. 427, 433 (1932).

17. H. R. Rep. 104-204, pt. 1 at 8 (1995) ("House Report") (proposing new section 245(c)(1)(A)) (emphasis added).

18. See id., pt. 1 at 77 (cellular excluded "since the Commission has not determined that cellular is a substitute for local telephone service").

19. See S. 652 § 101(a) (House substitute, Oct. 12, 1995) (proposing new § 245(a)(2)(a)).

20. 141 Cong. Rec. H8451, H8452 (daily ed. Aug. 4, 1995).

example, that a BOC cannot satisfy section 271(c)(1)(A) through an interconnection agreement with an independent LEC that serves an adjacent service area. By continuing to exclude cellular carriers from eligibility under Track A even after it deleted the requirement of "comparable" service, moreover, Congress ensured that prior to Bell company interLATA entry there would be some additional local competition beyond the cellular competition that was well established in all 50 states prior to the 1996 Act.[21] Otherwise, Track A would have been available to every BOC in every state immediately upon enactment.

Congress's decision that the "price, features, and scope" of a competitor's service need not be comparable to those of the BOC's service makes sound policy sense. The purpose of section 271(c) — including both Track A and Track B as well as the checklist — was not to guarantee any particular type or extent of local competition, but rather to ensure that the BOC has taken the necessary steps to open the local exchange to all comers.[22] That is why Congress refused to tie BOC interLATA relief to some measure of actual local competition. See Michigan Order ¶¶ 76-77. Moreover, wireless and wireline networks use the same basic forms of interconnection with the incumbent LEC and generally obtain checklist items in the same fashion. Any agreement with a PCS provider under sections 251 and 252 would be available to other CLECs under the same terms and conditions, so there is no danger that a BOC could obtain

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[21.] See generally Donaldson, Lufkin & Jenrette, The Wireless Communications Industry (Summer 1994).

[22.] See 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (noting adoption of checklist approach in place of "actual competition" test); 141 Cong. Rec. S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings) ("checklist" is test of "what actual and demonstrable competition would encompass").

interLATA relief by making preferential arrangements with a PCS provider. See 47 U.S.C. § 252(i).

*3. For Some Customers and Uses, PCS Service Is a Substitute for BellSouth's Wireline Service*

Even if the Commission wrongly read the term "competing provider" to require economic comparability of the sort originally proposed by the House Commerce Committee, PrimeCo, Sprint Spectrum, and MereTel would still be Track A "competing providers." Market surveys of PCS service in Louisiana indicate that about 17 percent of PrimeCo's and Sprint Spectrum's 8000-plus customers chose to subscribe to PCS service instead of subscribing to wireline service. See Denk Report at Tables 3-5 (App. D at Tab 5). Moreover, having signed up for PCS service, 29 percent of Louisiana PCS users report that they now use PCS as their primary home or business phone, id. Table 7; 56 percent say they sometimes use PCS to receive and place calls at home, id. Table 8; 47 percent use PCS as a second telephone at work, id. Table 9; and 80 percent report using their PCS phone rather than using the wireline service of a friend or business associate when they are away from home or work, id. Table 6. Each of these study results indicates that substitution between wireless and wireline calling is occurring.

The press similarly reports that GTE Wireless has "already detected [a] shift among students, who are signing up for cellular or PCS service rather than buying [a] separate phone line."[23] And according to market analysts Schroder Wertheim & Co. Inc., "Sprint Spectrum's

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[23] Industry Sees Students and Retirees Dropping Wired Phone for Wireless, Communications Daily, September 15, 1997.

wireless objectives include not only penetration of the existing cellular market but also capturing significant wireline local telephony market share."[24]

Pricing comparisons confirm that for low-volume residential customers in Louisiana a PCS subscription can be less expensive than taking the equivalent wireline intraLATA services from BellSouth. Banerjee Report (App. D at Tab 6). Dollar-for-dollar rate comparisons, moreover, do not account for the mobility and one-stop-shopping advantages of wireless, which may cause customers to substitute PCS for less expensive wireline service. Id. at 1, 7. Given the higher rates they pay for wireline service, business customers should be even more likely to find PCS attractive. Id. at 7.

### C. "Track A" Wireline Carriers Are Entering the Louisiana Market

Relevant evidence regarding wireline entry into Louisiana's local markets is not as readily obtainable by BellSouth as evidence regarding wireless entry. To ensure a full record, therefore, the Commission should direct all commenters on BellSouth's application to give specific details regarding their own telephone exchange service operations, if any, in Louisiana, including descriptions of all services now being offered and furnished, all steps currently being taken to enter the market, and timetables for introducing new services.

That said, BellSouth has collected evidence establishing that several wireline CLECs in Louisiana are beginning to serve the most attractive customer groups in the State. The Affidavit of Gary Wright describes in detail the activities of CLECs with facilities in Louisiana.

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[24.] Schroder Wertheim & Co. Inc., Company Report — Cox Communications, Inc., dated July 9, 1996.

ACSI provides exchange access over its own networks in New Orleans, Baton Rouge, and Shreveport. See Wright Aff. ¶ 18 & Attach. WLCE-A (Confidential). ACSI began providing resold telephone exchange service to business customers in these three cities in April, 1997 and introduced facilities-based business service in New Orleans on July 30, 1997. Id. ACSI's tariff offers service to business and residential customers, although ACSI's rates are priced to compete with BellSouth's business rates and it is unclear whether any residential customer has taken ACSI up on its tariff offerings. Id. ¶ 20. One customer who requested ACSI residential service was told that "[w]e are not able to provide service to residential. It is an FCC issue." Lee Affidavit ¶ 3 (App. D at Tab 7). Nevertheless, ACSI has told this Commission that it "will provide facilities-based services to residential callers through MDUs [multiple dwelling units] and STS [shared tenant service] providers where it makes economic sense." ACSI Opposition, Application by BellSouth for Provision of In-Region InterLATA Services in South Carolina, CC Dkt. No. 97-208, at 14 (FCC Oct. 20, 1997). Indeed, ACSI reported that it already was providing "a wide variety of local exchange services" using switches in New Orleans and elsewhere in BellSouth's region. Id. at 14 & attached Falvey Aff. ¶ 10.

American MetroComm and KMC Telecom are competitive access providers that thus far have provided telephone exchange service only on a resale basis. American MetroComm has a fiber optic network and switch in New Orleans, and a fiber optic network in Baton Rouge. Wright Aff. ¶ 32 & Attach. WLCE-B (Confidential). KMC Telecom owns fiber optic networks in Baton Rouge and Shreveport and has installed local exchange switching facilities in both cities. See id. ¶ 38 & Attach. WLCE-C. Although both companies have thus far used their networks

only to provide exchange access, and have limited their local exchange service to resale, American MetroComm and KMC Telecom are expected to begin facilities-based service in Louisiana in mid-November. See Wright Aff. ¶¶ 33-40.

Like ACSI, American MetroComm, and KMC TeleCom, SHELL Offshore Service Company ("Shell") — a subsidiary of the oil company — has an approved interconnection agreement with BellSouth, is certified to provide local service in Louisiana, and has filed a local exchange service tariff with the Louisiana PSC. Id. ¶¶ 42-43. A detailed description of Shell's network and tariff offerings for residential and business customers is included in Attachment WLCE-D of the Wright Affidavit.

Cox Fibernet has announced that it will serve residential and business customers in New Orleans using its own wireline hybrid coax/fiber facilities — a network that passes 428,000 homes and currently serves about 275,00 cable television subscribers. Wright Aff. ¶¶ 51-52 & Attach. WLCE-E (confidential). Cox provides access service, long distance service (with its partner Frontier Corporation), Internet access, and private line services, and is currently installing an Ericsson AXE central office switch. Although Cox has not negotiated an interconnection agreement with BellSouth, Cox's parent company owns a 30% stake in TCG, which has executed an interconnection agreement with BellSouth. Id. ¶ 56. Cox is certified to provide local service in Louisiana. Id. ¶ 49.

Entergy Hyperion Telecommunications is certified to provide local service in Louisiana and has an approved local exchange service tariff. Id. ¶¶ 70-71. Entergy Hyperion's plan for

facilities-based entry is targeted to the business end-user and the company is in the process of finalizing an interconnection agreement with BellSouth. Id. ¶¶ 70, 74.

ITC DeltaCom provides exchange access over a series of fiber optic routes in Louisiana and throughout most of BellSouth's region. Id. ¶¶ 75-76. Although ITC DeltaCom launched both resold and facilities-based local service in Alabama in June 1997, and has received Louisiana PSC approval of its interconnection agreement, application for CLEC certification, and tariff, ITC DeltaCom has not yet announced local entry plans for Louisiana. Id. ¶¶ 81-82.

If the evidence confirms that one or more of these wireline carriers are in fact offering both residential and business facilities-based service in Louisiana, Track A would be satisfied without regard to the status of PCS providers, and it would be unnecessary for the Commission to address that issue of first impression. Likewise, if the evidence shows that a wireline CLEC has begun supplementing facilities-based service to business customers with resale of BellSouth's residential service in Louisiana (or vice versa), BellSouth would be eligible for interLATA relief under Track A.[25] Furthermore, Track A can be satisfied by a combination of CLECs, rather than the activities of just one CLEC alone. See Michigan Order ¶¶ 82-85.

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[25.] The Department of Justice has explained that the Act "does not . . . require that each class of customers (i.e., business and residential) must be served over a facilities-based competitor's own facilities." Addendum to DOJ Oklahoma Evaluation at 3, CC Dkt. No. 97-121 (May 21, 1997). "[I]t does not matter whether the competitor reaches one class of customers — e.g., residential — only through resale, provided the competitor's local exchange services as a whole are provided 'predominantly' over its own facilities." Id.

### D. If No Wireline or Wireless CLEC Had Launched Track A Service, BellSouth Would Be Eligible for InterLATA Relief Under Track B

Even if PCS providers did not qualify under Track A for some reason, and even if no wireline carrier had commenced facilities-based service that would bring it under Track A, BellSouth would still be eligible to apply for interLATA entry in Louisiana. While the Commission has read section 271(c)(1)(B) to condition Bell company interLATA entry on the absence of a request for negotiation to obtain access and interconnection "from a prospective competing provider of the type of telephone exchange service described in section 271(c)(1)(A)," Oklahoma Order ¶ 31 (emphasis added), this interpretation of Track B is contrary to the plain language of the statute and has been challenged before the U.S. Court of Appeals for the District of Columbia. SBC Communications, Inc. v. FCC, No. 97-1425 (D.C. Cir. to be argued Jan. 9, 1998). BellSouth believes that, after December 8, 1996, Track B is foreclosed only if the BOC has received a request from a qualifying "competing provide[r]" that actually meets the criteria of Track A as of "the date which is 3 months before the date the company makes its application." 47 U.S.C. § 271(c)(1)(B). Accordingly, if no CLEC in Louisiana qualifies under Track A, it necessarily follows that BellSouth had not received any qualifying request as of three months prior to this application and is eligible to file under Track B.

Depending upon the record facts gathered by the Commission in this proceeding, BellSouth might qualify as well under the Commission's interpretation of Track B, on the basis that no CLEC is taking "reasonable steps" toward providing Track A service in Louisiana. See Oklahoma Order ¶¶ 57-58. For example, a CLEC would not be taking reasonable steps to provide residential service on a facilities basis if it offers business services over its own network,

but refuses to serve residential customers over that operational network. Likewise, a carrier such as AT&T that has sought to enter the local market by demanding a pre-assembled "platform" of network elements to which it has no legal entitlement, is not taking reasonable steps toward providing Track A service in Louisiana.

## II. BELLSOUTH PROVIDES INTERCONNECTION AND ACCESS IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST

BellSouth satisfies each of the fourteen requirements of the competitive checklist by "providing access or interconnection" pursuant to its state-approved interconnection agreements with PrimeCo, Sprint Spectrum, MereTel, and other carriers in Louisiana, as well as through the general offerings of the Statement. PrimeCo, Sprint Spectrum, and MereTel have negotiated with BellSouth for contract provisions that meet their particular requirements. These carriers also have a contractual right to opt-in to designated provisions of other BellSouth agreements that have been approved by the Louisiana PSC, or to take the terms of another agreement — such as the arbitrated agreement between BellSouth and AT&T — in their entirety. Finally, PCS providers and other CLECs may take advantage of the Statement, which, as the Louisiana PSC has confirmed, meets all checklist requirements.[26] Should CLECs place orders for checklist items

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[26.] These local competition issues are at the core of the Louisiana PSC's expertise and jurisdiction. See Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997) (confirming state jurisdiction over local interconnection and resale agreements and pricing). This Commission, moreover, is required to consult with the Louisiana PSC "to verify" BellSouth's satisfaction of the checklist, further driving home that the state commission's determinations are entitled to great weight. 47 U.S.C. § 271(d)(2)(B).

There is no conflict between the statute's requirement of consultation with the state commission to verify checklist compliance and the additional requirement of consultation with the Attorney General. See 47 U.S.C. § 271(d)(2)(A). Unlike the state commissions, the Department

under these provisions, they will find BellSouth ready, willing, and able to furnish each item at the requisite level of quality.

In that regard, a clear distinction must be drawn between competitive entry by CLECs, on the one hand, and CLECs' ability to obtain local facilities and services from BellSouth, on the other. This Commission has acknowledged that CLECs might limit their local services if doing so will slow Bell company entry into long distance. See Michigan Order ¶ 111; Oklahoma Order ¶ 56. In just the same way, CLECs have doggedly sought to convert their own lack of interest in the local market (or their ineptitude in executing business plans for local entry) into a strategic weapon: They suggest that any delays in local competition must necessarily be the fault of the incumbent. Consistent with that tactic, AT&T and others will predictably imply that — but for some failing by BellSouth — they would already be up and running as local carriers in Louisiana.

That is nonsense. AT&T in particular is making no serious effort to enter the local telephone business in Louisiana; it is too caught up in seeking to persuade judges and regulators to rewrite the 1996 Act. See Wright Aff. ¶¶ 105-108. Nor is BellSouth responsible for the relatively slow pace of entry by those CLECs that are now commencing local service, or those

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of Justice has no special expertise on checklist issues and chose not to be a participant in state-level evidentiary proceedings. Accordingly, the Department of Justice's views would be entitled to less weight than the Louisiana PSC's even if one did not consider the legislative history of the Act. When that legislative history is considered, it shows that Congress intended to limit the Attorney General's consultative role to antitrust issues under the public interest test. See, e.g., 142 Cong. Rec. H1176 (daily ed. Feb. 1, 1996) (statement of Rep. Jackson-Lee) ("substantial weight" to be accorded to the views of the Attorney General is limited to her "expertise in antitrust matters"); id. at H1178 (statement of Rep. Sensenbrenner) ("FCC's reliance on the Justice Department is limited to antitrust related matters"); see also id. at H1157 (statement of Sen. Hyde) ("the Department of Justice will apply any antitrust standard it considers appropriate").

carriers' general avoidance of residential customers. As explained in detail below, all required checklist items are demonstrably available to for those CLECs who are prepared to compete.

There are a few areas in which BellSouth disagrees with the interpretations of checklist requirements suggested in the Commission's Michigan Order, particularly regarding pricing, combinations of UNEs (an issue recently resolved in BellSouth's favor by the Eighth Circuit), and certain OSS performance measurements and standards. BellSouth and other parties have properly presented these issues to the courts and the Commission;[27] in this application BellSouth preserves its positions for resolution by the courts if necessary.[28] No one who fully reviews this application, however, could genuinely question BellSouth's good-faith commitment to satisfying the local-market requirements of the checklist and the 1996 Act. BellSouth thus believes not only that the Commission should change its position on the disputed legal issues as to which it has not already

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[27.] In connection with its decision in Iowa Utilities Board, 120 F.3d 753, the Eighth Circuit has pending before it petitions arguing that because pricing matters are reserved to the States under section 252, and the checklist simply requires compliance with section 252's pricing rules, the checklist does not authorize the Commission to condition BOC interLATA entry upon compliance with federal pricing rules. In addition, BellSouth has petitioned the Commission to reconsider and clarify portions of the Michigan Order, including those dealing with OSS performance measurements and standards and evidentiary matters. Petition of BellSouth Corporation for Reconsideration and Clarification, Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (filed Sept. 18, 1997).

[28.] BellSouth recognizes that the Commission has no power now to grant relief on BellSouth's belief that section 271, along with other provisions of the 1996 Act that single out and impose burdens on the BOCs by name, constitutes an unconstitutional bill of attainder and also violates both separation of powers and equal protection principles. Accordingly, BellSouth preserves these arguments as well for future review in the courts.

been overruled, but also that the Commission should look beyond these narrow disagreements to the broad effort BellSouth is making to accommodate competitive.

### A. BellSouth is Providing Nondiscriminatory Access to its Operations Support Systems

In its Michigan Order this Commission emphasized nondiscriminatory access to OSSs as a critical aspect of the checklist requirements. Michigan Order ¶¶ 128-221. After exhaustive and very expensive efforts to implement, test, and make commercially available new and improved interfaces and OSSs, see generally Stacy OSS Aff. (App. A at Tab 12), and to establish and staff new organizations, centers, and procedures for the benefit of CLECs, see Stacy Performance Aff. ¶¶ 4-11 (App. A at Tab 13), BellSouth is able to ensure CLECs the required access. BellSouth is not stopping there, however. As the affidavits cited below explain, BellSouth is continuing to enhance its systems, which already meet the Act's requirements, so that CLECs will have even better access to OSSs. Although not necessary to this application, that fact should give the Commission additional confidence in BellSouth's commitment to facilitate local market entry.

CLECs are able to perform traditional OSS functions such as pre-ordering, ordering, provisioning, maintenance and repair, and billing "in substantially the same time and manner" as BellSouth. Local Interconnection Order, 11 FCC Rcd at 15764, ¶ 518. As demonstrated in a videotape provided as part of Appendix D to this application, BellSouth has modified its OSSs to process CLEC transaction requests and has developed interfaces that allow CLECs to obtain access to resale services and unbundled elements at parity with BellSouth. With these modifications now in place, CLECs may obtain pre-ordering information, prepare and enter

orders, receive provisioning information, enter and track the receipt and status of trouble reports, and bill customers accurately, in substantially the same manner as BellSouth.

To cater to the differing needs of various CLECs, BellSouth has provided a choice of manual or electronic OSS interfaces. Electronic interfaces currently are available for every aspect of OSS access. These interfaces meet existing industry standards; as new industry standards are developed, BellSouth will implement them, too. See Stacy OSS Aff. ¶ 6. In addition, BellSouth has provided CLECs with all information (such as user guides and ordering codes) necessary to enable quick processing of CLEC requests, as well as the training they may need to use BellSouth's systems effectively. Stacy OSS Aff. ¶¶ 136-144 & Exs. WNS-48-51.

Whatever interface(s) a CLEC chooses, BellSouth will provide substantially the same type of functionality at substantially the same level of performance that BellSouth provides to itself. The Louisiana PSC has found as much. It explained that the sufficiency of BellSouth's systems was "[p]erhaps the single most hotly contested aspect of" its proceedings, eliciting supplemental briefing, over 115 data requests, and live demonstrations by BellSouth, AT&T, and MCI. Compliance Order at 4, 15. Based upon this "careful . . . analysis," the Louisiana PSC determined that BellSouth's systems "do in fact work and operate to allow potential competitors full non-discriminatory access" to BellSouth's OSSs. Id. at 15.

Nor can there be any argument that the access BellSouth provides is not viable at commercially reasonable usage levels. All of BellSouth's OSS interfaces have been subjected to extensive internal testing. See Stacy OSS Aff. ¶ 118. For example, BellSouth has conducted tests of its combined electronic interfaces to establish a minimum capacity of 10,000 total requests

per day in BellSouth's nine-state region. Id. ¶ 120. Almost 3,500 trouble reports have been processed through the maintenance and repair interface and BellSouth received more than 16,500 electronic orders for resale services in September alone. Id. ¶ 129 & Ex. WNS-46. BellSouth's systems are readily expandable to meet any reasonably foreseeable CLEC demand without discriminatory delays. Id. ¶ 122.

There will be those who say that the sufficiency of BellSouth's OSSs can only be shown by processing larger numbers of actual orders from CLECs. This Commission, however, has already rejected the argument that the availability of local facilities and services can only be shown by furnishing them to competitors at some minimum volume. Michigan Order ¶¶ 113-115. The checklist does not empower CLECs to delay long distance competition by refusing to come and get BellSouth's offerings.

Pre-ordering. To access OSSs containing pre-ordering information, CLECs can select a manual or electronic interface. The electronic interface — known as the Local Exchange Navigation System ("LENS") — is an interactive system that allows the CLEC direct, real-time access to BellSouth's pre-ordering OSSs. Stacy OSS Aff. ¶¶ 6-12. LENS is compatible with inexpensive, commercially available hardware and software and requires no additional development effort by the CLEC, yet can be customized by the CLEC to whatever extent the CLEC chooses. Id. ¶ 10. To accommodate CLECs of differing sizes and needs, LENS is accessible through direct (LAN-to-LAN) connections, dial-up access, or public Internet access. Id. LENS enables a CLEC to satisfy a customer's needs for pre-ordering information during a

single telephone call with the customer, without any assistance or intervention from BellSouth personnel. Stacy OSS Aff. ¶ 4.

For manual pre-ordering, which "smaller competing carriers [may] prefer," Michigan Order at ¶ 137 & n.333, the CLEC simply passes on pre-ordering information requests to one of BellSouth's two (redundant) Local Carrier Service Centers ("LCSCs") via facsimile, telephone, or mail. See Stacy Performance Aff. ¶¶ 4-5 (discussing LCSCs).

Using either of these interfaces, CLECs may gather and verify street address information, telephone number availability, service and feature availability, due date information, and customer service record information. Stacy OSS Aff. ¶¶ 13-41. For instance, if a CLEC initiates an address verification query through LENS, the LENS server will query the appropriate BellSouth database and verify the address on a real-time basis. Id. ¶¶ 16, 20. A CLEC can use LENS to select and reserve telephone numbers (including vanity numbers) on a real-time basis while the CLEC's customer is on the line. Id. ¶ 24. LENS also may be used to validate what features are available to particular end-user customers, either by entering a ten-digit telephone number or a street address. Id. ¶ 26.

LENS allows CLECs to obtain due date information for installations requiring a premises visit. Id. ¶¶ 32-33.[29] Authorized CLECs likewise may access customer service records on a real-time basis through the LENS interface. Id. ¶ 38. Not all pre-ordering functions are applicable to UNEs, but where a particular function is applicable (such as assigning a telephone number for an

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[29.] Business rules for other due-date intervals have been provided to CLECs. Stacy OSS Aff. ¶ 139.

unbundled port), BellSouth's pre-ordering interface can be used for UNEs as well as resold exchange services. Id. ¶ 48.

BellSouth personnel must use different systems for residential and business pre-ordering. Solely for the convenience of CLECs, however, BellSouth has made the single LENS system available for both business and residential pre-ordering. Id. ¶ 12.[30] LENS is, in addition, more user-friendly than some of the systems used by BellSouth's own service representatives, because it relies exclusively on graphics and English-text prompts rather than code and function keys. Id. ¶¶ 8, 12.

In an effort to make LENS even more useful to larger CLECs, BellSouth has provided to interested CLECs a LENS interface specification that allows for direct integration of data into a CLEC's systems. This enables the CLEC to use its own systems to obtain and manipulate the data provided by LENS. Stacy OSS Aff. ¶ 44. Over and above the nondiscriminatory access provided by LENS and required under the Act, moreover, BellSouth will make available machine-to-machine interfaces for access to pre-ordering OSSs that are tailored to individual CLECs' requirements. Id. ¶¶ 42-45. For instance, even though it is not required to do so to meet its duty of nondiscriminatory access under the Act, BellSouth is developing a customized machine-to-

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30. Certain complex services that require extensive design work and are ordered in relatively low volumes, such as SONET rings, may only be pre-ordered and ordered through a paper process. This is true for BellSouth and CLECs alike. Stacy OSS Aff. ¶¶ 63-73 & Ex. WNS-30. The service inquiry and any subsequent service requests are handled without distinguishing between orders generated by BellSouth and orders generated by a CLEC. Id. ¶ 64. The processes employed by BellSouth for these services thus afford CLECs and their customers the same level of timely service as BellSouth and its retail customers receive. See id. ¶¶ 63-73.

machine interface ("EC-LITE") that meets AT&T's particular specifications. BellSouth expects to deploy this interface in December 1997. Id. ¶ 42.

As described in the attached Stacy OSS Affidavit, tests and actual usage demonstrate that LENS is comparable in speed to the interfaces through which BellSouth's customer service representatives access the same systems. Id. ¶¶ 6, 9, 20, 31. BellSouth's central OSS databases thereafter treat all queries alike, whether they originate with a CLEC or a BellSouth service representative. Id. ¶¶ 16, 24, 28, 34 & Ex. WNS-37.

Ordering and Provisioning. Ordering and provisioning are the processes whereby a CLEC requests resold services, UNEs, or interconnection trunking from BellSouth and then receives information such as a confirmation that the order has been accepted. See 47 C.F.R. § 51.5. CLECs may use the Exchange Access Control and Tracking ("EXACT") system to request interconnection trunking. This is the same industry-standard interface BellSouth uses to process access service requests from interexchange carriers. Stacy OSS Aff. ¶ 56. In addition, a second interface specifically developed for CLECs, Electronic Data Interchange ("EDI"), has been available to CLECs since December 31, 1996. Currently, five CLECs have an EDI interface in actual use with BellSouth. Id. ¶ 55. EDI allows CLECs to order resold services, including four "complex" services, and unbundled loops, unbundled ports, and interim number portability. Id. ¶¶ 58, 60. BellSouth's interface meets the industry standards for EDI developed by the Ordering and Billing Forum (a subcommittee of the Association for Telecommunications Industry Solutions), allowing a CLEC to transmit service requests in standard EDI format to BellSouth. Id. ¶ 50. Using the EDI format, for instance, CLECs may specify that a customer be switched "as

is" (no features or functions are added or deleted) or "as specified" (specified features or functions are added or deleted). Id. ¶¶ 50-51.

CLECs have other alternatives as well. In addition to the nondiscriminatory access afforded by EXACT and EDI, CLECs may, at their option, submit service requests for most non-complex services through LENS. Id. ¶ 56. Or if a CLEC chooses not to use an electronic interface, it may request services or UNEs using a manual process. Stacy Performance Aff. ¶ 8.

CLECs' access to BellSouth's ordering functions is substantially the same as the access provided to BellSouth's own retail operations. Mechanized order generation is available on BellSouth's side of the EDI interface for resale services that collectively represent 90 percent of BellSouth's consumer and small business revenues. Stacy OSS Aff. ¶ 67. Mechanized service order generation for unbundled loops, ports, and interim number portability was made available to CLECs as of October 6, 1997, following testing by BellSouth. Id. While there have in the past been problems with rejection of electronic orders placed by CLECs, problems attributable to BellSouth have been corrected. Id. ¶¶ 68-72.

After the CLEC submits its order through the preferred interface, the request is screened for formatting errors and the complete and correct service request is transferred to the same service order control system used for BellSouth's own retail orders. This database automatically delivers service order records to the downstream OSSs that select and assign facilities and cross-connect wiring functions. There is no distinction between CLEC- and BellSouth-originated order records. Instead, orders are scheduled and filled on a first-come, first-served basis. Stacy OSS Aff. ¶¶ 23, 33, 34.

All of BellSouth's systems for ordering and provisioning are easily capable of meeting current demand and are scalable to meet reasonably foreseeable demand, including order "spikes," without discriminatory delays. Id. ¶¶ 119-134; Stacy Performance Aff. ¶¶ 4-11 (discussing BellSouth service centers).

Service Maintenance and Repair. CLECs can use BellSouth's interactive Trouble Analysis Facilitation Interface ("TAFI") or a manual interface to initiate maintenance or repair inquiries for services associated with a telephone number. Stacy OSS Aff. ¶ 86. If a CLEC elects to use the manual interface, BellSouth will handle the CLEC's phoned-in trouble reports in the same way it handles reports from its own retail customers — by entering the report into TAFI. Id. ¶¶ 90, 93. But if the CLEC chooses direct access to TAFI, its personnel are themselves able to input trouble reports, obtain commitment times, and check on the status of previously entered reports in the same way BellSouth retail service representatives, who use TAFI themselves, would accomplish the same task. Id. ¶ 93. Unlike BellSouth retail service representatives, however, CLECs have the advantage of being able to access TAFI for both business and residential customers through the same interface. Id. ¶ 90. CLECs have access to information on the resale services and UNEs they have purchased from BellSouth, but not to information about the customers of other CLECs. Id. ¶¶ 90-91.

TAFI automatically performs diagnostic tests and, by interacting with other internal BellSouth systems, is often able to correct a trouble report while the customer is still on the line. For example, if a customer were to report a problem with call waiting, TAFI would first verify that the feature is listed on the customer service record. Then, depending on the nature of the

problem, TAFI may be able to restore the service to the line. Id. ¶ 87. Where further action is required BellSouth will advise the CLEC of the steps being taken and the time they will take, so that the CLEC can inform its own customer. Id. ¶ 86. Thereafter, the CLEC can check the status of a repair order by entering a subsequent report into TAFI or, if it placed the initial order manually, by contacting the BellSouth Residence Repair Center or Business Repair Center with which it placed the initial report. See id.

As of September 30, 1997, eighteen CLECs had entered trouble reports via TAFI. A total of 3,463 trouble reports were generated by CLECs on TAFI from June through September 1997. Id. ¶ 129. BellSouth is able to add additional capacity almost immediately. Stacy OSS Aff. ¶ 128. Usage data and testing confirm that the access provided to CLECs through TAFI is nondiscriminatory. See Stacy OSS Aff. ¶¶ 120-135.

For designed services (which are associated with a circuit number), CLECs have the ability to pass a trouble ticket electronically into the Work Force Administration database using the Exchange Carrier - Common Presentation Manager interface. Id. ¶¶ 84, 95. For trouble reporting regarding designed services (such as resold complex private line services), interconnection trunking, or designed UNEs, CLECs today have access to the T1M1 electronic bonding interface used by interexchange carriers for access services. Id. ¶ 95. In addition, BellSouth will make available to CLECs in November 1997 yet another option beyond the nondiscriminatory access required under the Act: namely, the Electronic Communications Trouble Administration Gateway, a system based on the T1M1 standard for repair and maintenance of local service that can be used for non-designed and designed services and UNE trouble reports.

Id. ¶ 97. BellSouth also will develop customized systems such as one now being developed for AT&T based on the T1M1 standard. Id.

Billing. BellSouth bills CLECs using its two billing systems — Carrier Access Billing Systems ("CABS") and Customer Records Information System ("CRIS"). CABS is a billing system for carriers that measures billable access usage and conforms to industry standards established by the Ordering and Billing Forum. CRIS was developed for billing end users and is used to bill CLECs for resold services: It measures billable call events (e.g., the use of a vertical service that is charged on a per-use basis) and accumulates call record details. Hollett Aff. ¶ 5 (App. A at Tab 6).

A CLEC receives separate bills from the CRIS and CABS systems, just as a BellSouth end user who subscribes to a service that is recorded in both systems would receive two bills. Stacy OSS Aff. ¶ 101. A variety of billing media formats are available to CLECs for both CRIS and CABS bills; BellSouth also offers a capability for sorting the information provided on CRIS bills. Hollett Aff. ¶ 6. To accommodate the preferences of CLECs, BellSouth has even negotiated to provide CRIS data in CABS format and is testing this capability with AT&T and MCI. Id. ¶ 7; see also Stacy OSS Aff. ¶ 102.

BellSouth additionally offers CLECs access, either electronically or using a magnetic tape, to usage-sensitive data in a manner that facilitates end-user billing. Hollett Aff. ¶ 11. Fourteen CLECs in BellSouth's region now use this daily data transfer and another ten are receiving test files. Id. In all, approximately 1.5 million such messages are transmitted monthly throughout BellSouth's region. Id. Daily usage information is available for resold lines, interim number

portability accounts, and some unbundled network elements such as unbundled ports. Id. This system provides CLECs access to the data they need in substantially the same time and manner as BST, as the Louisiana PSC confirmed through its own investigation. See Compliance Order at 15. Testing and actual usage prove that CLECs are able to receive billing information on a nondiscriminatory basis. See Hollett Aff. ¶¶ 9-18 (discussing measures to ensure adequacy of billing systems for CLECs' needs); Stacy OSS Aff. Ex. WNS-53. BellSouth has adopted a variety of safeguards to prevent double-billing and other billing errors and has addressed the few issues of this sort that have arisen. Hollett Aff. ¶¶ 9-17.

Performance Measurements. BellSouth has collected for this application and will make available to CLECs extensive data on the real-world performance of its systems. Data are provided to assess system availability, response time, and usage billing timeliness. See Stacy Performance Aff. ¶¶ 32-35. BellSouth also has provided data on the percentage of orders placed through BellSouth's electronic interfaces that "flow through" the OSSs without manual intervention. Id. ¶ 36.[31]

### B. All Fourteen Checklist Items Are Legally and Practicably Available

BellSouth's OSSs enable CLECs to obtain the local network facilities and services BellSouth provides in accordance with other checklist requirements. See 47 U.S.C. § 271(c)(2). The Commission has explained that "to be 'providing' a checklist item, a BOC must have a

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[31] As BellSouth explained in its petition for reconsideration of the Michigan Order, however, the Commission may not enforce substantive performance standards for other checklist items under the rubric of access to OSSs. What happens after CLECs' requests have made it through BellSouth's support systems is governed not by the Act's OSS provisions, but rather by the checklist requirements (if any) that address the underlying item ordered.

concrete and specific legal obligation to furnish the item upon request" and "must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality." Michigan Order ¶ 110.

BellSouth satisfies both elements of this test with respect to all checklist items. BellSouth is legally obligated to provide all fourteen checklist items to PrimeCo, Sprint Spectrum, MereTel, or any other CLEC that asks. First, the specific provisions of the PrimeCo, Sprint Spectrum and MereTel agreements directly require BellSouth to make a number of checklist items available. Second, the agreements require BellSouth to make available to PrimeCo, Sprint Spectrum, and MereTel portions of any of BellSouth's other state approved agreements on matters such as: interconnection, collocation, unbundled access to any network element, access to poles, ducts, conduits, and rights-of-way, access to 911/E911 emergency network, and access to telephone numbers. PrimeCo Agreement § XVI.B, E.2; Sprint Spectrum Agreement § XVII.B, E.2; MereTel Agreement § XVII.B, E.2. Third, PrimeCo, Sprint Spectrum and MereTel may choose to opt into an entire agreement negotiated by another CLEC. PrimeCo Agreement § XVI.B, E.1; Sprint Spectrum Agreement § XVII.B, E.1; MereTel Agreement § XVII.B, E.1. Thus, for example, BellSouth is legally obligated to provide these carriers whatever it offers to AT&T, pursuant to AT&T's arbitrated interconnection agreement. Fourth, any CLEC that is certified by the Louisiana PSC to provide local telecommunications services in the State has access to the terms of BellSouth's approved Statement. Statement at 1. Moreover, pursuant to MFN clauses in their own negotiated agreements, Sprint Spectrum, PrimeCo, and MereTel have access to the terms of BellSouth's approved Statement, either in their entirety or on a section-by-section basis

if they fall within one of the categories noted above. See Sprint Spectrum Agreement § XVII.C, E.1-2 (making available terms of any "order," including the terms imposed by the Louisiana PSC in its Compliance Order); see also PrimeCo Agreement § XVI.C, E.1-2 (same); MereTel Agreement § XVII.C, E.1-2 (same).

BellSouth's legal obligations to provide all fourteen checklist items are not mere paper promises. Rather, commercial usage throughout BellSouth's region, as well as thorough testing in Louisiana and elsewhere, confirm that all checklist items are available today on a nondiscriminatory basis that enables CLECs to provide the same quality telecommunications services as BellSouth and in sufficient quantities to meet reasonably foreseeable CLEC demand.

(1) Interconnection. Subsection 271(c)(2)(B)(i) requires BellSouth to hold out interconnection with its network facilities in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Communications Act. These two provisions in turn require BellSouth to provide interconnection: (A) "for the transmission and routing of telephone exchange service and exchange access;" (B) "at any technically feasible point;" (C) "that is at least equal in quality" to what BellSouth provides itself; (D) "on rates, terms and conditions that are just, reasonable, and nondiscriminatory;" and (E) based upon cost plus a "reasonable profit."

BellSouth's agreements with PrimeCo, Sprint Spectrum, and MereTel (among other carriers) satisfy sections 251(c)(2) and 252(d)(1) and applicable Commission regulations by providing local interconnection of equal quality, at any technically feasible point, at cost-based rates. See Varner Aff. ¶¶ 50, 56-63; Milner Aff. ¶¶ 12-15 (App. A at Tab 9). In addition to setting forth specific interconnection terms, PrimeCo Agreement §§ IV, VI; Sprint Spectrum

Agreement §§ IV, VI; MereTel Agreement §§ IV, VI, the agreements enable PrimeCo, Sprint Spectrum, and MereTel to opt into the interconnection provisions of other agreements and the Statement. PrimeCo Agreement §§ XVI.E.2.a; Sprint Spectrum Agreement § XVII.E.2.a; MereTel Agreement § XVII.E.2.a. For example, the terms of the AT&T Agreement would allow PrimeCo, Sprint Spectrum, and MereTel to "interconnect" with BellSouth "at any point . . . that is technically feasible." AT&T Agreement § 30.2 & Attach. 2, § 16. The Statement allows interconnection at the line-side or trunk-side of the local switch, as well as at trunk interconnection points for a tandem switch, central office cross-connect points, and out-of-band signal transfer points. See Statement § I.A.1. Pursuant to a "Bona Fide Request Process" that was developed jointly with AT&T and is available to all CLECs, BellSouth also will provide local interconnection at any other technically feasible point, including meet-point arrangements. AT&T Agreement Attach. 14; Statement § I.A.2 & Attach. B; Varner ¶¶ 16, 50; Milner Aff. ¶ 12; Woroch Aff. ¶¶ 28-29 (Bona Fide Request Process allows new and unusual offerings and "gives the CLEC the flexibility to respond to market uncertainties"). Interconnection is available through several alternative methods, including virtual and physical collocation and interconnection via purchase of facilities by either company from the other. PrimeCo Agreement § VI.A.; Sprint Spectrum Agreement § VI.A; MereTel Agreement § VI.A; see also AT&T Agreement § 32.1 & Attach. 3 at § 2; Statement § I.C & II.B.6; Varner Aff. ¶¶ 44-45, 47.

The Louisiana PSC has confirmed that interconnection is available in compliance with the Act. Compliance Order at 6-7. As of September 30, 1997, BellSouth had installed more than 30,500 interconnection trunks in its region, including 936 trunks in Louisiana. Milner Aff. ¶ 13.

There are, in addition, 21 physical collocation arrangements in place in BellSouth's region and 88 in progress, including one in place and two in progress in Louisiana. See Milner Aff. ¶ 23 (discussing and providing list of physical collocations). Four virtual collocation arrangements are in place in Louisiana and another four are in progress, and another 145 have been established elsewhere in BellSouth's region. Milner Aff. ¶ 29 & Ex. WKM-2 (list of BellSouth's virtual collocations). Because BellSouth uses the same processes with respect to checklist items in all of its nine states, this experience within and outside Louisiana confirms the practical availability of interconnection in Louisiana. Milner Aff. ¶ 5.

To demonstrate that the interconnection BellSouth provides competitors is equal in quality to that BellSouth provides itself, BellSouth has furnished the following materials with this application: detailed technical service descriptions outlining its local interconnection trunking arrangements and switched local channel interconnection, Milner Aff. ¶¶ 13-14 & Ex. WKM-9; BellSouth's Collocation Handbook, which establishes standardized procedures for collocation, Milner Aff. ¶ 17; Varner Ex. AJV-4; and blockage rates for trunks that route BellSouth traffic and for trunks that route competitors' traffic, see Stacy Performance Aff. ¶¶ 47-49. Each of these three bases for comparison confirms that the interconnection BellSouth provides competitors equals what BellSouth provides to itself. Milner Aff. ¶ 12; Stacy Performance Aff. ¶¶ 63-65 & Exs. WNS-11-14. In every instance in which a trunk has been blocked, BellSouth has cooperated with competitors to resolve the problem in a nondiscriminatory fashion. See Milner Aff. ¶ 16 (describing examples).

BellSouth's interconnection agreements and Statement also address the rates at which interconnection will be provided. PrimeCo Agreement Attach. B-1; Sprint Spectrum Agreement Attach. B-1; see also AT&T Agreement Part IV (pricing of transport); id. Table 2 (pricing for physical and virtual collocation); Statement § I.E & Attach. A at 1. After an in-depth cost proceeding in which BellSouth and other parties submitted forward-looking cost studies and other evidence, the Louisiana PSC recently established cost-based interconnection rates that have been incorporated into the Statement and — where lower than BellSouth's interim rates — were automatically included (via a true-up process) in BellSouth's agreements. See Pricing Order Attach. A, § D (interconnection and transport), § H (collocation); Varner Aff. ¶¶ 48, 50 (discussing rates). The Louisiana PSC arrived at these rates after consulting an independent expert, whose recommendations often differed from those of BellSouth and other parties. Pricing Order at 4. The independent consultant's methodology, which the Louisiana PSC adopted, was identical to the methodology relied upon by the Michigan Commission, id. at 3, and endorsed by this Commission as "fully consistent with TELRIC principles." Michigan Order ¶ 290.[32]

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[32] In its Pricing Order, the Louisiana PSC explained that its rates were derived in accordance with nine principles: (1) long-run implies a period long enough that all costs are avoidable; (2) cost causation is a key concept in incremental costing; (3) the increment being studied should be the entire quantity of services provided; (4) any function necessary to produce a service must have an associated cost; (5) common overheads are not part of a long run incremental cost study and recovery of those costs is a pricing issue; (6) technology used in a long-run incremental cost study should be the least-cost most efficient technology that is currently available for purchase; this assumes existing structural facilities, but allows for replacement with the most efficient, least-cost technology; (7) costs should be forward-looking and should not reflect the company's embedded costs; (8) cost studies should be performed for the total output of specific services and preferably at the level of basic network functions from which services are derived; and (9) the same long-run incremental cost methodology should apply to all services. Pricing Order at 3-4.

The PrimeCo, Sprint Spectrum and MereTel agreements contain true-up provisions to ensure that BellSouth's Louisiana PSC-approved TELRIC rates are available to these carriers. PrimeCo Agreement § V; Sprint Spectrum Agreement § V; MereTel Agreement § V. Although the PrimeCo, Sprint Spectrum, and MereTel agreements specify that rates may be adjusted upward or downward to reflect the Louisiana PSC's rate orders, the MFN clauses of the PrimeCo and Sprint PSC agreements allow these carriers to benefit from the downward-only adjustments provided for in the AT&T and MCI agreements and the Statement. PrimeCo Agreement § XVI.E.2.a; Sprint Spectrum Agreement § XVII.E.2.a; MereTel Agreement § XVII.E.2.a. In addition, for local interconnection or UNEs placed in service at a rate subject to true-up prior to October 24, 1997, if the rate established in the Pricing Order is higher than the interim rate, no additional payment is due BellSouth from the CLEC. Varner Aff. ¶ 29. Accordingly, BellSouth makes interconnection available to these carriers at cost-based rates in compliance with sections 251(c)(2) and 252(d)(1), and checklist item (i).

The Louisiana PSC's pricing determinations are conclusive with respect to particular rate levels. Section 252(d) reserves to the States pricing authority over local interconnection, unbundled access, resale, and transport and termination of traffic. "[T]he FCC has no valid

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Although the Louisiana PSC decided to follow a TELRIC pricing methodology, the PSC was not required to do so under the Act. Indeed, the Department of Justice and this Commission have conceded that the Act, in requiring that rates be based on costs, does not specify any particular cost methodology. The Commission explained, "[t]he core terms in section 252(d) — 'just and reasonable' rates based on 'cost' — are elastic terms in ratemaking, for which 'neither law nor economics has yet defined generally accepted standards.'" Brief for Respondents Federal Communications Commission and United States of America at 47, Iowa Utils. Bd. (filed Dec. 23, 1996).

pricing authority over these areas of new localized competition." Iowa Utils. Bd., 120 F.3d at 799. The checklist, in turn, requires only that interconnection pricing comply with the requirements of sections 251(c)(2) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(i). This incorporation of the States' rate-setting authority into the checklist does not suggest any transfer of power to the Commission. Indeed, far from issuing an "explici[t] direct[ion]" that the Commission exercise jurisdiction over intrastate rates (as would be necessary to establish federal authority, California v. FCC, No. 96-3519, 1997 U.S. App. LEXIS 22343, at *10 (8th Cir. Aug. 22, 1997)), Congress forbade the Commission from extending the checklist requirement of State-regulated pricing in accordance with section 252. 47 U.S.C. § 271(d)(4). Simply put, "state commission determinations of the just and reasonable rates that incumbent LECs can charge their competitors for interconnection, unbundled access, and resale" are "off limits to the FCC." Iowa Utils. Bd., 120 F.3d at 804.[33]

(2) Access to Network Elements. Subsection 271(c)(2)(B)(ii) requires BellSouth to provide access to UNEs in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Communications Act. Sections 251(c)(3) and 252(d)(1) in turn require BellSouth to provide access to unbundled network elements: (A) "at any technically feasible point;" (B) "on rates, terms and conditions that are just, reasonable, and nondiscriminatory;" and (C) based upon cost plus a "reasonable profit." In addition, in the Local Interconnection Order, the Commission

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33. Despite the Department of Justice's claims, the requirement that the Commission consider the Attorney General's evaluation does not enable the Department to bring pricing within the Commission's jurisdiction at will. See Evaluation of the United States Department of Justice at 44-45, CC Docket No. 97-208 (filed Nov. 4, 1997) ("DOJ South Carolina Evaluation").

adopted rules that require BellSouth to make interconnection available for unbundled access to, at a minimum, the following independent network elements: local loops; the network interface device; switching; interoffice transmission facilities; signaling networks and call-related databases; OSS functions; and operator services and directory assistance. 47 C.F.R. § 51.319.

The Louisiana PSC found that BellSouth has satisfied its obligations under checklist item (ii) throughout the Statement. Compliance Order at 8. BellSouth's interconnection agreements bear this out. For instance, BellSouth's agreement with Sprint Spectrum provides access to a number of specified unbundled network elements, including loops, switching, and transport, and provides in addition that any elements not specifically provided for in the agreement are available through the Bona Fide Request Process, where technically feasible. See Sprint Spectrum Agreement § VIII; see also MereTel Agreement § VIII. In addition, Sprint Spectrum, MereTel, and PrimeCo have terms in their agreements that enable them to opt into any provision of any state commission-approved BellSouth agreement or the Statement providing "unbundled access to network elements, which include: local loops, network interface devices, switching capability, interoffice transmission facilities, signaling networks and call-related databases, operations support systems functions, operator services and directory assistance, and any elements that result from subsequent bona fide requests." PrimeCo Agreement § XVI.E.2.c; Sprint Spectrum Agreement § XVII.E.2.c; MereTel Agreement § XVII.E.2.c. Thus, by virtue of BellSouth's agreement with AT&T and BellSouth's Statement, PrimeCo, Sprint Spectrum, and MereTel have nondiscriminatory access to all network elements identified in the Commission's rules on an unbundled basis at any technically feasible point. AT&T Agreement §§ 29-30 & Attach. 2;

Statement § II & Attach. C; Varner Aff. ¶¶ 60-70; Milner Aff. ¶¶ 32-34; see also supra Part II(A) (OSS access).

BellSouth does not impose any limitations, restrictions, or requirements on requests for or use of a UNE that would impair a CLEC's ability to provide a telecommunications service in the manner it intends. See Sprint Spectrum Agreement § VIII.F; MereTel Agreement § VIII.B; AT&T Agreement §§ 29-30 & Attach. 2; Statement § II.G ("Network elements may be combined in any manner."). CLECs obtain exclusive use of an unbundled network facility and may use features, functions, or capabilities for a set period of time as required by section 51.309(c) of the Commission's rules. Varner Aff. ¶ 59. BellSouth retains the obligation to maintain, repair, or replace UNEs, also in compliance with section 51.309(c). Id.; see AT&T Agreement §§ 29-30 & Attach. 2; Statement Attach. C.

BellSouth permits any CLEC to recombine UNEs on an end-to-end (or any other) basis, thereby creating the equivalent of one of BellSouth's retail services or a different service of its own. Varner Aff. ¶ 66. The Act, however, only requires incumbent LECs to provide UNEs "in a manner that allows requesting carriers to combine such elements," 47 U.S.C. § 251(c)(3), "which unambiguously indicates that requesting carriers will combine the unbundled elements themselves." Order on Petitions for Rehearing at 2, Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir. Oct. 14, 1997). Therefore, if a CLEC wishes to obtain an existing retail service from BellSouth on a pre-combined, "switch-as-is" basis, BellSouth will provide this service as a wholesale service, at the retail rate less the 20.72 percent resale discount set by the Louisiana PSC. Varner Aff. ¶ 68.

The Louisiana PSC — exercising its exclusive jurisdiction over pricing of both UNEs and resale services — has confirmed the consistency of this practice with the requirements of the 1996 Act. See Order U-22145, at 39, Interconnection Agreement Negotiations Between AT&T Communications of the South Central States and BellSouth Telecommunications, Inc. (Jan. 15, 1997) ("AT&T Arbitration Order") ("a rose by any other name is still a rose, and so it is with resale, even when AT&T chooses to call it a combination of unbundled elements"); Varner Aff. ¶ 75. The Louisiana PSC's pricing decision is determinative and, in any event, is consistent with the Eighth Circuit's ruling on the Commission's pricing rules. Order on Petitions for Rehearing at 2, Iowa Utils. Bd. ("To permit . . . an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in sections 251(c)(3) and (4) between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other.").

The Statement's rates for specific network elements purchased on an unbundled basis also were set by the Louisiana PSC, in its recent Pricing Order. Pricing Order Attach. A; see also Varner Aff. ¶¶ 22-25; Sprint Spectrum Agreement Attachs. B1, C-16; AT&T Agreement Table 1; Statement Attach. A at 1 & Attach. G. As discussed above, PrimeCo, Sprint Spectrum, and

MereTel have access to these cost-based rates pursuant to true-up provisions[34] and MFN clauses,[35] and the Louisiana PSC's conclusion that BellSouth's rates are cost-based is definitive.

BellSouth recognizes that a CLEC does not have to own or control some portion of a telecommunications network before being able to purchase UNEs, see Iowa Utils. Bd., 120 F.3d at 814, and therefore will provide CLECs with UNEs in "a manner that enables the competing carriers to combine them." Order on Petitions for Rehearing at 2, Iowa Utils. Bd. BellSouth will perform all services necessary to make UNEs available to CLECs so that CLECs themselves may combine the UNEs. BellSouth will also perform network software modifications that are necessary for the proper functioning of CLEC-combined BellSouth UNEs at no additional charge. Varner Aff. ¶ 67. CLECs may use the Bona Fide Request Process to request additional software modifications to allow new features or services, or to request services related to combining or operating of BellSouth UNEs. Id. These voluntary accommodations by BellSouth do not, however, lift from CLECs their responsibility for assembling the tools, equipment, and expertise necessary to accomplish desired combinations of UNEs. Just as the Act does not "levy a duty" on BellSouth to combine UNEs for a CLEC, Order on Petitions for Rehearing at 2, Iowa Utils. Bd., it also does not require an incumbent LEC to provide every item needed by a CLEC to accomplish the combination.

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34. PrimeCo Agreement § V; Sprint Spectrum Agreement § V; MereTel Agreement § V.

35. PrimeCo Agreement § XVI.E.2.c; Sprint Spectrum Agreement § XVII.E.2.c; MereTel Agreement § XVII.E.2.c.

Nor is BellSouth required, as a condition of in-region, interLATA relief, to try to anticipate all the services CLECs may in the future request to assist in combining UNEs. See DOJ South Carolina Evaluation at 19-25. To date, CLECs that have expressed an intent to utilize combinations of UNEs (notably AT&T) have focused on circumventing the requirement that they perform combinations themselves, not implementing that requirement. BellSouth therefore has not had occasion to address these issues with CLECs in negotiations under the Act. It would be premature for BellSouth unilaterally to establish detailed terms and conditions for unspecified services that may never be sought by CLECs in practice, even at the negotiation stage. Such terms and conditions would also come within the perview of the state commissions under section 251 and 252, see Iowa Utils. Bd., 120 F.3d at 803-04, and may not be dictated by this Commission (much less the Department of Justice) through the backdoor of the section 271 process. See DOJ South Carolina Evaluation at 22 (seemingly proposing a preferred approach to facilitating UNE combinations).

Contrary to AT&T's argument in other proceedings, moreover, the Eighth Circuit has never suggested that a CLEC may obtain unlimited access to an incumbent LEC's network and facilities for the purpose of combining UNEs.[36] On the contrary, the Eighth Circuit emphasized that "the degree and ease of access that competing carriers may have to incumbent LECs'

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[36.] See Comments of AT&T Corp. in Opposition to BellSouth's Section 271 Application for South Carolina at 22 (FCC, filed Oct. 20, 1997) ("[T]he limited opportunity that BellSouth provides for combining only two elements using a new entrant's equipment in collocated space is itself an unlawful restriction under the Eighth Circuit's decision.")

networks is . . . far less than the amount of control that a carrier would have over its own network." Iowa Utils. Bd., 120 F.3d at 816.

Specifically, the Act indicates that an incumbent LEC will provide access to its UNEs at a dedicated collocation space located at the premises of the incumbent LEC. See 47 U.S.C. § 251(c)(6) (incumbent LEC must provide "for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."). If a LEC demonstrates that physical collocation is not practical "for technical reasons or because of space limitations," the incumbent LEC may instead offer "virtual collocation" for this purpose. See 47 U.S.C. § 251(c)(6). BellSouth has made collocation space available to CLECs, and as a general rule will deliver UNEs to this collocation space. See Varner Aff. ¶ 66; Milner Aff. ¶ 28. Where obtaining access to the UNE at the CLEC's collocation space is not practical, BellSouth will make access available at another appropriate location. For instance, BellSouth provides CLECs access to the network interface device ("NID") on an unbundled basis at the end user's premises (as well as in combination with other subloop elements that BellSouth offers). See Varner Aff. ¶¶ 86, 88-89 ; Milner Aff. ¶ 34 ; Statement § IV.B.2, Attach. C at 2; AT&T Agreement, Attach. 2, § 4.1; PrimeCo Agreement § XVI.E.2.c; Sprint Spectrum Agreement § XVII.E.2.c.

The collocation provision of section 251(c)(6) is the Act's only statutory authorization for CLEC entry into the premises of an incumbent LEC for the purpose of combining UNEs. Lacking additional statutory authority, the Commission may not require further CLEC access to the central office or other facilities of incumbent LECs. To do so would work an impermissible

expansion of the Commission's statutory authority. See Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982) ("We conclude that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve."); Bell Atlantic Telephone Co. v. FCC, 24 F.3d 1441, 1446 (D.C. Cir. 1994) (holding that the pre-1996 Act "does not expressly authorize an order of physical collocation, and thus the Commission may not impose it.").

In the Bell Atlantic case, the Commission had ordered incumbent LECs to provide collocation space within their central offices to competitors, so that the competitors could install their own circuit terminating equipment. Id. at 1444. The LECs would have recovered their "reasonable costs" of providing collocation. Id. at 1445 n.3. Yet, at the time that the Commission issued this requirement, the Act did not contain express language authorizing this access to the facilities of incumbent LECs. Id. at 1446. The Court of Appeals therefore vacated the order on the basis that the Act did "not supply a clear warrant to grant third parties a license to exclusive physical occupation of a section of the LECs' central offices." Id.

Congress was aware of this limitation in drafting the 1996 Act, and for this reason expressly provided for collocation. See 47 U.S.C. § 251(c)(6); House Report at 73. However, this is the Act's only statutory authorization for CLEC entry into BellSouth's premises. Had Congress intended to grant CLECs a further right of physical access to the facilities and networks of incumbent LECs in connection with their responsibility for recombining UNEs, it would have included the necessary statutory language authorizing this access. Congress did not do so, thus

putting any further encroachments on incumbent LECs' property rights beyond the Commission's power.

(3) Nondiscriminatory Access to Poles, Ducts, Conduits and Rights-of-Way. Section 271(c)(2)(B)(iii) directs BellSouth to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by it at just and reasonable rates in accordance with the requirements of section 224.

BellSouth's agreements with PrimeCo, Sprint Spectrum, and MereTel provide such non-discriminatory access on terms that fulfill all statutory and regulatory requirements. PrimeCo Agreement § VIII; Sprint Spectrum Agreement § IX; MereTel Agreement § IX; see also AT&T Agreement § 32.1; id. Table 3; id. Attach. 3, § 3; Statement § III & Attachs. A & D; Varner Aff. ¶¶ 74-76; Milner Aff. ¶¶ 39-40; Pricing Order Attach. A, § J.2 (pricing of access). Nine CLECs in Louisiana have executed license agreements with BellSouth to attach facilities to BellSouth's poles and place facilities in BellSouth's ducts and conduits. Milner Aff. ¶ 39. In addition, BellSouth has provided cable television and power companies with access to poles, ducts, conduits and rights-of-way in Louisiana and throughout its region for many years. Id. Such arrangements are "business as usual" for BellSouth. Id. ¶ 40. Accordingly, the Louisiana PSC found that BellSouth complies with checklist item (iii). Compliance Order at 8.

(4) Unbundled Local Loops. Section 271(c)(2)(B)(iv) requires BellSouth to make available local loop transmission from the central office to the customer's premises unbundled from local switching or other services. As noted above, BellSouth makes local loop transmission available on an unbundled basis in compliance with section 51.319 of the Commission's rules.

See Sprint Spectrum Agreement §§ VIII.A-B, XVII.E.2.c; MereTel Agreement §§ VIII, XVII.E.2.c; PrimeCo Agreement § XVI.E.2.c (access to local loop provisions of agreements and Statement); see also AT&T Agreement Attach. 2 §§ 2-6; Statement § IV. Standard unbundled local loops available under the AT&T Agreement and Statement include 2- and 4-wire voice-grade analog lines, 2-wire ISDN digital grade lines, 2-wire Asymmetrical Digital Subscriber Line ("ADSL"), 2-wire and 4-wire High-bit-rate Digital Subscriber Line ("HDSL"), and 4-wire DS-1 digital grade line, and 56 or 64 Kbps digital grade lines. See Compliance Order at 9; Varner Aff. ¶ 76; AT&T Agreement Attach. 3, § 2.2; Statement § IV.A. Technical service descriptions of BellSouth's loop offerings are included in Exhibit WKM-9 to the Affidavit of Keith Milner. Additional loop types may be requested through the Bona Fide Request Process. Varner Aff. ¶ 80.

In addition to loops themselves, CLECs are able to obtain and use the Network Interface Device ("NID"). AT&T Agreement Attach. 2, § 4; Statement § IV.B, Attach. C at 2; Varner Aff. ¶¶ 80, 86; Milner Aff. ¶¶ 34-35. In response to a desire expressed by AT&T in state proceedings, BellSouth also offers two alternative ways of providing CLECs access to loops "behind" integrated digital loop carrier equipment, where the necessary facilities exist. Varner Aff. ¶¶ 88-92; AT&T Agreement Attach. 2, § 3. As explained in connection with checklist item (ii) above, BellSouth's prices for local loops are in compliance with the Louisiana PSC's Pricing Order and section 252(d)(1). See Pricing Order Attach. A, § A; Varner Aff. ¶ 79.

Local loops are available in practice to any CLEC that wishes to order them. Although CLECs in Louisiana have not taken BellSouth up on its offer, see Compliance Order at 9,

BellSouth had provisioned 5,882 unbundled loops to CLECs in its nine-state region as of September 30, 1997. Milner Aff. ¶ 41. BellSouth also has tested its ability to process orders and bill for various loops that its approved agreements and Statement make available, ensuring that orders for these items flow through BellSouth's systems in a timely and accurate fashion. See Id. ¶ 43. In actual practice, BellSouth has confirmed that at least 98 percent of the time it is able to cut-over loops to CLECs within a 15 minute window. Id. ¶ 45.

(5) Unbundled Local Transport. Section 271(c)(2)(B)(v) of the Act requires BellSouth to offer local transport unbundled from switching or other services. BellSouth makes available dedicated and shared transport between end offices, between tandems, and between tandems and end offices. See Sprint Spectrum Agreement §§ VIII.C, XVII.E.2.c & Attach. B-1; MereTel Agreement §§ VIII, XVII.E.2.c; PrimeCo Agreement § XVI.E.2.c; AT&T Agreement Attach. 2, §§ 9-10; Statement § V.A; Varner Aff. ¶¶ 102-106; Milner Aff. Ex. WKM-9 (technical service descriptions). CLECs have access to the same transport facilities that BellSouth uses to carry its own traffic, and no distinction is made between BellSouth's traffic and the CLEC's traffic. Varner Aff. ¶ 105. CLECs choosing shared transport have access to the routing tables in BellSouth's switches. Id.

BellSouth permits a requesting carrier to use shared transport to provide interstate exchange access to customers for whom the carrier provides local service. Varner Aff. ¶ 106. In such cases the CLEC, rather than BellSouth, will collect the corresponding interstate access charges. See id.

Like BellSouth's other rates, its rates for transport have been approved by the Louisiana PSC, Pricing Order Attach. A, § D, and PrimeCo, Sprint Spectrum, and MereTel have access to these rates pursuant to their MFN clauses. PrimeCo Agreement § XVI.E.2.c; Sprint Spectrum Agreement § XVII.E.2.c; MereTel Agreement § XVII.E.2.c.

BellSouth has provided twenty-two dedicated local trunks to CLECs in Louisiana, and nearly 1000 dedicated trunks to CLECs throughout its region. Milner Aff. ¶ 51; see also Compliance Order at 10 (noting that BellSouth cannot be faulted for failure of some CLECs to order local transport). BellSouth has likewise demonstrated its ability to furnish shared transport upon request. Milner Aff. ¶ 52.

(6) Unbundled Local Switching. Section 271(c)(2)(B)(vi) of the Act requires BellSouth to make available local switching unbundled from transport, local loops, or other services. The Commission's rules require further unbundling of local and tandem switching capabilities. 47 C.F.R. § 51.319(c)(2). BellSouth meets these requirements. See Sprint Spectrum Agreement § VII, XVII.E.2.c; see also MereTel Agreement § VII, XVII.E.2.c; PrimeCo Agreement § XVI.E.2.c (MFN clause providing access to switching provisions of other agreements and Statement); AT&T Agreement Attach. 2, § 7; Statement § VI.A; Varner Aff. ¶¶ 112-17; Milner Aff. Ex. WKM-9.

AT&T and other CLECs have expressed a desire for customized or "selective" routing capability using line class codes, which BellSouth will provide. Varner Aff. ¶ 118; Milner Aff. ¶ 55; Compliance Order at 12-13; Statement § VI.A.2. A second method of providing selective routing is through the use of BellSouth's Advanced Intelligent Network (AIN) platform.

Development work continues on this method and it is expected that a technical and market trial will commence in Georgia during December of 1997.

BellSouth will follow any intervals specified in its Louisiana PSC-approved interconnection agreements and Louisiana orders in converting service from BellSouth to a CLEC, or from one CLEC to another. BellSouth's general policy, however, is that where the CLEC does not specify another due date, conversions requiring only a software change will be made on the same day they are requested if requested by 3:00 p.m. Stacy OSS Aff. ¶ 37; see also Michigan Order ¶ 141. If requested later, such conversions will be made on the next business day. Stacy OSS Aff. ¶ 37.[37]

BellSouth's switch offerings also satisfy the pricing requirements of checklist item (ii) and section 252(d)(1). Pricing Order Attach. A, § C; see Varner Aff. ¶ 115; Sprint Spectrum Agreement §§ VIII.C, XVII.E.2.c & Attach. C-17; PrimeCo Agreement § XVII.E.2.c; MereTel Agreement §§ VIII, XVII.E.2.c; AT&T Agreement Table 1; Statement § VI.B & Attach. A at 3. BellSouth has amended its Statement in accordance with the Louisiana PSC's instructions so that the vertical features of a switch are available as UNEs, rather than merely as retail services. See Compliance Order at 10-11; Statement VI.A; Varner Aff. ¶¶ 113-17. The PSC's rates for

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[37.] Although these intervals are shorter than those BellSouth adheres to when customers request a new presubscribed interexchange carrier ("PIC"), see Stacy OSS Aff. ¶ 37, BellSouth notes that the Local Exchange Carrier Coalition, of which BellSouth is a member, has petitioned for reconsideration of the Local Interconnection Order insofar as it requires customer switchovers to be made within the same intervals as PIC switchovers. See Petition of the Local Exchange Carrier Coalition for Reconsideration and Clarification at 24-25, Dkt. Nos. 96-98 & 95-185 (filed Sept. 30, 1996).

vertical switching features have been incorporated into the Statement. Varner ¶ 115; Pricing Order Attach. A, § B.2.

BellSouth has completed the required development and implementation work and has a process in place and the capacity to produce bills mechanically for usage charges when CLECs purchase unbundled switching from BellSouth. Milner Aff. ¶ 57. Bills were generated for CLECs in September 1997; to date BellSouth has not received any complaints regarding the format or accuracy of these bills. Milner Aff. ¶ 59 In addition, BellSouth provides CLECs with usage data that allows them to bill for access services they provide their customers. Stacy OSS Aff. ¶ 104.

Region-wide, BellSouth has furnished CLECs with 21 unbundled ports. Milner Aff. ¶ 54. BellSouth has conducted extensive tests to ensure that CLECs purchasing selective routing can route 0+, 0-, and 411 calls to an operator other than BellSouth's or route 611 repair calls to a repair center other than BellSouth's. See Milner ¶ 55. The Louisiana PSC thus properly concluded that BellSouth provides local switching in accordance with checklist item (vi). Compliance Order at 11.

(7) Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services. Section 271(c)(2)(B)(vii) of the Act further conditions in-region, interLATA relief on providing nondiscriminatory access to 911 and E911 services, directory assistance services, and operator call completion services. BellSouth fulfills each of these requirements. See PrimeCo Agreement §§ IX, XVI.E.2.e; Sprint Spectrum Agreement §§ X,

XVII.E.2.e; MereTel Agreement §§ X, XVII.E.2.e; see also AT&T Agreement Attach. 2, § 16.1.10 - 16.7.2.6.3; Statement § VII; Varner Aff. ¶¶ 121-42; Milner Aff. ¶¶ 61-74.[38]

Whether they are facilities-based competitors or resellers, CLECs have nondiscriminatory access to BellSouth's 911 and Enhanced 911 facilities. See Varner ¶ 121; Statement § VII.A. For 911 calls, facilities-based CLECs translate the 911 call to a 10-digit number (provided by BellSouth) and route the call to BellSouth's tandem or end office, at which point BellSouth will complete the call. Varner Aff. ¶ 123; Statement § VII.A.3. CLECs are responsible for obtaining the trunks needed to reach BellSouth's switch, but the cost of the 911 (or E911) functionality is borne by the municipality purchasing the service. Varner Aff. ¶ 123; AT&T Agreement Attach. 2, § 16.6.1.10; Statement § VII.A.3-A.5. For E911 calls, the CLEC forwards the 911 call and Automatic Number Identification ("ANI") to the appropriate BellSouth tandem. Varner Aff. ¶¶ 124-25; AT&T Agreement § 16.6.1.10; Statement § VII.A.4. If the E911 tandem trunks are not available, the CLEC will route the call (without ANI) over BellSouth's interoffice network using a 7-digit number. Varner Aff. ¶ 125. BellSouth has developed a guide that provides facilities-based CLECs with the information they need to interconnect with BellSouth for 911 and E911 service, which is furnished as part of this application. Milner Aff. ¶ 61 & Ex. WKM-10.

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[38.] Although PrimeCo and Sprint Spectrum serve mobile end-user customers and thus have somewhat different 911 needs than landline CLECs, the agreements of both carriers nonetheless ensure access to "911-like" services and provide access to the provisions of BellSouth's other agreements and its Statement regarding BellSouth's 911/E911 emergency network. See PrimeCo Agreement §§ IX, XVI.E.2.e; Sprint Spectrum Agreement §§ X, XVII.E.2.e.

BellSouth routinely monitors call blockage on E911 trunk groups and, in coordination with the CLEC, takes corrective action using the same trunk servicing procedures for E911 trunk groups from CLEC switches as for E911 trunk groups from BellSouth switches. Id. ¶ 65.

BellSouth is responsible for maintaining the Automatic Location Identification/Database Management System and will use its service order process to do so by updating CLEC customers' information on the same daily schedule that BellSouth uses for information pertaining to its own end-user customers. Varner Aff. ¶ 122; Milner Aff. ¶ 62. CLECs will provide BellSouth with daily database updates. Varner Aff. ¶ 124; Milner Aff. ¶ 62. Any errors found by BellSouth in the data supplied by CLECs are faxed back to the CLEC along with error codes. Milner Aff. ¶ 62. Explanations of these error codes are contained in the guide that BellSouth provides to facilities-based CLECs, which is furnished as part of this application. Id.; CLEC Guide (App. C at Tab 142). BellSouth's procedures for maintaining the database and providing nondiscriminatory access to it are fully discussed in Exhibit WKM-4 to the Affidavit of Keith Milner. BellSouth is not aware of any instance in which it caused incorrect end user information regarding a CLEC end user customer to be sent to emergency service personnel. Milner Aff. ¶ 62.

BellSouth has 213 trunks connecting CLECs with BellSouth's E911 arrangements in its nine-state service area, including eight trunks in Louisiana. Milner Aff. ¶ 67. BellSouth also is receiving mechanized database updates from 15 different CLECs. Id.

BellSouth both offers to perform directory assistance ("DA") and directory assistance call completion ("DACC") services on behalf of CLECs and provides CLECs with direct access to its

DA databases. Varner Aff. ¶¶ 121-126; Milner Aff. ¶¶ 68-72; PrimeCo Agreement §§ X; XVI.E.2.c; Sprint Spectrum Agreement §§ XI, XVII.E.2.c; MereTel Agreement §§ XI, XVII.E.2.c; AT&T Agreement § 20 & Attach. 2, § 13.7; Statement § VII.B. Details of BellSouth's DA and DACC services are set out in a technical service description. Milner Aff. ¶¶ 68, 72 & Ex. WKM-9. Subject to line class code capacity, BellSouth will use selective routing to provide branded or unbranded directory assistance capabilities for facilities-based CLECs and resellers. Varner Aff. ¶ 129; AT&T Arbitration at 22; AT&T Agreement § 19; Statement § VII.B.3. In addition, BellSouth currently is developing AIN capabilities to provide selective routing. Milner Aff. ¶ 56. CLECs' subscriber listings will be included in BellSouth's DA databases at no charge and will be maintained in the same manner and within the same intervals as BellSouth end user listings. Varner Aff. ¶ 130; PrimeCo Agreement § X.B; Sprint Spectrum Agreement § XI.B; MereTel Agreement § XI.B; AT&T Agreement § 20.3; Statement § VII.B.1.

BellSouth has "for many years provided comparable directory assistance to independent local telephone companies . . . as well to IXCs" in all of its in-region States. See Milner Aff. ¶ 69. Currently, moreover, BellSouth provides DA service to 15 CLECs and DACC services to 9 CLECs in its region. Id. ¶ 68. As of September 30, these CLECs were using 492 BellSouth directory assistance trunks, including six in Louisiana. Id. Ten CLECs and other service providers in BellSouth's region, and nine CLECs and other service providers in Louisiana, were using BellSouth's DA database service as of September 1, 1997. One third-party service provider in BellSouth's region was using BellSouth's direct access to DA service ("DADAS") as of

September 1. Id. ¶ 73. This service provider, in turn, provides directory assistance services to CLECs and others. Id.

BellSouth likewise provides operator services in compliance with statutory and regulatory requirements, allowing a CLEC's subscribers to access services such as operator call processing access services, busy line verification, centralized message distribution system hosting, emergency interrupt, intercept, and operator services transport. Varner Aff. ¶¶ 133-139; Milner Aff. ¶¶ 72, 73 & Ex. WKM-9; PrimeCo Agreement § XVI.E.2.c (access to any agreement or Statement provision regarding operator services); Sprint Spectrum Agreement § XVII.E.2.c (same); MereTel Agreement § XVII.E.2.c (same); AT&T Agreement Attach. 2, § 16.6.1.10.3.4 ; Statement § VII.C & Attach. E (CMOS). As of September 30, 1997, there were 6 operator services trunks and 2 verification trunks in place in Louisiana, and a total of 194 operator services trunks and 48 verification trunks across BellSouth's nine states. Milner Aff. ¶ 74.

Rates for directory assistance and operator services have been set by the Louisiana PSC and are further discussed in the Affidavit of Alphonso Varner. Pricing Order Attach. A, § G; Varner Aff. ¶¶ 140-142; see AT&T Agreement Table 1; Statement Attach. A at 3-4.

(8) White Pages Directory Listings for CLEC Customers. Section 271(c)(2)(B)(viii) requires BellSouth to make available White Pages directory listings for the customers of competing CLECs. BellSouth satisfies this requirement. PrimeCo Agreement § X.A & Attach. C-1; Sprint Spectrum Agreement § XI.A & Attach. C-1; MereTel Agreement § XI.A & Attach. C-1; AT&T Agreement § 20; Statement § VIII.A; see Varner Aff. ¶¶ 144-149. BellSouth makes available White Pages listings for customers of both resellers and facilities-based carriers, as if

they were BellSouth customers. Varner Aff. ¶ 145; PrimeCo Agreement § X.A; Sprint Spectrum Agreement § XI.A; AT&T Agreement § 20; Statement §§ VIII.A & F. CLEC subscribers are not separately classified or otherwise identified, and their listings are accorded the same level of confidentiality as the listings of BellSouth customers. Varner Aff. ¶¶ 144-45. The Louisiana PSC found that BellSouth satisfies this checklist requirement. Compliance Order at 11; see also Milner Aff. ¶ 75. Although it is not required to do so under the checklist or any other provision of the Act, BellSouth also includes listings of CLECs' business subscribers in the appropriate Yellow Pages or classified directory. PrimeCo Agreement § X.A.; Sprint Spectrum Agreement § XI.A; MereTel Agreement § XI.A; AT&T Agreement § 20.1.3; see Varner Aff. ¶ 146.

(9) Nondiscriminatory Access to Telephone Numbers. Pursuant to section 271(c)(2)(B)(ix) of the Act, BellSouth must provide CLECs with nondiscriminatory access to telephone numbers for assignment to their customers until telecommunications numbering administration guidelines, plans, or rules are established. BellSouth has met this requirement. See PrimeCo Agreement § XI.A; Sprint Spectrum Agreement § XII.A; MereTel Agreement § XII.A; Statement § IX; Varner Aff. ¶¶ 150-51; Milner Aff. ¶¶ 78-80; Compliance Order at 12.

As the Central Office Code ("NXX") Administrator for its territory, BellSouth has followed industry-established guidelines published by the Industry Numbering Committee. Milner Aff. ¶ 78 & Ex. WKM-5. Pursuant to its procedures, as of October 7, 1997, BellSouth had assigned 14 NPA/NXX codes for CLECs in Louisiana and 821 region-wide. Milner Aff. ¶ 78. BellSouth has not turned down any requests for NPA/NXX code assignments in Louisiana. Id.

(10) Nondiscriminatory Access to Signaling and Call-Related Databases. Section 271(c)(2)(B)(x) of the Act requires BellSouth to provide CLECs with nondiscriminatory access to databases and associated signaling necessary for call routing and completion. The Commission's implementing regulations also require BellSouth to provide nondiscriminatory access to signaling networks and call-related databases. 47 C.F.R. § 51.319(e).

BellSouth's Statement offers the required access. PrimeCo Agreement §§ XII, XVI.E.2.c; Sprint Spectrum Agreement §§ XIII, XVII.E.2.c; MereTel Agreement §§ XIII, XVII.E.2.c; AT&T Agreement Attach. 2, §§ 11-13; Statement § X; Varner Aff. ¶¶ 150-63; Milner Aff. ¶¶ 81-103. CLECs in Louisiana have access to Signaling Links (dedicated transmission paths carrying signaling messages between switches and signaling networks), Signal Transfer Points (signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases), and call-related Service Control Points (databases containing customer and/or carrier-specific routing, billing, or service instructions). Compliance Order at 12; Varner Aff. ¶¶ 153-56; AT&T Agreement Attach. 2, §§ 11-13; Statement § X.A. Service Control Points to which CLECs have access include (but are not limited to) Line Information Data Base ("LIDB"), toll free number database, Automatic Location Identification/Data Management System, AIN and selective routing. Compliance Order at 12; Varner Aff. ¶¶ 153-62; AT&T Agreement Attach. 2, § 13; Statement § X.A.3 & Attach. F (LIDB). BellSouth provides access to its databases on a nondiscriminatory basis and in a manner that complies with the requirements of section 222 of the Communications Act. See Milner Aff. ¶¶ 83-103; see also Milner Aff. Ex. WKM-9 (technical

service descriptions); Statement § X & Attach. C. BellSouth's cost-based prices for databases were established by the Louisiana PSC in its cost proceeding. Pricing Order Attach. A, §§ E, K.

In the first 8 months of 1997 alone, CLECs and other telecommunications service providers made approximately 22 million queries to BellSouth's toll free database. Milner Aff. ¶ 101. BellSouth's LIDB processed more than 328 million queries from outside BellSouth from January through September, 1997. Id. BellSouth's AIN Toolkit 1.0 and AIN SMS Access 1.0 — which CLECs will use in connection with AIN access — have been tested and the accuracy of billing for these offerings has been confirmed. Id. ¶ 102. BellSouth's signaling services are also available to CLECs in practice, as demonstrated by actual CLEC interconnection. See Milner Aff. ¶ 103.

(11) Interim Number Portability. Section 271(c)(2)(B)(xi) of the Act requires BellSouth to provide CLECs with interim number portability ("INP"), either through remote call forwarding ("RCF"), direct inward dialing ("DID"), or other comparable arrangements, until the Commission issues regulations to ensure permanent number portability. See also 47 C.F.R. §§ 42.7(a), 42.9, 42.3(a), (b). BellSouth meets this requirement as well. It offers RCF or DID, at the CLEC's option, on non-discriminatory rates, terms and conditions. AT&T Agreement § 39, Table 4, & Attach. 8; Statement § XI & Attachs. A at 5-6 and G; Varner Aff. ¶ 168; Milner Aff. ¶¶ 104-13 & Ex. WKM-9 (technical descriptions of RCF and DID). CLECs that choose DID number portability have access to signaling using the SS7 protocol. Milner Aff. ¶ 104. Additional methods such as Route Index - Portability Hub, Direct Number Route Index, and Local Exchange Routing Guide are available through the Bona Fide Request Process. Varner Aff. ¶ 168.

PrimeCo, Sprint Spectrum, and MereTel have access to number portability via the MFN clauses in their agreements. PrimeCo Agreement § XVI; Sprint Spectrum Agreement § XVII; MereTel Agreement § XVII.

The Louisiana PSC found that BellSouth's INP offerings comply with the requirements of the Act, as well as those imposed by the PSC itself. Compliance Order at 13. Indeed, BellSouth already has ported over 18,300 business numbers and 30 residence numbers. Milner Aff. ¶ 106. BellSouth's rates for number portability were approved by the Louisiana PSC and are consistent with the requirements of the Act. Pricing Order Attach. A, § I; see Varner Aff. ¶ 171; Statement Attach. A at 5-6.

As explained in the Affidavit of Keith Milner, BellSouth will implement a permanent approach to number portability consistent with the standards set by the Louisiana PSC, this Commission, and industry fora. Milner Aff. ¶ 111 & Exs. WKM-6 & WKM-7; AT&T Agreement 8, § 1; Statement § XI.F; see also Varner Aff. ¶ 172.

(12) Local Dialing Parity. Section 271(c)(2)(B)(xii) of the 1996 Act requires BellSouth to provide CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity in accordance with section 251(b)(3). See also 47 C.F.R. § 51.207 (equal number of digits). The Commission has held "that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251." Dialing Parity Order, 11 FCC Rcd at 19430, ¶ 71. Consistent with its obligations, BellSouth guarantees that "CLEC customers will not have to dial any greater number of digits than BellSouth customers to complete the same call" and that "CLEC local service customers will

experience at least the same quality as BellSouth local service customers regarding post-dial delay, call completion rate and transmission quality." Statement § XII.A; see Varner Aff. ¶ 176 (noting that "[b]ecause BellSouth and CLECs can use the same dialing and numbering plans, local dialing parity simply happens as CLECs begin operating"); Milner Aff. ¶ 114; see also PrimeCo Agreement § XVI (MFN clause); Sprint Spectrum Agreement § XVII (same); MereTel Agreement § XVII (same). The Louisiana PSC found that BellSouth offers local dialing parity in accordance with the checklist requirement. Compliance Order at 13.

(13) Reciprocal Compensation for the Exchange of Local Traffic. Section 271(c)(2)(B)(xiii) requires BellSouth to agree, under section 251(d)(2), to just and reasonable terms and conditions that provide for mutual and reciprocal recovery by BellSouth and the CLEC of the costs associated with transporting and terminating calls that originate on the other carrier's network. BellSouth's rates are those approved by the Louisiana PSC. Pricing Order Attach. A, § D; see PrimeCo Agreement § V & Attach. B-1 (establishing rates and providing for true-up to PSC-established rates); Sprint Spectrum Agreement § V & Attach. B-1 (same); MereTel Agreement § V & Attach. B-1 (same); AT&T Agreement Table 1; Statement Attach. A at 1; Varner Aff. ¶¶ 177-78. As discussed above, the Louisiana PSC's conclusions on these matters are definitive. BellSouth does not pay or bill local interconnection charges for traffic termination to enhanced service providers because this traffic is jurisdictionally interstate. Id. ¶ 177.

(14) Resale. Section 271(c)(2)(B)(xiv) requires BellSouth to make its telecommunication services available for resale in accordance with the provisions of sections 251(c)(4) and 252(d)(3) of the Communications Act. These provisions, in turn, require BellSouth to provide its services at

wholesale rates, with no unreasonable or discriminatory conditions or limitations. 47 U.S.C. §§ 251(c)(4), 252(d)(3); see also 47 C.F.R. § 51.603(b) (requiring equal quality, subject to the same conditions, and with the same provisioning time intervals).

BellSouth's Statement and agreements provide CLECs wholesale rates for any services that BellSouth offers to its retail customers, with the exception of those excluded from resale requirements in accordance with the Commission's rules and the orders of the Louisiana PSC. See PrimeCo Agreement § XVI (MFN clause); Sprint Spectrum Agreement § XVII (same); MereTel Agreement § XVII (same); AT&T Agreement §§ 23-28; Statement § XIV; Compliance Order at 14; see Varner Aff. ¶¶ 184-85; Milner Aff. ¶¶ 115-18 & Ex. WKM-9 (technical service descriptions).

BellSouth has filled more than 8,000 resale orders in Louisiana and over 175,000 orders in its region. See Milner Aff. ¶ 115 & Ex. WKM-8. Testing confirms the practical availability of resale services that have not yet been purchased by any CLEC. Milner Aff. ¶ 118. All known billing problems associated with resale services have been corrected by BellSouth. Id. ¶¶ 116-17.

BellSouth's discount rate of 20.72 percent, see Statement Attach. H; AT&T Agreement § 35, was established by the Louisiana PSC in Order No. U-22020 (Nov. 12, 1996), based upon cost studies provided by BellSouth and an outside consultant's application of "avoidable" cost methodologies recommended by this Commission. See Cochran Aff. ¶ 31 & Attach. A (App. A at Tab 2). The PSC again confirmed the consistency of this discount with the Act's requirements in its Compliance Order at 14. Although not strictly relevant, it is worth noting that the Louisiana

PSC's 20.72 percent wholesale discount falls well within the Commission's now defunct proxy range. 47 C.F.R. § 51.611 (overruled).

In accordance with the Louisiana PSC's holdings, services to which the ordinary resale rules do not apply include promotions of 90 days or less (which are not subject to resale requirements),[39] grandfathered services (which may only be resold to subscribers who have already been grandfathered),[40] and contract service arrangements, or "CSAs" entered into after January 28, 1997 (which are available for resale on the same terms and conditions, including rates, BellSouth offers to the end user customers).[41] Varner Aff. ¶ 184.

A CSA is an individually negotiated arrangement between BellSouth and an end user whose local service is subject to competition. Under BellSouth's General Subscriber Services and Private Line Services Tariffs for Louisiana, CSAs may only be used where "there is a reasonable potential for uneconomic bypass of [BellSouth's] services," such that a competitive alternative is available to the end user customer at a price below BellSouth's tariffed rates but above BellSouth's incremental costs. General Subscriber Services Tariff § A5.6.1 (effective July 24, 1992); Private Line Services Tariff § B5.7.1 (effective Nov. 27, 1989) (App. D at Tab __).

The Louisiana PSC approved BellSouth's pricing of CSAs for resellers because "[r]equiring BellSouth to offer already discounted CSAs for resale at wholesale prices would

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39. AT&T Arbitration at 5 ("short-term promotions . . . should not be offered at a discount to resellers"); Order No. U-22145-A, at 3 (June 12, 1997) ("short term promotions . . . are not subject to mandatory resale).

40. AT&T Arbitration at 6.

41. Id. at 4.

create an unfair advantage for AT&T."[42] The PSC's decision on this local pricing matter is determinative. See Iowa Utils. Bd., 120 F.3d at 794-800. Indeed, although prior to the Eighth Circuit's recent decision the Commission sought to assert control over some local pricing matters, it has always acknowledged that "the substance and specificity of rules concerning which discount and promotion restrictions may be applied to resellers in marketing their services to end users is a decision best left to state commissions." Local Interconnection Order, 11 FCC Rcd at 15971, ¶ 952. Thus, the Commission's rules permit an incumbent LEC to "impose a restriction [on resale] . . . if it proves to the state commission that the restriction is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b). Although the Commission has held that the 1996 Act provides for the resale of contract and other customer-specific offerings, Local Interconnection Order, 11 FCC Rcd at 15970, ¶ 948, the Commission has never questioned State authority to determine the appropriate discount available to resellers.[43]

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[42.] AT&T Arbitration at 4. In the AT&T Arbitration and in a separate proceeding governing local competition in Louisiana generally, the PSC directed that "Contract Service Arrangements which are in place on January 28, 1997 shall be exempt from mandatory resale. All CSAs entered into after January 28, 1997, and existing CSAs upon termination after January 28, 1997 will be subject to resale at no discount." Id.; General Order, Amendments of Regulations for Competition § 1101.B.2, at 8 (March 19, 1997) (App. C, Tab 186) ("Louisiana Competition Order").

[43.] Nor for that matter is there any basis to challenge BellSouth's PSC-approved approach of restricting the resale of CSAs to the end-user for whom the CSA was established. See AT&T & LCI Motion at 17-18. As noted above, the Louisiana PSC allows BellSouth to negotiate CSAs in order to respond to particular competitive situations. Resale of an individually-tailored CSA to other customers with different competitive situations would be at odds with the underlying rationale for CSAs. In short, BellSouth has demonstrated to the Louisiana PSC that its restriction of CSAs to particular customers "is reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

The Louisiana PSC's decision not to impose a further discount for already discounted CSAs is in fact the only sensible approach. As the Commission has held, the "State commissions have established rate structures that take into account certain desired balances between residential and business rates and the goal of maximizing access by low-income consumers to telecommunications services." Local Interconnection Order, 11 FCC Rcd at 15975, ¶ 962. CSAs enable BellSouth to offer a price lower than the tariffed rate established by the Louisiana PSC to meet a competitive threat. If BellSouth lacked this flexibility, it would almost necessarily lose these customers and the contribution to total cost recovery they represent, without any opportunity to compete in a fashion that benefits the end user.

Likewise, if CLECs were entitled to an automatic 20.72 percent discount beyond the discounts already included in BellSouth's CSAs, end users would automatically be able to chop an additional discount off of BellSouth's competitive price simply by turning to BellSouth's competitors. As a practical matter, end users would never sign long-term CSAs with BellSouth; instead, they would negotiate their best price with BellSouth, sign a short-term deal, and then switch to a lower-priced reseller at the earliest opportunity. This would interfere with BellSouth's cost recovery under the Louisiana PSC's pricing regime and subvert free-market negotiations between end users and BellSouth. See generally Iowa Utils. Bd. 120 F.3d at 800-01 (noting Act's "preference" for free-market negotiations).

Conversely, the Louisiana PSC's policy regarding CSAs does not place CLECs at any competitive disadvantage. For one thing, CLECs can choose to order services for resale either at

the CSA rate, or at the tariffed retail rate minus the 20.72 percent discount. For another, the South Carolina PSC explained in the Commission's section 271 proceedings for that State,

> Because CSAs, unlike ordinary retail offerings, are individually negotiated arrangements, BellSouth does not bear ordinary marketing costs with respect to these services. It would be impossible for the Commission to determine on a case-by-case basis what additional discount, if any, is necessary to account for BellSouth's potential cost savings with respect to a particular CSA. What is clear, however, is that if applied to CSAs, the . . . resale discount applicable to BellSouth's generally available retail offerings would greatly overstate the costs avoided by BellSouth and in many cases might require BellSouth to sell services to CLECs at rates that are below BellSouth's costs.

South Carolina PSC Comments at 10, CC Dkt. No. 97-208 (Oct. 17, 1997).

There is no possible basis for speculation that BellSouth might seek to convert customers to CSAs in order to "evade" the Louisiana PSC's 20.72 percent wholesale discount. Any discount off the tariffed rate that BellSouth offers to end users through CSAs means a smaller profit for BellSouth's retail operations. Moreover, BellSouth might well earn more from a wholesale transaction at the 20.72 percent discount than a CSA at some lesser discount, because the wholesale transaction allows BellSouth to avoid negotiating the CSA, issuing end user bills, and collecting payments from the end user. Finally, the Louisiana PSC's procedures protect against any attempt to abuse the CSA process. Based on BellSouth's CSA filings, the Louisiana PSC has all the information it needs to challenge any effort by BellSouth to evade tariff restrictions on the use of CSAs.

### C. Performance Measurements

As it has with OSSs, BellSouth has agreed to provide CLECs with performance measurements regarding other checklist items. These measurements will allow interested CLECs, state commissions, and this Commission to verify that CLECs are receiving network

interconnection and access in accordance with the Act. BellSouth has implemented a data warehouse to collect and produce the data necessary to generate these measurements. Stacy Performance Aff. ¶ 13. BellSouth will provide CLECs access to this data warehouse, enabling them to obtain specific results without intervention by BellSouth. Id. ¶ 15.

BellSouth has assembled from the data warehouse data to produce two types of reports. First, BellSouth has prepared contractual measurements based on existing contractual agreements with AT&T, Time Warner and US South.[44] Second, BellSouth's permanent measurements include contractual measurements but also additional measurements that BellSouth typically presents to regulatory bodies in order to demonstrate its nondiscriminatory performance. Id. ¶ 16. Permanent measurements do not displace any CLEC-specific measurements that are outlined in particular agreements. Id. Rather, permanent measurements are measurements that BellSouth, on its own initiative, has proposed and adopted to verify that it is providing services to CLECs in a nondiscriminatory fashion. Id.

Where relevant historical data are available, BellSouth applies three standard deviations (the industry standard) to its average retail performance in order to determine upper and lower acceptable limits for each measurement. Id. ¶ 20. These calculations establish statistical process control parameters against which BellSouth's service to CLECs is compared. Id. ¶ 21. If the average performance for BellSouth's services to CLECs is higher or lower than the corresponding performance measurement for BellSouth's service to itself for three consecutive months, or if a

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[44] Of these agreements, only the AT&T agreement has been approved by the Louisiana PSC at the present time.

single monthly measure is outside of the control limits, BellSouth undertakes an investigation (known as a root cause analysis) to determine the cause of the deviation. Based on this investigation, BellSouth takes the corrective action when appropriate. Id. ¶ 23.

Some service categories do not have historical data, because they are actions that BellSouth has never before had to undertake in serving its customers. See generally Michigan Order ¶¶ 210-12. To address this absence of historical data, BellSouth has published target intervals. Stacy Performance Aff. ¶ 27. Also where sufficient data have not yet been collected for a particular service category, BellSouth will use negotiated measures to set estimated values for the average, as well as the upper and lower controls, which will be adjusted as additional data become available. Id. ¶ 28. These target intervals and negotiated performance levels will allow BellSouth to begin to generate the data that it needs for future measurements. Id. ¶ 27.

The data that BellSouth has collected and analyzed establishes that for interconnection trunking, provisioning of UNEs, and resale services, CLECs are receiving nondiscriminatory service.

Interconnection trunking: BellSouth has agreed to provide four groups of measurements related to local interconnection trunking, including data specific to Louisiana. Id. ¶ 42. These measurements are: % Provisioning Appointments Met; % Provisioning Troubles within 30 days of the Installation of New Service; Maintenance Average Duration (Receipt to Clear); and Trouble Report Rate. Id. ¶ 29.

While there currently are insufficient data from which to draw state-specific conclusions for Louisiana, the regional data reveal that CLECs are receiving interconnection trunking that is

substantially similar to what BellSouth provides itself. Id. ¶ 43. For instance, the new circuit failure rate on local interconnection trunks was better for CLECs than for BellSouth retail customers for six of the eight months that measurements were taken. Id. Ex. WNS-10.

While some blockage of CLEC trunks has occurred, it is consistent with the service levels BellSouth provides to its local customers. Id. ¶ 64. In almost all cases where CLECs have experienced trunking problems, moreover, those problems were caused either by the CLEC's failure to provide BellSouth with sufficient advance notice of its trunk request, or by the CLEC's failure to be ready to add the requested trunk on time.[45] Id. ¶¶ 66-67.

Provisioning UNEs: BellSouth has published a set of target intervals for provisioning UNEs. Id. ¶ 27 & Ex. WNS-7. BellSouth has also recently finalized a similar set of target intervals for maintenance of UNEs. Id. ¶ 27 & Ex. WNS-8. In addition, BellSouth has agreed to meet with AT&T in order to establish percentage target performance levels for UNEs. Id. ¶ 18. Until sufficient data are collected, BellSouth intends to use negotiated measures to set the estimated values needed to verify that CLECs are receiving UNEs in a manner that enables them to provide service that is substantially similar to the service that BellSouth provides its own retail customers. Id. at ¶ 28.

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[45.] For example, on July 10, 1997, a CLEC informed BellSouth that starting on August 1, 1997, and proceeding over the next four months, it was going to need 10,000 trunks installed in a single city. BellSouth simply could not provision that many trunks in such a short time period. BellSouth does not have 10,000 trunk terminations available for immediate ordering or use, and if BellSouth has to add equipment, its vendor may require up to twenty-six weeks before it can provide this equipment. Id. ¶ 66. Other CLECs have failed to provide any forecast of the trunks they will need, and have notified BellSouth of large trunk requests only after making commitments to end users. Id. ¶ 67.

For purposes of this application, BellSouth has provided data showing average installation intervals for unbundled loops. While no direct comparison to BellSouth retail services is possible, unbundled loops for CLECs were installed on time at a rate higher than 90 percent for six of the eight months in which measurements were taken. Id. ¶ 44. The rate was never lower than 86 percent, and in one month (March), the rate was 99 percent. Id.

Although the Commission suggested in its Michigan Order that average installation intervals were appropriate empirical evidence given the limitations of Ameritech's proxy data, Michigan Order at ¶ 212, these intervals depend upon the due dates requested by CLECs, whose business needs may call for due dates later than the soonest date available from BellSouth's systems in accordance with nondiscriminatory assignment procedures. See id. ¶ 45; see also Stacy OSS Aff. ¶¶ 32-37 (discussing due date assignments). Because BellSouth's assignment of due dates is nondiscriminatory, BellSouth's record of meeting those due dates provides a better indication of BellSouth's actual service performance. See Stacy Performance Aff. ¶ 45 & Exs. WNS-9, WNS-10, and WNS-11. BellSouth has provided with its application the data necessary to demonstrate nondiscrimination as to the establishment of due dates, the meeting of due dates, and average performance in this area.

Resale Services: BellSouth has developed permanent measurements for resale services, using the historical and current performance of BellSouth as the standard to establish statistical process control parameters. Id. ¶¶ 20-21. There are twenty-eight resale service measurements. Id. ¶ 40. Of these twenty-eight measurements, twenty-one indicate that CLECs are receiving either better service than BellSouth's own retail customers, or service that is within the control

parameters. Of the few measurements in which discrepancies favoring BellSouth's retail operations have occurred, the percentage point differentials are minimal, and do not suggest any discrimination or competitive disadvantage. BellSouth is currently initiating root cause analysis to investigate these areas, and will take corrective action as appropriate. Id. ¶ 41.

These measurements confirm that local interconnection trunking, unbundled loops, and resale services are available to CLECs on a nondiscriminatory basis. By making these performance measurements available to interested CLECs and to regulators, BellSouth gives these parties ample tools to ensure that BellSouth is providing and will continue to provide the nondiscriminatory access required by the Act. The measurements prevent the possibility of undetected back-sliding from BellSouth's commitments and ensure continued implementation of all checklist obligations.

## III. BELLSOUTH SATISFIES THE REQUIREMENTS OF SECTION 272

Section 271(d)(3)(B) authorizes the Commission to ensure that "the requested authorization will be carried out in accordance with the requirements of section 272." Section 272 in turn requires compliance with structural separation and nondiscrimination safeguards that prevent a Bell company from providing its long distance affiliate with an unfair advantage over competitors. As described below, BellSouth is submitting as part of this application extensive evidence that its entry into long distance will be carried out in accordance with each of the requirements of section 272 and the Commission's implementing regulations.

Separate Affiliate Requirement of Section 272(a). BellSouth Corporation has established an affiliate — BellSouth Long Distance, Inc. ("BSLD") — that will provide in-region interLATA

services in compliance with the structural separation and operational requirements of section 272. Jarvis Aff. ¶¶ 5-9 (App. A at Tab 7).

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate "shall operate independently from the Bell operating company." BSLD and BST will operate in a manner that satisfies both this statutory requirement and the Commission's implementing regulations. Jarvis Aff. ¶¶ 10-11; Cochran Aff. ¶¶ 8-19. BSLD and BST do not and will not jointly own telecommunications transmission or switching facilities or the land and buildings on which such facilities are located. Jarvis Aff. ¶ 10; Cochran Aff. ¶ 9. BST and BSLD use separate personnel to operate, install, and maintain facilities, and will continue to do so. Jarvis Aff. ¶ 10; Varner Aff. ¶ 231.

BST and BSLD also will comply with the requirements, set out in sections 272(b)(2) and 272(b)(3), that they maintain separate books and separate officers, directors, and employees. Jarvis Aff. ¶¶ 11-12; Cochran Aff. ¶¶ 11-17. In accordance with section 272(b)(4), BSLD's creditors do not and will not have recourse to BST's assets. Jarvis Aff. ¶ 13; Cochran Aff. ¶ 19.

Consistent with section 272(b)(5), all transactions between the two companies will be conducted on an arms-length basis, reduced to writing, subject to public inspection, and accounted for in accordance with all applicable Commission requirements. Jarvis Aff. ¶¶ 11-14 (describing procedures); id. ¶ 14(d) (describing procedures for posting transactions on the Internet); id. Ex. 4 (copy of Internet homepage); Cochran Aff. ¶ 20 (describing cost allocation manual).

BST and BSLD need not conduct or report transactions in accordance with the requirements of section 272 prior to receiving interLATA authorization and establishing BSLD as a section 272 affiliate. Section 271(d)(3)(B) employs the future tense, authorizing the Commission to ensure that "the requested authorization will be carried out in accordance with the requirements of section 272" (emphasis added). While "past and present behavior" under applicable rules may be relevant to ensuring future compliance with section 272 (and in Ameritech's case was "highly relevant" because Ameritech claimed already to be in compliance), Michigan Order ¶ 366, the Act does not empower the Commission to require full section 272 compliance before the BOC applicant receives interLATA authorization.

Nonetheless, in order to provide the Commission with what it may deem "relevant" information when assessing BellSouth's future compliance, BellSouth has included with its application descriptions of all transactions between BST and BSLD to date as well as of future services that may be provided. Jarvis Aff. ¶¶ 14(b)-(c). The transactions have been carried out on an arms-length basis in accordance with the Commission's applicable affiliate transaction and cost-accounting rules. Cochran Aff. ¶¶ 19-23. Accordingly, transactions conducted between March 13, 1996 (the date on which BSLD was incorporated) and August 12, 1997 (the date on which the requirements of the Accounting Safeguards Order went into effect) have been carried out in accordance with the affiliate transaction rules prescribed in the Commission's Joint Cost

Order.[46] BellSouth affiliate transactions after August 12, 1997 are conducted in accordance with the requirements of the Accounting Safeguards Order.

Agreements between BST and BSLD have been posted on the Internet in accordance with the posting procedures BST and BSLD will follow when BST operates as a section 272 affiliate. See Accounting Standards Order ¶ 122. Descriptions of transactions that have occurred between BST and BSLD (as provided in the accompanying affidavit of Victor Jarvis) also are being made available on the Internet through BellSouth's homepage, located at ⟨http://www.bellsouthcorp.com⟩. Jarvis Aff. ¶ 14(d); Cochran Aff. ¶ 26.

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits BST from discriminating between BSLD and any other entity. In compliance with this provision and Commission regulations, and subject to the joint marketing authority granted by section 272(g), BST will make available to unaffiliated entities any goods, services, facilities and information that BST provides to BSLD at the same rates, terms, and conditions. Varner Aff. ¶ 196. These may include exchange access, interconnection, collocation, UNEs, resold services, access to OSSs, and administrative services. Id. ¶¶ 197-200. To the extent BST develops new services for or with BSLD, it will also cooperate with other entities on a nondiscriminatory basis to develop such services, so long as it is required to do so under section 272. Id. ¶ 200. BST does not and will not, for so long as the requirement applies, discriminate between BSLD and other entities with

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46. Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1304, 1328 (1987), recon., 2 FCC Rcd 6283, further recon., 3 FCC Rcd 6701, aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

regard to dissemination of technical information and interconnection standards related to telephone exchange and exchange access services, or with regard to protection of confidential network or customer information. Id. ¶¶ 201-203; see also infra Part IV.D.1 (describing regulatory and practical protections against technical discrimination). Nor will BST disclose any individually identifiable Customer Proprietary Network Information ("CPNI") to BSLD except to the extent that such disclosure is consistent with section 272 and Commission rules. Varner Aff. ¶ 206. BST will continue to provide public notice regarding any network change that will affect a competing telecommunications carrier's performance or ability to provide service, or will affect BST's interoperability with other telecommunications carriers. Id. ¶ 204.

As required by section 272(c)(2), BST will account for all transactions between BSLD and BST in accordance with applicable Commission rules. See Cochran Aff. ¶¶ 20-23.

Audit Requirements of Section 272(d). Pursuant to section 272(d)(1), BST will obtain and pay for a biennial federal/state audit, commencing after section 272's requirements become applicable. See Cochran Aff. ¶ 27. In accordance with section 272(d)(2), BST will require the independent auditor to provide this Commission and the Louisiana PSC with access to working papers and supporting materials relating to this audit. Id. ¶ 30. And, as required by section 272(d)(3), BST and its affiliates, including BSLD and BellSouth Corporation, will provide the independent auditor, the Commission, and the Louisiana PSC with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements under section 272(b). Id. ¶ 29.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), BST will fulfill any requests from unaffiliated entities for installation and maintenance of telephone exchange and exchange access services within a period no longer than the period in which it provides such services to BSLD. Varner Aff. ¶ 209. In addition, BellSouth will comply with all applicable Commission monitoring and reporting requirements. Id. ¶ 212.

BST will comply with section 272(e)(2) by refusing to provide any facilities, services, or information concerning its provision of exchange access to BSLD unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions. Varner Aff. ¶ 216. In accordance with section 272(e)(3), BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated interexchange carrier for such service. Id. ¶¶ 224-225. Where BST uses access for provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange carrier. Id. ¶ 225. Finally, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, BST will make such services or facilities available to all carriers at the same rates and on the same terms and conditions, in accordance with section 272(e)(4). Id. ¶ 216.

Joint Marketing Provisions of Section 272(g). Pursuant to 272(g)(1), BSLD will not market or sell BST's telephone exchange service unless BST permits BSLD's competitors to do so as well. Varner Aff. ¶ 228.

With respect to joint marketing, BellSouth has petitioned the Commission to reconsider its discussion of Ameritech Michigan's proposed "telemarketing script," because that discussion may

be read as forbidding a Bell company from mentioning its long distance affiliate prior to reading a list of all available carriers in random order. See Michigan Order ¶¶ 375-376; Varner Aff. ¶¶ 223-24.[47] Section 251(g) preserves a BOC's pre-existing obligation to provide equal access. The Act, however, also authorizes the BOCs and their section 272 affiliates to market services jointly upon receiving interLATA relief under section 271. 47 U.S.C. § 272(g)(2). In the Non-Accounting Safeguards Order the Commission struck a balance between these provisions. The Commission explained that "the continuing obligation to advise new customers of other interLATA options is not incompatible with the BOCs' right to market and sell the services of their section 272 affiliates under section 272(g)."[48] Rather, a BOC can meet its equal access obligations in the joint marketing context by "inform[ing] new local exchange customers of their right to select the interLATA carrier of their choice and tak[ing] the customer's order for the interLATA carrier the customer selects." Id.

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[47.] Another concern expressed by the Commission in the Michigan Order related to Ameritech's "Winback program." Michigan Order ¶¶ 379-380. As explained in the Varner Affidavit, BellSouth will not engage in "winback" campaigns for residential customers at least for the duration of this year. When BellSouth implements any such campaign, it will comply with section 222 of the Act and Commission regulations. Varner Aff. ¶ 228. With respect to large business customers, BellSouth will not encourage any customer to breach a contract with a competitor, but will limit its marketing efforts to contacting customers regarding new services and services similar to those under contract. Id. ¶ 229.

[48.] First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 21905, 22046, ¶ 292 (1996) ("Non-Accounting Safeguards Order"), modified on recon. 12 FCC Rcd 2297(1997), further recon. 12 FCC Rcd 8653 (1997), pet'n for review pending sub nom. Bell Atlantic Tel. Cos. v. FCC, No. 97-1432 (D.C. Cir. filed July 11, 1997).

When explaining that the two provisions are compatible, the Commission relied on the ex parte comments of NYNEX, id. & n.764, in which NYNEX set forth a marketing script reflecting the fact that section 251(g) "does not continue the MFJ's prohibition against 'marketing,'" but "only continues the requirement to advise new customers of available carriers if the customer does not name a long distance carrier."[49] The NYNEX script that the Commission cited approvingly informed customers that they had a choice of carriers, but did not require NYNEX representatives to list all of the eligible interexchange carriers until after NYNEX had mentioned its own long distance affiliate and asked the customer if he or she had already made a selection. Id.

This balanced approach makes sense. Any requirement that the BOC's long distance affiliate be mentioned only as part of a random list would nullify the BOC's statutory joint marketing right. Moreover, requiring a BOC to list every interexchange carrier even when the customer (after thirteen years of equal access and exposure to numerous carriers' marketing efforts) has already made up his or her mind would impose a needlessly burdensome obligation that would slow the presubscription process and annoy the BOC's local customers. Such a requirement also would be flatly inconsistent with the Commission's prior recognition that section 251(g) does not add to a BOC's pre-existing equal access obligations and that, under section 272(g), a BOC must be permitted to market the services of its long distance affiliate. Non-Accounting Safeguards Order, 11 FCC Rcd at 22046, ¶ 292. If the statute's express joint

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[49.] Letter from Susanne Guyer, Executive Director, Federal Regulatory Policy Issues, NYNEX to William F. Caton, Acting Secretary, FCC at 3 (Oct. 23, 1996) (emphasis added).

marketing authorization is to retain any meaning, a BOC cannot be denied the opportunity to bring its affiliate's services to the customer's attention in a preferential fashion.[50]

Compliance. BSLD has developed a compliance plan to ensure satisfaction of its obligations under section 272. Likewise, BST has an extensive compliance program in place, which will be expanded to include the company's non-discrimination obligations under section 272. Agerton Aff. ¶¶ 5-17 (App. A at Tab 1). These procedures, which are similar to procedures used to comply with judicial restrictions under the Modification of Final Judgment ("MFJ"), will ensure that the letter and spirit of section 272 and its implementing regulations are honored.

## IV. BELLSOUTH'S ENTRY INTO THE INTERLATA SERVICES MARKET WILL PROMOTE COMPETITION AND FURTHER THE PUBLIC INTEREST

The final element of the Commission's section 271 analysis is a determination whether interLATA entry "is consistent with the public interest, convenience and necessity." 47 U.S.C.

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50. See Babbitt v. Sweet Home Chapter of Communities for a Great Oregon , 115 S. Ct. 2407, 2426 (1995) ("statutes should be read . . . to give independent effect to all their provisions"); see also Weinberger v. Hynson, Westscott and Dunning, Inc., 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible'"). The Order's restrictions on joint marketing raise First Amendment concerns as well. The Commission may not restrict a BOC's ability to disclose "truthful, verifiable, and nonmisleading factual information" about its long distance affiliate's offerings absent a "substantial" government interest that reasonably "fit[s]" the Commission's restriction. Rubin v. Coors Brewing Co., 115 S. Ct. 1585, 1590 (1995); Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 416 (1993). Because the Order's approach to presubscription would deprive the BOCs of a statutory right to engage in joint marketing that Congress granted the Bell companies after full deliberations, it fails both prongs of this test. The Commission's suggested approach might, in addition, run afoul of the constitutional prohibition on coercing parties to deliver messages with which they disagree. See Pacific Gas & Elec. Co. v. Public Util. Comm'n, 475 U.S. 1, 10-11 (1986); cf. Glickman v. Wileman Bros. & Elliott, Inc., 117 S. Ct. 2130, 2138 (1997) (contrasting situation in which complainants "agree with the central message of the speech").

§ 271(d)(3)(C). The remainder of this brief demonstrates that BellSouth's provision of interLATA services in Louisiana meets this test.

The Louisiana PSC held unanimously below that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Compliance Order at 14. This conclusion is consistent with Congress's expectation, in passing the 1996 Act, that "removing all court ordered barriers to competition — including the MFJ interLATA restriction — will benefit consumers by lowering prices and accelerating innovation." 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux). The U.S. Department of Justice agrees that in-region interLATA entry by Bell companies would promote long distance competition.[51] This Commission also recently affirmed that "BOC entry into the long distance market will further Congress's objectives of promoting competition and deregulation of telecommunications markets." Michigan Order ¶ 381.

The damage done by continuing to exclude the Bell companies from in-region, interLATA services is staggering. As the attached affidavit of Professor Jerry Hausman of MIT details, delaying Bell company interLATA entry has cost U.S. residential consumers $7 billion per year, effectively imposing an annual tax on each long distance customer. Hausman Aff. ¶¶ 5, 21-23, 24 (App. A at Tab 5). This public burden cannot be justified by a desire to promote local competition. The 1996 Act already opens local markets and any additional benefit from applying some higher standard would be much less than the costs of continuing to curtail interLATA

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[51.] Evaluation of the United States Department of Justice, Application of SBC Communications Inc., CC Docket No. 97-121, at 3-4 (FCC filed May 16, 1997).

competition. Id. ¶¶ 11, 24-25; see also Michigan Order ¶¶ 387, 390 (suggesting higher standards). As Professor Hausman explains, "[t]he consumer welfare gains from increased competition in long distance will more than outweigh the incremental gain from the last step to regulatory perfection" that parties such as the Department of Justice are urging this Commission to enforce as a prerequisite to interLATA relief. Hausman Aff. ¶ 25.

In Louisiana there is no offsetting benefit at all from delaying long distance competition because BellSouth's interLATA entry would increase local competition. The Louisiana PSC found that approving BellSouth's application would benefit "both local and long distance" consumers in Louisiana. Compliance Order at 14. Allowing BellSouth's entry would end the incentives of potential competitors to go slow in Louisiana, or to limit their local offerings, in an effort to delay BellSouth's entry while pursuing more profitable markets elsewhere.

### A. The Scope of the Public Interest Inquiry

While the public interest inquiry generally may provide the Commission with "broad discretion . . . to consider factors relevant to the achievement of the goals and objectives of" the legislation, Michigan Order ¶ 385, it is limited by Congress's specific determinations.[52] In the 1996 Act, Congress decided that it would open local markets by enacting a competitive checklist that sets forth concrete obligations in plain terms. The "checklist" was Congress's test of "what

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[52.] See NAACP v. FPC, 425 U.S. 662, 669 (1976) ("the use of the words 'public interest' in a regulatory statute . . . take meaning from the purposes of the regulatory legislation"); New York Central Sec. Corp. v. United States, 287 U.S. 12, 25 (1932) ("the term public interest' as thus used [in a statute] is not a concept without ascertainable criteria"); Business Roundtable v. SEC, 905 F.2d 406, 413 (D.C. Cir. 1990) ("broad 'public interest' mandates must be limited to 'the purposes Congress had in mind when it enacted [the] legislation'" (quoting NAACP v. FPC, 425 U.S. at 670)).

. . . competition would encompass," 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings), and Congress forbade the Commission from second-guessing its judgment or modifying its checklist "by rule or otherwise." 47 U.S.C. § 271(d)(4) (emphasis added); see also 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (noting adoption of checklist approach in place of "actual competition" test). As the Chairman of the Senate Commerce Committee reassured Senators, "[t]he FCC's public-interest review is constrained by the statute" because "the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist." 141 Cong. Rec. S7967 (daily ed. June 8, 1995) (statement of Sen. Pressler). Accordingly, the Commission may not use the public interest inquiry to add local competition criteria beyond those that Congress included in the checklist.

The Michigan Order nevertheless suggests that public interest approval should be conditioned in every case on exceeding the checklist. The Commission reasoned that because Congress (1) wanted the Bell companies to enter long distance only after local markets are open and (2) included both the competitive checklist and the public interest test in section 271, Congress must have viewed the competitive checklist as an inadequate mechanism to open local markets.[53] But in fact, Congress wanted the Commission to examine an essential element of Bell company interLATA entry not addressed by any other part of section 271: the competitive

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53. See Michigan Order ¶ 389 (reasoning that if "compliance with the checklist alone is sufficient to open a BOC's local telecommunications markets to competition," then "BOC entry into the in-region interLATA services market would always be consistent with the public interest requirement whenever a BOC has implemented the competitive checklist").

consequences of that entry, given the checklist and section 272's safeguards.[54] The Commission's equation of the public interest inquiry with its own assessment of local competition is implausible on its face, for it assumes that Congress devoted countless hours to honing the smallest details of the checklist and forbade the Commission from altering them, see 47 U.S.C. § 271(d)(4), and yet wanted the Commission to use a different standard of open local markets as the dispositive test in considering BOC applications.[55]

The point of the public interest test is thus to allow the Commission to examine the effect on competition of Bell company entry into the interLATA market. The principal focus of the inquiry must be the market where the effects of Bell company entry would directly be felt: the interLATA market. It cannot be the local market, for issues related solely to local competition are conclusively determined by compliance with the competitive checklist.

The Commission may as part of its public interest inquiry evaluate such matters as the current state of long distance competition and the degree to which the checklist, section 272, and other regulatory safeguards constrain anticompetitive conduct in the interLATA market. These inquiries are familiar for the Commission. As long as a decade ago, for example, the Commission addressed the hotly contested issue whether regulatory safeguards and market conditions were then sufficient to preclude the Bell companies from impeding competition in long distance. The Commission concluded that they were and thus agreed with the Department of Justice that the

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54. See Michigan Order ¶ 388 (discussing "congressional determination" that open local markets and regulatory safeguards will protect interLATA competition).

55. See, e.g., 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (describing extensive negotiations and work that went into developing the competitive checklist).

MFJ's line of business restrictions should be lifted, notwithstanding that the Bell companies in 1987 had no obligations to competitors comparable to the checklist.[56]

The Commission also may consider individual circumstances that Congress could not have anticipated — such as the applicant's history of compliance or non-compliance with Commission rules. See Michigan Order ¶ 397. The Commission may not, however, use the public interest inquiry to substitute its own local competition plan for that established by Congress. Over-regulation of local and long distance markets today cannot be defended in the name of ideal competition tomorrow.[57] The Commission also may not use the public interest inquiry to rewrite express provisions of the Act.[58] In particular, the public interest test may not be used as a vehicle

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[56.] Responsive Comments of the Federal Communications Commission As Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Companies by the Modification of Final Judgment, at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C. filed Apr. 27, 1987).

[57.] See MCI Telecommunications Corp. v. FCC, 627 F.2d 322, 341 (D.C. Cir. 1980) ("The best must not become the enemy of the good."); see generally 47 U.S.C. § 271(d)(4); Conference Report at 1 (enacting a "de-regulatory national policy framework"); 141 Cong. Rec. S7895 (daily ed. June 7, 1995) (statement of Sen. Hollings) ("We should not attempt to micro-manage the marketplace"); 141 Cong. Rec. H8282 (daily ed. Aug. 2, 1995) (statement of Rep. Bliley) (Congress wanted to promote "competition, and not Government micro-management of markets"); accord Local Interconnection Order, 11 FCC Rcd at 15509, ¶ 12 ("look[ing] to the market, not to regulation" to determine entry strategies); see also Hausman Aff. ¶ 10 ("The Commission is once again failing to recognize that regulation is meant to benefit consumers, not to further other objectives of regulators.").

[58.] See NAACP v. FPC, 425 U.S. at 669; United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) (when "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law" statutory provision's meaning is "clarified by the remainder of the statutory scheme") (internal quotation marks omitted); National Broadcasting Co. v. United States, 319 U.S. 190, 216 (1943) (the public interest "is to be interpreted by its context").

for circumventing the specific statutory restrictions of sections 251 and 252 regarding such matters as the pricing of UNEs and resold services. Although this issue is now pending before the Eighth Circuit,[59] that Court just recently confirmed that this Commission does not have "jurisdiction over intrastate telecommunications matters" under the Communications Act unless Congress has drafted provisions that "expressly apply to intrastate telecommunications matters and explicitly direct the FCC to implement the act's intrastate requirements."[60] Because section 252 reserves pricing authority to the States, and the public interest provisions of section 271 do not purport to override that delegation of authority, the FCC is powerless to usurp State jurisdiction over pricing through the section 271 process.

### B. The Current Long Distance Oligopoly Limits Competition

Turning to the core of the Commission's proper inquiry, it has long been settled that the benefits of new entry in long distance presumptively outweigh any risk of harm,[61] even where the

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[59] See Petition of the State Commission Parties and the National Association of Regulatory Utility Commissioners for Issuance and Enforcement of the Mandate (filed Sept. 17, 1997) & Petition for Immediate Issuance and Enforcement of the Mandate (filed Sept. 18, 1997), Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir.).

[60] California v. FCC, 1997 U.S. App. LEXIS 22343, at *10 (emphasis in original) (citing Louisiana Pub. Serv. Comm'n v. FCC, 473 U.S. 355, 376-77 (1986)).

[61] See Report and Order, Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. off of the Island of Puerto Rico, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) ("plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public") (emphasis added); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, MTS-WATS Market Structure Inquiry, 81 F.C.C.2d 177, 201-02, ¶ 103 (1980) (Commission will "refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects").

long distance entrant is an incumbent local exchange carrier.[62] That presumption is especially apt when applied to this application.

The interexchange market is highly concentrated and systematically non-competitive. In the Michigan Order, the Commission repeated its "concern[s] . . . that not all segments of this market appear to be subject to vigorous competition," and "about the relative lack of competition among carriers to serve low volume long distance customers." Michigan Order ¶ 16. Likewise, in Louisiana, the PSC "has instituted its own investigation into whether long distance companies currently operating in Louisiana have properly passed access charge reductions on to their ratepayers," based on "serious questions raised at both the national level and within Louisiana regarding abuse in the long distance market." Compliance Order at 14.

In a competitive market, entry by new firms and competition by incumbent firms drive prices toward cost. See Schmalensee Aff. ¶ 9 (App. A at Tab 11); Paul W. MacAvoy, The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services 173-74 (1996) ("MacAvoy Study"). Yet long distance carriers have failed to pass on cost savings to their customers. Access charges constitute nearly half of interexchange carriers' total costs. Hausman Aff. ¶ 30. From January 1990 to July 1996 these charges declined by 27 percent, yielding at least a 13 percent reduction in interexchange carriers' total costs during that period. Id. Yet carriers have raised their prices despite these declines in access charges. See

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62. See Inquiry into Policies to Be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. Off the Island of Puerto Rico, 2 FCC Rcd at 6604, ¶ 30 (Commission's "open entry policy," "clearly contemplate[s] competitive entry by independent local exchange companies") (citing MTS-WATS Market Structure Inquiry, 81 F.C.C.2d at 186).

Schmalensee Aff. ¶ 9 (9% drop in access charges between 1993 and 1996, while AT&T raises rates 22%); Hausman ¶¶ 28-32. Indeed, they have raised prices despite additional savings from new transmission technologies and lower equipment prices. Id.; see Schmalensee Aff. ¶ 9; MacAvoy Study at 96; WEFA Study at p. 11 (App. C at Tab 23) (failure to pass through cost reductions of 6 to 7 percent per year). The major carriers have, moreover, raised their discounted rates along with the basic rates off of which discounts are taken. Hausman Aff. ¶ 31; see Schmalensee Aff. ¶¶ 11, 16-17 (discounted rates yield "supracompetitive profits").

Recent flat-rate promotions do not mark a substantial departure from the longstanding pattern of lock-step price increases. Schmalensee Aff. ¶¶ 12-14; Hausman Aff. ¶ 32. AT&T's flat rate of 15 cents per minute — higher than its standard evening rate — does not benefit typical residential callers who place most calls during off-peak hours. Schmalensee Aff. ¶ 13. MCI's flat rate of 14.5 cents and Sprint's two-tiered plan of a 25 cent peak rate and 10 cent off-peak rate also provide modest relief at best.[63] The monthly consumer price index for interstate toll calls rose steadily during 1995 and 1996, with only minor declines in early 1997. See WEFA Study at p. 10. As Professor Schmalensee points out, "the only reason that many consumers might find the One Rate plan attractive today is that AT&T has substantially raised its basic rates over the last several years." Schmalensee Aff. ¶ 14.

To the extent that there have been price reductions, they consist simply of passing only a portion of the interexchange carriers' savings from recent access charge reductions, and were effected only because the Commission required AT&T to share some of its windfall with

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63. See AT&T Calls MCI Flat Pricing More Than a Coincidence, Newsbytes, Sept. 30, 1996.

residential consumers who pay undiscounted basic rates. See Hausman Aff. ¶ 32 (noting that none of the access charge savings was passed on to discount customers). In a competitive industry, regulators do not need to strong-arm competitors into passing on cost-savings to consumers. See Schmalensee Aff. ¶ 9.

The major carriers themselves concede that they do not compete for the business of the lowest volume callers. See id. ¶ 15. They have in the past claimed that these customers are served below cost, but that does not explain why mid-volume callers are denied discounts. See id. ¶¶ 15-17. Besides, even if claims of below-cost pricing were true, they would only highlight the need for additional competition to place pressure upon all carriers to lower operational and marketing costs.

### C. Market Evidence Confirms that BellSouth's Entry into the InterLATA Market in Louisiana Will Benefit Consumers

BellSouth's entry into interLATA services in Louisiana will provide the needed competition and benefit long distance consumers through lower prices and/or higher quality service. Moreover, by chipping away at costly barriers between local and long distance services, BellSouth's entry will bring further benefits. The United States is the only nation in the world that rigidly divides local from long distance telephone service and thereby deprives consumers the benefits of both vertical integration and additional competitors in long distance. Hausman ¶¶ 26-27; see also Gilbert Aff. ¶ 44 (App. A at Tab 3). Despite hypothetical possibilities of anticompetitive conduct, every other country that has permitted competition in long distance has decided that the benefits of allowing incumbent LECs to participate outweighs possible anticompetitive concerns. Hausman Aff. ¶ 26. The record of incumbent LECs' competitively

beneficial provision of vertically related services makes clear that the unanimous conclusion of all these other nations is correct.

*1. Evidence of Competition Where LECs Have Been Allowed to Offer Long Distance*

Uniform historical experience confirms the potential benefits of in-region interLATA entry by BellSouth. As the Commission itself has recognized, the "recent successes of [SNET] and GTE in attracting customers for their long distance services illustrates the ability of local carriers to garner a significant share of the long distance market rapidly;" "recent studies" based upon these positive market experiences "have predicted that AT&T's share of the long distance market may fall to 30 percent with BOC entry;" and such "additional competition in the long distance market is precisely what the 1996 Act contemplates and is welcomed." Michigan Order ¶ 15.

Long distance customers in Connecticut have benefitted from SNET's price competition since it entered the interstate market in 1994.[64] On average, SNET's residential long distance rates have been 17-18 percent lower than AT&T's. Hausman Aff. ¶¶ 16-19. These savings have especially benefitted low-volume callers who, prior to SNET's entrance, had disproportionately stayed with AT&T because they were ignored by other carriers. See Schmalensee Aff. ¶¶ 25-28. SNET has shown both a willingness and ability to compete for this segment of the market, attracting a much higher share of interstate customers than interstate revenues.[65]

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64. Consumers of intrastate services also have benefitted, as AT&T responded to SNET's long distance offerings with competitive intrastate offerings. See Gilbert Aff. ¶¶ 37-38.

65. See Susan Jackson, A Telecom Yankee Defends its Turf, Business Week, Oct. 28, 1996, at 167.

To compete with SNET, AT&T petitioned the Commission for authority to reduce its long distance rates specifically for Connecticut.[66] AT&T's stated reason for the petition was "the rapidly emerging competition from SNET in Connecticut."[67] AT&T thus effectively admitted that it faces more intense competition in Connecticut than elsewhere because the incumbent LEC has been allowed to enter the long distance market.[68]

The two geographic corridors running from New York City and Philadelphia to New Jersey offer another example in which incumbent local exchange carriers — in this case Bell Atlantic and NYNEX — have competed in in-region, interLATA services by setting prices below those of the major carriers. AT&T concedes that Bell Atlantic's corridor rates are as much as one-third lower than AT&T's,[69] and credits Bell Atlantic's widespread marketing of "sav[ings] over AT&T's basic rates" for Bell Atlantic's 20 percent market share of interstate corridor calls.[70] See Taylor Direct Testimony at p. 18 (App. C at Tab 23). AT&T and MCI sought permission to reduce their rates in these corridors precisely because they face more intense competition there

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66. See AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace & Implementation of Section 254(g), CC Docket No. 96-61 (FCC Apr. 19, 1996) ("AT&T Rate Averaging Comments"); AT&T Corp.'s Petition for Reconsideration, Policy and Rules Concerning the Interstate, Interexchange Marketplace at 2-5 (FCC Sept. 16, 1996); see also supra at 3-4 (discussing nationwide rate increases).

67. AT&T Petition for Reconsideration at 2.

68. See id. at 2-5; AT&T Rate Averaging Comments at 29.

69. AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 Attachment A (FCC filed Oct. 23, 1996) ("AT&T Waiver Petition").

70. Id. at 3.

than elsewhere.[71] Neither questions that consumers in these corridors are better off because of price competition from the incumbent Bell company.[72]

Evidence from foreign markets confirms this domestic experience. In Canada, where the incumbent local carrier has been allowed to offer long distance toll service, long distance rates are lower than in this country even though carriers use essentially the same equipment as in the United States to serve less densely populated areas. Hausman Aff. ¶ 27; see Gilbert Aff. ¶ 44 & n.70. Conversely, healthy competition to the vertically integrated incumbent carrier has developed in the United Kingdom, notwithstanding that regulators have done considerably less to open local markets than was done by the 1996 Act in the United States. Gilbert Aff. ¶ 44.

*2. BellSouth Is Suited to Break Up the Interexchange Oligopoly in Louisiana*

BellSouth will offer consumers these same sorts of competitive benefits when it provides in-region, interLATA service in Louisiana.

BellSouth has an affirmative incentive to lower long distance prices in Louisiana, because increased interLATA usage will increase usage of BellSouth's access services as well. See Hausman Aff. ¶¶ 12-14. Indeed, BellSouth has committed, upon receiving interLATA authority, to setting its initial basic rates at least 5% lower than the corresponding rates of the largest

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[71] See id. at 1, 5; MCI Comments at 1, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) ("MCI Comments") (petitioning the Commission "so that [MCI] likewise will be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T").

[72] See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's "arguments").

interexchange carrier. See Harralson Testimony at p. 1219 (App. C at Tab 68). All types of consumers will benefit. For example, in addition to authorizing carriage of calls "originating in" Louisiana under section 271(b)(1), approval of this application will further benefit competition by allowing BellSouth to provide interLATA toll-free and private line services under section 271(j). See Jarvis Aff. ¶ 5. BellSouth thus will be able to provide customers in Louisiana inbound 800 and 888 service from any location across LATA boundaries (relief that was granted to the BOCs for out-of-region customers under sections 271(b)(2) and 271(j)).

BellSouth is, moreover, well-positioned to spur the competition that will lower interexchange prices. BellSouth has honed its marketing skills as a wireless carrier in Louisiana, as well as a provider of other competitive offerings such as exchange access to business customers, Centrex service, customer premises equipment, and directories. These experiences will enable BellSouth to provide better interexchange services to Louisiana and to sell them effectively. See Schmalensee Aff. ¶¶ 30-37. BellSouth also could reduce costs by using existing sales and customer support systems (in compliance with the requirements of section 272). See Gilbert Aff. ¶¶ 24-28; Schmalensee Aff. ¶ 29. AT&T secured approval to acquire McCaw in part on such grounds. Applications of Craig O. McCaw, 9 FCC Rcd 5836, 5885, ¶ 83 (1994), aff'd sub nom. SBC Communications Inc. v. FCC 56 F.3d 1484 (D.C. Cir. 1995).

Above all, however, BellSouth's brand name will make it a strong competitor to the three major incumbents. The BellSouth brand is recognized by approximately 70 percent of consumers in region — less than AT&T and MCI, but high in relation to other potential entrants into long distance. Gilbert Aff. ¶ 17. BellSouth's reputation is on par with that of the major incumbent

interexchange carriers: better than three out of four customers rated BellSouth as "very good" in the categories of customer service and service reliability/product quality. Schmalensee Aff. ¶ 32. Indeed, BellSouth received the highest customer satisfaction rating of any major LEC in a recent survey.[73] These factors will give BellSouth lower marketing costs in-region than other potential new entrants and position BellSouth as a serious competitor to AT&T, MCI, and Sprint.[74]

BellSouth's marketing strength will be most pronounced among current BellSouth customers who are part of a low-volume market segment that is "neglected in the competition among interexchange carriers." Schmalensee Aff. ¶ 26. The failure of the three large carriers to market services to this group leads many residential and small business customers to choose AT&T out of inertia, without giving other carriers serious consideration. See id. ¶¶ 27-28. If BellSouth (and other Bell companies across the country) can make competitive inroads, however, AT&T, MCI, and Sprint are likely to respond with new promotions and expanded eligibility for targeted offerings, to the benefit of low-volume callers. Id. ¶ 37.

Likewise, BellSouth will be able to offer bundled service offerings and "one stop shopping." Bundled service packages can "have clear advantages for the public," such as greater convenience and the ability to secure volume discounts by aggregating purchases of different

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[73.] J.D. Power and Associates, 1997 Residential Local Telephone Study, RBOCs Achieve Higher Customer Satisfaction than Independent Carriers: BellSouth Top Carrier for Second Year, Aug. 26, 1997 <http://www.jdpower.com//0826pho.html>.

[74.] See Schmalensee Aff. ¶ 37; Gilbert Aff. ¶ 28; see also Applications of Craig O. McCaw, 9 FCC Rcd at 5871-72, ¶ 57 (AT&T's acquisition of McCaw would serve the public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how).

services.[75] The Commission thus has supported developments that promise to speed the introduction of bundled services at the retail level. This was one reason why the Commission approved AT&T's buyout of McCaw Cellular Communications, saying it "would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification" for doing so. 9 FCC Rcd at 5880, ¶ 75; see Gilbert Aff. ¶ 19.

BellSouth will not be the only, or even the first, carrier to market bundled offerings, and it will have no unfair advantage in providing bundled packages. See Gilbert Aff. ¶¶ 7-16.[76] Bundled offerings are the cornerstone of interexchange carriers' plans for entering the local exchange. AT&T, for example, has announced that it plans to "take a basic $25-a-month long distance customer and convert him or her into a $100-a-month customer for a broader bundle of services." AT&T Challenges the Bell Companies," Wall St. J., June 12, 1996, at A3; see Gilbert Aff. ¶¶ 7-19 (describing AT&T's plans). MCI is offering long distance, cellular service, Internet access, and MCImetro local service on the same bill in some States. Gilbert Aff. ¶ 10. Sprint is bundling its

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75. Applications of Craig O. McCaw, 9 FCC Rcd at 5879-80, ¶¶ 73-75; see 141 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statements of Sen. Harkin) (1996 Act will allow "low cost integrated service with the convenience of having only one vendor and one bill to deal with"); S. Rep. No. 104-23, at 43 (joint offerings constitute a "significant competitive marketing tool"); see also Gilbert Aff. ¶ 16 ("Consumers will benefit from the integration of service offerings and the marketing of bundled products through convenience and through the increased number and variety of telecommunications options available in the marketplace."); Hausman Aff. ¶ 7.

76. As Gilbert explains, "[a]ny argument that the offering of integrated packages of local and long distance services could lead to a return of the market structure that existed prior to the Modification of Final Judgment ("MFJ") is not justified by market realities. The structure of the telecommunications marketplace has changed dramatically since the MFJ's break-up of AT&T. Not only will there now be several competitors offering packages in a given geographic market, but the local and long distance markets separately will be subject to competition." Gilbert Aff. ¶ 23.

long distance offerings with local wireline service, cable television, and PCS offerings. Id. ¶¶ 11-14. Following MFS Communications' merger with the Internet access provider UUNet and the long distance carrier WorldCom (to form the entity that now wants to buy MCI), the merged entity's President explained: "We are creating the first company since the breakup of AT&T to bundle together local and long distance service carried over an international end-to-end fiber network owned or controlled by a single company." Communications Firms to Join in $12-Billion Deal, Los Angeles Times, August 27, 1996, at A-1 (see also Gilbert Aff. ¶ 15).

A recent study by J.D. Power and Associates found that 65 percent of households are likely to sign up with one company for all their telecommunications services, with the majority choosing their current long distance carrier as that sole provider. Gilbert Aff. ¶ 18. Congress recognized the importance of bundled offerings to the development of local and long distance competition, noting that a "full 86 percent of . . . small business owners want one-stop shopping for telecommunications services" and that "[t]wo-thirds of them want to be able to choose one provider that can give them both local and long-distance telephone service." 141 Cong. Rec. S7903 (daily ed. June 7, 1995) (statement of Sen. Burns). Legislators considered bundling so important that they barred the major interexchange carriers from jointly marketing resold local service with their own long distance services until the incumbent Bell company has an equal ability to combine local and long distance offerings. 47 U.S.C. § 271(e)(1).

Approval of BellSouth's petition also will lift remaining prohibitions on BellSouth's participation in telecommunications equipment manufacturing and allow BellSouth to pursue all opportunities in this area, subject to statutory and regulatory safeguards. See id. § 273(a);

S. Rep. No. 104-23, at 67 (allowing Bell Companies to engage in manufacturing will "foste[r] competition . . . and creat[e] jobs along the way"). Only the currently dominant equipment manufacturers support these archaic restrictions, for "[a]lmost everyone else in the domestic market has been disadvantaged, either from a negative impact on efficiency or through loss of investment and opportunities." Kettler Aff. ¶ 17 (App. A at Tab 8). For instance, smaller telecommunications equipment manufacturers have strongly supported BellSouth's application for interLATA relief in South Carolina, based upon their expectation that BellSouth's ability to "have more normal business relationships" with unaffiliated manufacturers will benefit the domestic manufacturing industry as a whole. Comments of Ad Hoc Manufacturers, Application by BellSouth for Provision of In-Region, InterLATA Services in South Carolina at 17-24, CC Dkt. 97-208 (FCC Oct. 20, 1997).

Finally, approval of this application would trigger "1+" intraLATA competition in Louisiana, intensifying competition in the intraLATA toll market as well. See 47 U.S.C. § 271(e)(2). The Louisiana PSC has issued a General Order establishing regulations for 1+ presubscription, and BellSouth has filed a tariff with the State commission for services that will be required to implement intraLATA toll dialing parity. Varner Aff. ¶ 199 & Ex. AJV-5. These tariffed offerings will become effective when BellSouth receives authorization to provide interLATA services in Louisiana. Id. ¶ 191. IntraLATA toll presubscription will be implemented using a two-PIC method, allowing the customer to choose different carriers for intraLATA toll and interLATA calls. Id. ¶ 192. Cost recovery for the incremental costs of dialing parity will be implemented in a competitively neutral manner over a four year period. Id. ¶ 193.

The rivalry between SNET and AT&T in Connecticut — which quickly spilled over from interstate services to intrastate toll — indicates how, in a world of bundled service offerings, greater competition in interLATA services will benefit Louisianans across a range of telecommunications services including local and intraLATA toll. See Gilbert Aff. ¶¶ 34-38; Hausman Aff. ¶¶ 10 n.13, 22.

While it is difficult to quantify such benefits with precision, estimates are available. An analysis conducted by the WEFA Group predicts that long-distance rates will drop by 25 percent as a result of Bell company in-region, interLATA entry. WEFA Study at p. 11; Raimondi Testimony at p. 5 (App. C at Tab 23). The study estimates that BellSouth's entry into the interLATA long distance markets throughout Louisiana will by the year 2006 generate an additional 7,600 new jobs in the state and increase the gross state product by approximately $922 million. WEFA Study at pp. 1-2, 21. An independent economist, Loren Scott, Chairman of the Economics Department and Director of the Economic Development and Forecasting Division of Louisiana State University, has confirmed that the WEFA model was based on reliable assumptions and that its results are reasonable and conservative estimates. Scott Aff. at p. 5 (App. C at Tab 23).

These estimates are consistent with the work of other prominent economists. Dr. Paul MacAvoy of Yale projects that, nationwide, the total gains to consumers from unrestricted Bell company entry into the long distance market would be as high as $306 billion, even if AT&T, MCI, and Sprint "maintain their tacitly collusive pricing strategies." MacAvoy Study at p. 185. During debates on the 1996 Act, Congress relied upon estimated savings of $333 billion from

greater long distance competition. 141 Cong. Rec. S704 (Feb. 1, 1996) (statement of Sen. Ford). Relying upon actual market experience with local telephone company entry into long distance as well as incumbent LECs' economic incentive to lower prices upon vertical integration, Professor Hausman anticipates that prices would fall by about 17-18 percent as a result of in-region entry by the Bell companies, and that residential customers alone stand to benefit by about $7 billion per year. Hausman Aff. ¶¶ 5, 20-23.

In other proceedings, the incumbent interexchange carriers and the Department of Justice have questioned the magnitude of the consumer savings that will result from Bell company entry into long distance. See DOJ South Carolina Evaluation at 48-49. The important thing, however, is the indisputable fact of significant consumer benefits from greater interLATA competition. The Justice Department's consultant, for instance "expect[s] price reductions." Schwartz Supplemental Aff. ¶ 77 (filed with DOJ South Carolina Evaluation). Whether these benefits total $7 billion per year, $10 billion per year, or a "mere" $1 or $2 billion per year is nearly immaterial for purposes of this application, because the public interest requires that consumers be allowed to reap any possible benefits from competitive markets where, as here, there are no offsetting costs.

### D. BellSouth's Entry into the InterLATA Market, Subject to Extensive Statutory and Regulatory Safeguards, Presents No Risk to Competition

For all its potential strengths as a competitor, BellSouth has absolutely no ability to impede competition by entering the interLATA market. The 1996 Act and regulatory reforms have rendered 20-year-old worries about cross-subsidy and network discrimination obsolete.

*1. Regulation and Practical Constraints Make "Leveraging" Strategies Impossible to Accomplish*

In light of the federal and state safeguards that prevent Bell companies from engaging in anticompetitive conduct upon entering long distance, the Commission recently held that the Bell companies should be regulated as non-dominant when they provide in-region, interLATA services.[77] It found that Bell companies could not drive other interexchange carriers from the market through cost misallocation, that federal and state price caps reduce incentives to misallocate costs, and that existing safeguards "will constrain a BOC's ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur." Id. ¶ 105. The Commission likewise dismissed fears of predation against the established long distance incumbents, id. ¶ 108; found that the numerous protections against discrimination will prevent Bell companies from gaining market power upon entry through such tactics, id. ¶¶ 111-119; and concluded that any risk of price squeezes can be addressed through FCC procedures and the antitrust laws, id. ¶¶ 128-129. Finally, the Commission recognized "that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies." Id. ¶ 134.

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77. Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, FCC No. 97-142 (rel. Apr. 18, 1997) ("BOC Non-Dominance Order").

Each of these conclusions is buttressed by the success that federal and state regulators have had in regulating Bell companies over the years, as well as by the new, additional safeguards imposed by the 1996 Act and the Commission's implementing regulations. As a former Deputy Assistant Attorney General for Economics in the current Administration's Antitrust Division explains, existing safeguards "expressly and comprehensively" address potential harms. Gilbert Aff. ¶ 43.

a. Cost Misallocation. Theories that BellSouth might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, are premised upon the assumption that BellSouth "is regulated under rate-of-return regulation." Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 18877, 18882-83, ¶ 7 (1996) ("Non-Accounting Safeguards NPRM.")[78]

To cure this problem, the Commission has totally overhauled its approach to rate regulation. See Hausman Aff. ¶ 34. The Commission adopted a price cap regime that sets maximum rates almost entirely without regard to costs, thereby giving LECs "a powerful profit incentive" to cut the costs of their regulated services. National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993). There is no "reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices." Id.; see

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78. The Department of Justice contended in supporting approval of the MFJ that the Bell System's alleged practice of subsidizing its competitive offerings at ratepayers' expense "stem[med] . . . directly from AT&T's status as a rate-of-return regulated firm . . . ." Competitive Impact Statement at 13, United States v. AT&T, No. 74-1698 (D.D.C. Feb. 10, 1982).

Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136 (Commission's price cap policies "reduc[e] the potential that the BOCs would improperly allocate the costs of their affiliates' interLATA services"); Hausman ¶ 34. Indeed, the Commission has described price cap regulation as providing strong "efficiency incentives" to keep down costs allocated to regulated services. Report and Order, Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17605-06, ¶ 145 ("Accounting Safeguards Order"); see also Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555, 570 (D.C. Cir. July 1, 1997) (under price caps "risk of loss" is borne by "investors rather than ratepayers"), clarified, Case No. 96-1394, slip op. (D.C. Cir. Sept. 16, 1997); Hausman Aff. ¶¶ 35-36.[79]

Congress nevertheless took steps to address supposed worries about possible cost misallocation. In section 272 of the 1996 Act, Congress sharply reduced opportunities for cost-shifting by requiring that a Bell company provide long distance through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. 47 U.S.C. § 272. Moreover, Congress reinforced structural separation with demanding accounting requirements. See id. § 272(d), Hausman Aff. ¶ 37. Legislators concluded, after hearing arguments on all sides, that these statutory safeguards and the Commission's implementing rules

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[79.] To the extent that improper cost sharing may formerly have been a concern, see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136, that concern is addressed by the Commission's recent decision to eliminate sharing entirely. Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Reform Charge, FCC 97-159, ¶¶ 147-155 (rel. May 21, 1997); see Hausman Aff. ¶ 34.

would be sufficient to deal with concerns about Bell company cost misallocation. See, e.g., 47 U.S.C. § 254(k) (requiring Commission to implement regulations as necessary "to ensure that" revenues from regulated services are not used to subsidize competitively provided services). The Commission has likewise expressed confidence in the efficacy of structural separation in various contexts.[80]

Beyond this statutory requirement, the Commission has explained that its preexisting "cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers' competitive ventures." Accounting Safeguards Order, 11 FCC Rcd at 17550-51, ¶ 25. The Commission reasoned that these rules together "will effectively prevent predatory behavior that might result from cross-subsidization," and that because they "have proven generally effective" there was "no reason to require a change to a different system." Id. 17551, ¶ 28, 17586, ¶ 108; see also First Report and Order, Access Charge Reform, CC Docket No. 96-262, FCC No. 97-158, ¶ 283 (rel. May 16, 1997) ("Access Reform Order") (price caps protect against cross-subsidization).

Louisiana regulators have implemented a parallel regulatory regime that contains many of these same protections. Like the Commission, the Louisiana PSC has abandoned rate-of-return regulation in favor of price-cap regulation. See Woroch Aff. ¶ 53; see also Roberts Aff. ¶ 44

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80. Report and Order, Inquiry into the Use of the Bands 825-845 MHZ and 870-890 MHZ for Cellular Communications Sys., 86 F.C.C. 2d 469, 494, ¶ 50 (1981) (cellular); Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 453 ¶ 177 (Bell System), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198, 211 (D.C. Cir. 1982).

(App. A at Tab 10). The Louisiana PSC also matches this Commission's accounting requirements, imposing similar record-keeping and reporting requirements and carrying out periodic audits. Cochran Aff. ¶ 14; Woroch Aff. ¶ 53.

b. Other Pricing Strategies. Just as cost misallocation would be impossible to accomplish, BellSouth would not and could not raise the cost of its access services in an effort to effectuate a "price squeeze" on other interexchange carriers.[81] The Commission has cited a host of factors that "constrain the ability of a [Bell company or its] interLATA affiliate to engage in a predatory price squeeze," and concluded that Bell companies "will not be able to engage in a price squeeze to such an extent that the [Bell company] interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output." BOC Non-Dominance Order ¶ 129; see also Access Reform Order, ¶ 278 ("we have in place adequate safeguards against such conduct"). The Commission likewise concluded that a strategy of providing long distance services below cost to drive out competitors could not be profitable for Bell companies because losses incurred in predation could not later be recovered through supra-competitive pricing. Id. ¶ 108; see also Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18943-44, ¶ 137; Hausman Aff. ¶ 38.

Wholly aside from regulatory safeguards, "predatory pricing schemes are rarely tried, and even more rarely successful." Brooke Group v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993) (citations omitted); see Roberts Aff. ¶ 54. In an industry with standardized

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[81] See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1st Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

technologies and sophisticated incumbents, it is "especially unlikely" that BellSouth could employ the classic predatory strategy of lowering prices below cost to affect competitors' assessments of future competition. Id. ¶¶ 24, 46-48; see also Gilbert Aff. ¶¶ 43-46. Realistically, moreover, any attempt to drive out large and well-financed incumbent carriers who have made mammoth sunk investments would be doomed. Roberts Aff. ¶¶ 46-47.

c. Price Discrimination. Perhaps the weakest of all theories advanced by those with a vested interest in delaying interLATA competition is that Bell companies might discriminate in the pricing of their exchange access services. The Commission has for years "require[d] any exchange carrier offering interexchange service to impute to itself the same costs that it uses to develop the access rates that it charges its interexchange customers." Order on Reconsideration, Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637, 2714, ¶ 168 (1991). Consistent with that regulatory requirement, Congress specifically provided that the Bell company must charge its affiliate, or impute to itself, "an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service." 47 U.S.C. § 272(e)(3). The Commission thus rightly has concluded that "the statutory and regulatory safeguards . . . will prevent a [Bell company] from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services." BOC Non-Dominance Order ¶ 119.

d. Technical Discrimination. Theories that BellSouth might impede competition by engaging in technical discrimination are equally unfounded. AT&T, MCI/British

Telecom (/WorldCom or /GTE), and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with revenues much greater than BellSouth's and the expertise and resources to detect and challenge systematic discrimination. See Gilbert Aff. ¶¶ 46-47, 49. Indeed, to state how discrimination against them would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, BellSouth would have to provide inferior access services to its major competitors, without disrupting its own local or long distance services, in a fashion that cannot be proved by other interexchange carriers or detected by regulators, yet is so apparent to customers that it drives them to switch to BellSouth's long distance service, but not the service of some other competitor. See Hausman Aff. ¶ 40; see also Gilbert Aff. ¶¶ 46-47 (no harm to competition unless discrimination raises consumer prices). When one considers these realities, it is not surprising that incumbent interexchange carriers never have produced specifics (much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible, what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices.

To accomplish discrimination, BellSouth would have to circumvent the mechanization of its technical and operations systems, including assignment and provisioning processes. It would have to bypass the SONET capabilities used by many interexchange carriers to reconfigure immediately their networks should a malfunction or service degradation occur. Gunter Aff. ¶¶ 40-42 (App. A at Tab 4). If technically possible at all, this would require substantial and visible investments, participation by large numbers of employees, and the cooperation of hardware and

software vendors who have no interest in favoring BellSouth's interLATA services operations, all of which make such a strategy unthinkable. Id. ¶ 40. Of course, there also would be no guarantee that customers who are unhappy with their existing long distance carrier would switch to BellSouth; targeted discrimination against, say, Sprint, would send many customers to AT&T and MCI, giving BellSouth no benefit. Cf. United States v. Western Elec. Co., 993 F.2d 1572, 1579 (D.C. Cir. 1993) (noting that discrimination is unlikely where "customers could readily shift to the BOC's larger competitors") cert. denied, Consumer Fed'n of America v. United States, 510 U.S. 984 (1983).

Furthermore, BellSouth has been providing exchange access services to the long distance industry for over a dozen years. Interexchange carriers can and do directly monitor BellSouth's performance, making it "likely that an IXC would detect any degradation in BellSouth's access service long before any customer could notice that degradation and attribute it to the IXC." Gilbert Aff. ¶¶ 46-47. BellSouth's interconnection arrangements with all the major interexchange carriers establish specific criteria for service quality and procedures for the interexchange carrier to monitor BellSouth's performance. Gunter Aff. ¶¶ 28-32. In addition, BellSouth is required to file various reports, of proven effectiveness, with the Commission. See Varner Aff. ¶ 212; Gilbert Aff. ¶ 48.[82] And, BellSouth is subject to rigorous industry standards which "neither BellSouth,

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[82.] See also, e.g., Order, Revisions of ARMIS Quarterly Report, 11 FCC Rcd 22508, 22515, ¶¶ 20, 22 (1996) (reporting of, inter alia, information about trunk blockage, total switch downtime, and consumer satisfaction); Id. at 22515, ¶ 20 (reporting of installation and repair intervals); Non-Accounting Safeguards Order; 11 FCC Rcd at 22020, ¶ 242, 22081, ¶ 368 (reporting of the "service intervals in which the BOCs provide service to themselves or their affiliates").

nor RBOCS generally, nor anyone else is able to affect or influence . . . without technical justification and industry consensus." Gunter Aff. ¶ 20; see Woroch Aff. ¶¶ 30-31.

The Commission recently rejected additional reporting requirements because "sufficient mechanisms already exist within the 1996 Act both to deter anticompetitive behavior and to facilitate the detection of potential violations of section 272 requirements." Non-Accounting Safeguards Order, 11 FCC Rcd at 22060-61, ¶ 321. Indeed, the Commission explained that "the reporting requirements required by the 1996 Act, those required under state law, and those that may be incorporated into interconnection agreements negotiated in good faith between BOCs and competing carriers will collectively minimize the potential for anticompetitive conduct by the BOC and its interexchange operations. In addition to deterring potential anticompetitive behavior, these information disclosures will also facilitate detection of potential violations of the section 272 requirements." Id. at 22063-64, ¶ 327.

Suggestions that a Bell company might seek to slow-roll interexchange carriers in developing and implementing new access arrangements are equally unfounded. The 1996 Act provides that a Bell telephone operating company "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards," 47 U.S.C. § 272(c)(1); must fulfill "any requests from an unaffiliated entity for telephone exchange service, and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates," id. § 272(e)(1); and may not provide facilities, services, or information concerning exchange access to its long distance affiliate unless they are

made available to other providers of interLATA service on the same terms and conditions, id. § 272(e)(2), (4). See Gilbert Aff. ¶¶ 42-43; Woroch Aff. ¶ 58.

Regulators should have no trouble enforcing these requirements. The Commission has explained that existing rules relating to enhanced services and customer premises equipment currently protect against analogous discrimination. Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18915-16, ¶ 75. Moreover, access revenues account for one-quarter of BellSouth Telecommunications' total operating revenues, 1996 Annual Report at 20. BellSouth thus has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase demand for its exchange access services and avoid the loss of access revenues that would result if interexchange carriers provided their own access services or obtained access services from a facilities-based competitor to BellSouth. See Schmalensee Aff. ¶ 45; Woroch Aff. ¶ 77 (discussing access competition in Louisiana). All that will be required in the context of new exchange access arrangements is an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and BellSouth, which leave no room or reason for misconduct.

e. Misuse of Confidential Information. Section 272(c)(1) prohibits a Bell company from discriminating "in the provision or procurement of goods, services, facilities, or information." The Commission has interpreted "information" in section 272(c)(1) so that it "includes, but is not limited to, CPNI and network disclosure information." Non-Accounting Safeguards Order, 11 FCC Rcd at 22010, ¶ 222. Accordingly, a Bell company must make such information available to other interexchange carriers on the same terms and conditions as its own

long distance affiliate. Id.; see Woroch Aff. ¶ 70 (citing Statement and agreement provisions governing confidentiality).

The Commission has explained that its "current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any 'information concerning . . . exchange access' on a nondiscriminatory basis." Non-Accounting Safeguards Order, 11 FCC Rcd at 2206, ¶ 253. Commission regulations also have long governed, and will continue to regulate, access to competitively useful information concerning particular customers. See id. at 22010, ¶ 222 (noting separate CPNI proceeding). Under the Commission's rules, for example, Bell companies must disclose CPNI to unaffiliated enhanced service providers and CPE suppliers at the customer's request; bar their own enhanced service sales personnel from accessing certain CPNI without customer authorization; and notify multi-line business customers of their CPNI rights each year.[83]

f. Penalties. In light of its inability to engage in cost misallocation or any form of discrimination, there simply would be no reason for BellSouth to risk the substantial penalties likely to follow such a fruitless endeavor. If BellSouth were to violate any provision of the Communications Act of 1934 it would be required to pay civil fines, 47 U.S.C. § 202(c), and would be liable to injured parties for the amount of their injuries plus attorneys' fees. 47 U.S.C. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties

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83. See Report and Order, Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 153 ¶ 66 (1987), on reconsideration, 3 FCC Rcd 22 (1987), pet'n for review denied, Illinois Bell Telephone Co. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); Computer III Remand Proceedings: Bell Operating Company Safeguards, 6 FCC Rcd 7571, 7602-14, ¶¶ 68-95 (1991).

for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of any statutory or regulatory provision. Moreover, if the Commission determines that BellSouth "has ceased to meet any of the conditions required for" interLATA entry, it may revoke interLATA authority under section 271(d)(6).[84]

All of the Act's and the Commission's specific statutory and regulatory protections are backed up by federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping systematic discrimination or cost-shifting secret, make it most unlikely that Bell company managers would order unlawful practices.[85]

Given its own decisions noting the strength of all these various statutory and regulatory protections, the Commission could hardly find them inadequate to the task in this case. Moreover, the Commission recently determined, in approving British Telecom's proposed acquisition of MCI, that regulations in the United Kingdom "ensure proper cost allocation, timely and nondiscriminatory disclosure of network technical information, and protection of carrier and

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84. The Commission has ruled that once a complainant makes a prima facie showing that a Bell company has "ceased to meet the conditions of entry," the burden shifts to the Bell company to produce evidence of its compliance. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072, ¶ 345. This is a complete answer to claims that discrimination and cross-subsidy, even though detectable, might be hard for rival interexchange carriers to prove.

85. See, e.g., 15 U.S.C.A. §§ 1, 2 (Sherman Act); United States Sentencing Comm'n, Guidelines Manual § 2R1.1 (requiring prison sentences for a number of antitrust violations).

consumer proprietary information against unauthorized disclosure," and thereby "contro[l] BT's market power" in the provision of access services. Memorandum Opinion and Order, Merger of MCI Communications Corp. and British Telecommunications PLC, GN Docket No. 96-245, FCC No. 97-302 at ¶ 203 n.288 (rel. Sept. 24, 1997). The U.K.'s safeguards, however, are weaker than those under the Act and this Commission's regulations, see id. ¶¶ 218-223, and do not even include equal access, unbundling, or resale, id. ¶ 202. If the U.K.'s regulations and the potential for future competition are sufficient to prevent harm from BT's vertical integration with MCI, see id. ¶ 210, then the much stronger U.S. safeguards and the openness of Louisiana markets to competitors under the checklist must be sufficient to address any analogous concerns raised in this proceeding.

. *Actual Experience with LEC Participation in Adjacent Markets Disproves Theories about Anticompetitive Potential*

BellSouth's inability to raise prices or restrict output as an interexchange carrier in Louisiana is confirmed by over a decade of experience with LEC entry into markets adjacent to the local exchange, including, in some instances, long distance service. As noted earlier, local exchange carriers have competed fairly and effectively where they have been permitted to offer long distance. See supra at 76-78.[86] One would not have expected such competitive benefits

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[86.] The same is true of BOC participation in the information services and CPE markets. See Hausman Aff. ¶¶ 33, 40. For instance, while the interexchange carriers have tried in various proceedings to cast BellSouth's introduction of its MemoryCall voice-messaging service as an example of discriminatory conduct, that only shows how bare the record is of any wrongdoing. In 1991, the Georgia PSC did find that BellSouth had used improper marketing practices and had discriminated against competing enhanced service providers and ordered a temporary halt to MemoryCall sales. Yet MCI and Sprint, among others, supported BellSouth's successful position before the FCC that the PSC lacked jurisdiction to find a violation where BellSouth had acted in

based on the self-serving predictions of potential competitors, which were of the same ilk as the arguments they will make in opposing this application.

The New Jersey Corridors. When NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the

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accordance with FCC rules. Memorandum Opinion and Order, Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd 1619 (1992). This Commission later stated that it found the Georgia PSC's finding of improper practices unpersuasive on the merits. Brief for Respondents, California v. FCC, No. 92-70083, at 59-61 (9th Cir. filed July 14, 1993).

There likewise is no merit to contentions that BellSouth Telecommunications, Inc. ("BST") has discriminated against unaffiliated payphone service providers with respect to network access. This Commission has approved BST's CEI plan, pursuant to which BST offers independent payphone providers nondiscriminatory access to the regulated payphone services used by its wholly-owned payphone affiliate, BellSouth Public Communications, Inc. ("BSPC"). See Order, BellSouth's Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, 12 FCC Rcd 4318 (1997). BST has followed the terms of its CEI plan and will continue to do so after section 271 relief is granted.

Equally meritless are recent claims before this Commission that BSPC has impermissibly interfered with contracts between its payphone customers and interexchange carriers. Section 276 of the Communications Act and this Commission's payphone orders specifically authorize BSPC to negotiate, select, and contract with interexchange carriers on behalf of its payphone customers. BSPC has mailed materials to its payphone customers advising them of this fact. Nowhere do these materials suggest that location providers must reevaluate, let alone change, existing contracts with interexchange carriers. To the contrary, BSPC expressly requires that any such contracts be allowed to run their term unaffected. Nor is there any truth to the assertions that BSPC discriminates against payphone subscribers who do not authorize BSPC to negotiate with interexchange carriers on their behalf. BSPC currently imposes a $15 fee on a small minority of its payphones that generate insufficient traffic to recover their costs. BSPC anticipates that, when authorized to do so, it will be able to make up the revenue shortfall on these payphones by negotiating with an interexchange carrier to carry the traffic from these payphones. But where the location provider chooses to select an interexchange carrier itself, BSPC is unable to cover the costs of the payphone. BSPC thus charges a monthly fee of $15 to location providers whose phones do not cover their costs and who elect not to appoint, or are precluded by contract from appointing, BSPC as their agent. This charge is entirely consistent with the letter and the spirit of section 276 and with this Commission's payphone orders.

district court credited suggestions that allowing such service would give "the Operating Companies the same incentive to discriminate against new entrants that they had while part of the integrated Bell [s]ystem," and that it "may be tantamount to giving to the Operating Companies a monopoly over certain interstate traffic." United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). Yet these (now merged) Bell companies do not dominate corridor traffic. By AT&T's own count, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. AT&T and MCI have sought authority to lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local "bottlenecks," but rather because their prices are being undercut. See AT&T Waiver Petition at 5; MCI Comments at 3. Disproving the predictions of potential competitors, Bell Atlantic and NYNEX have benefitted consumers by lowering prices.

SNET in Connecticut. Similarly, all the evidence suggests that SNET's competitive success in Connecticut is due to its lower prices, not to any anticompetitive behavior. See Hausman Aff. ¶¶ 16, 22, 41. AT&T does not allege that SNET has gained market share through anticompetitive conduct, but rather attributes SNET's success to lower prices. Id.; see also Gilbert Aff. ¶ 53 (no complaints against SNET or Frontier Communications). Moreover, competition between SNET and AT&T is vigorous, leading AT&T to ask for permission to reduce prices along with SNET in order to preserve its market share. See supra at 76-77.

GTE/Sprint. GTE's ownership of Sprint proves the same point on a larger scale. See Gilbert Aff. ¶¶ 51-52. As the fourth largest local exchange carrier and the incumbent carrier across large geographic areas, GTE had the same theoretical incentives to impede interexchange

competition as would a Bell company entering the long distance market today. See United States v. Western Elec. Co., 993 F.2d at 1579 (explaining relevance of GTE experience). Indeed, when seeking to place conditions on GTE's purchase of Sprint in 1984, the Department of Justice argued that because GTE "provide[d] in the same market both local monopoly telecommunications services and competitive long distance services, it" necessarily would have "the incentive and ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier." United States v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984).

Yet after the acquisition was completed, Sprint never was able to accumulate disproportionate market share in areas served by a GTE telephone company. The Department of Justice found no pattern of discrimination by GTE in favor of Sprint, Gilbert Aff. ¶ 52, and even AT&T and MCI have had to concede that GTE's monopoly power in the local exchange never enabled it to "achieve market power" in its in-region interLATA market.[87] As further evidence of its inability to earn monopoly profits in the long distance business, GTE sold Sprint in three installments between 1986 and 1992. Gilbert Aff. ¶ 51. GTE recently entered long distance as a new entrant — in the same way that BellSouth will enter — and has competed effectively with AT&T not through any anticompetitive conduct but rather through residential prices that are 17.2 percent lower. Hausman Aff. ¶ 23.

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87. MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C., Dec. 9, 1994); see AT&T's Opposition to the Four RBOCs' Motion to Vacate the Decree at 159, United States v. Western Electric Co., No. 82-0192 (D.D.C. Dec. 7, 1994).

Cellular Services. Similarly, given that cellular carriers and interexchange carriers have similar local interconnection requirements, Bell companies have had essentially the same incentive and ability to act anticompetitively against rival cellular carriers as they would have to act anticompetitively against other interexchange carriers in in-region states. See Hausman Aff. ¶¶ 33, 40. As with interexchange services, moreover, predictions of future harm to the public interest preceded Bell company participation in the cellular business. See, e.g., 825-845 MHZ Inquiry, 86 F.C.C.2d at 469, 530-31, 540-43, 550-51, 643 (summarizing comments of Millicom, Telocator, and the Department of Justice).

Yet, this theoretical incentive of wireline carriers to inhibit cellular growth has not created any actual problems. The Commission has confirmed "the infrequency of interconnection problems" between local exchange carriers and unaffiliated cellular providers. Eligibility for the Specialized Mobile Radio Servs., 10 FCC Rcd 6280, 6293, ¶ 22 (1995). Indeed, "the wireless communications business is one in which relatively small, entrepreneurial competitors have often been as successful as . . . the BOCs." Applications of Craig O. McCaw and AT&T Co., 9 FCC Rcd at 5861-62, ¶ 38.

The Bell companies, who would know if incumbent local telephone companies could give their cellular affiliates an unfair competitive edge, have invested heavily in cellular systems that compete with the incumbent LEC's systems. BellSouth, for instance, competes against an incumbent LEC's wireless affiliate in Hawaii, California, Illinois, and Indiana. Such investments would never be made if Bell companies really believed that LECs can frustrate fair competition. Even AT&T effectively has agreed that the Bell companies have no ability to overwhelm

competitors in wireless; it bought the nation's largest cellular carrier and has invested billions more for PCS licenses, investments that would not make sense if the incumbent LEC had a clear edge.

### E. The Effect of BellSouth's Entry on Local Competition

Even if the Commission follows the policy suggested in its Michigan Order and focuses primarily on local competition, it should find that approving BellSouth's application is in the public interest. The expert agency on local telecommunications in Louisiana found that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Compliance Order at 14 (emphasis added). The Louisiana PSC's conclusion is consistent with common sense, economic theory,[88] and the findings of other State commissions. For example, the South Carolina PSC explained that allowing BellSouth into long distance "will create real incentives for the major [interexchange carriers] to enter the local market . . . , because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities." South Carolina Order at 67. The Oklahoma Corporation Commission similarly determined in connection with section 271 relief that "once full long distance competition is opened up in Oklahoma, the major competitive providers of local exchange service will take notice and adjust their respective

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88. See Woroch Aff. ¶¶ 17-19, 79-86 (noting incentives of CLECs, absent BellSouth interLATA entry, to "go slow" in Louisiana and to pursue markets that offer greater profit margins); Hausman Aff. ¶ 9 (noting that, following BellSouth interLATA entry, interexchange carriers "and other competitors will be required by competition to respond with competitive offerings").

business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers."[89]

Approving BellSouth's application, moreover, would provide the Big Three long distance carriers with the ability to compete more effectively as CLECs. These carriers are temporarily prohibited from bundling any wholesale services they obtain from BellSouth in Louisiana with interLATA services. BellSouth's entry will release the interexchange carriers from this prohibition, 47 U.S.C. § 271(e)(1), and produce the result Congress envisioned: enhanced competition in both local and long distance markets. Conference Report at 1 (Act intended to "ope[n] all telecommunications markets to competition"); see Gilbert Aff. ¶¶ 18-23 (noting benefits to competition and consumers of bundled offerings); Hausman Aff. ¶ 7 (same).

The Act's prohibition on bundling by the major carriers pending BellSouth's interLATA entry is the only barrier remaining to full local competition in Louisiana. "[A]ll procompetitive entry strategies are available to new entrants" in the State[90] and the currently limited extent of wireline, facilities-based local competition is due solely to the business decisions of competitors. See Woroch Aff. ¶¶ 51-53 (discussing Louisiana PSC policies and absence of municipal entry barriers). When BellSouth has opened its local markets through compliance with the checklist, it is simply wrong for any party to suggest that there would be consumer benefits from further

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89. Comments of the Oklahoma Corporation Commission at 11, 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 Oklahoma, CC Docket No. 97-121 (FCC filed May 1, 1997).

90. Michigan Order ¶ 387.

delaying certain long distance competition in the name of possible local competition — particularly where the Louisiana PSC has authoritatively found that local competition will increase as a result of approving this application.

The Louisiana PSC's efforts to promote local competition in the State are extensive. In addition to reviewing scores of interconnection agreements and applications for CLEC certification, presiding over arbitrations, establishing cost-based rates in its Pricing Order, and reviewing BellSouth's Statement and its eligibility for interLATA relief, the Louisiana PSC has issued rules affirmatively to ensure that all CLECs — whether they proceed under the Statement's standard terms or tailored agreements — have access to the prerequisites for competition. See Woroch Aff. ¶¶ 51, 53; Louisiana Local Competition Order.

The Affidavit of Gary Wright describes the varied backgrounds and business plans of CLECs that have responded to the opportunities available in Louisiana. Eighteen CLECs have already ordered services from BellSouth for resale in Louisiana and CLECs are already serving a substantial number of customers and access lines on this basis and over their own networks. Wright Aff. ¶ 122; see also id. Attach. WLCE-G. As of September 30, 1997, CLECs had captured 3608 business lines and 3460 residential lines from BellSouth. Id.

Whether or not they yet qualify as Track A providers, CAPS such as ACSI, American MetroComm, KMC Telecom, and ITC DeltaCom, and cable television companies such as Cox, have facilities that could be utilized to offer telephone exchange service and are likely to be a source of facilities-based competition in a matter of months. Wright Aff. ¶¶ 17-41, 49-63, 75-86. ACSI, for example, has networks in New Orleans, Baton Rouge and Shreveport. Wright Aff.

¶ 18. American MetroComm has a fiber optic network and a Nortel DMS Central Office switch in New Orleans. Wright Aff. ¶ 32. KMC Telecom owns fiber optic networks in Baton Rouge and Shreveport and has installed local exchange switching facilities in both cities. See Wright Aff. ¶ 38 & Attach. WLCE-C. ITC DeltaCom provides exchange access over a series of fiber optic routes in Louisiana and throughout most of BellSouth's region. Wright Aff. ¶ 75. Cox's network passes 428,000 homes and currently serves about 275,000 cable television subscribers. Wright Aff. ¶ 52. The future facilities-based offerings of these traditional telecommunications carriers will be complemented by the competitive entry of Shell, which is making the transition to a full-scale CLEC with entry plans covering the entire State. Wright Aff. ¶ 47& Attach. WLCE-D.

When these competitors choose to provide local service on a facilities basis, they will be able to compete for a substantial percentage of BellSouth's Louisiana revenues without even extending their networks or resorting to resale. See Wright Aff. ¶ 125; see also Attach. WLCE-A - WLCE-E (providing confidential figures). About 30 percent of BellSouth's Louisiana revenues are generated by customers connected to just 7 wire centers serving 2.0 percent of BellSouth's service area — the same area covered by the networks of potential facilities-based carriers. Wright Aff. ¶ 125 & Attach. WLCE-A-WLCE-E. This geographic concentration of revenues means that the threat of competition imposes significant competitive constraints on BellSouth, even though competition may not be widespread outside Louisiana's urban centers.

BellSouth also faces a competitive threat from wireless providers. As described earlier, these carriers price their services competitively with wireline services for some BellSouth wireline customers, and they can offer the advantages of mobility and one-stop shopping as well. See

supra Part I.C.3. Indeed, market factors in Louisiana such as long average loop lengths make wireless an especially attractive local entry strategy in the State. Woroch Aff. ¶ 88. In that regard, it is noteworthy that Cox, TCI and Comcast are equity partners in Sprint Spectrum's PCS venture in New Orleans, and that Sprint Spectrum has announced its intention to use the wireline networks of its cable television partners to accelerate the deployment of its PCS network infrastructure. Wright Aff. ¶¶ 58, 61. Other wireless carriers in Louisiana also are affiliated with wireline providers, positioning them to integrate wireless and wireline services as well. See Wright Aff. ¶¶ 104, 117-118.

The only obstacles preventing CLECs from competing fiercely with BellSouth are the CLECs' incentives to pursue more profitable markets and to protect long distance profits by keeping BellSouth out of interLATA services. Under the Act, the Commission simply may not delay interLATA relief until CLECs choose to confirm in the marketplace that they are viable, long-term competitors. Nor would such delay be sound policy. "[T]he social cost of such a delay," including foregone competition in the interLATA and local markets, "is prohibitive." Woroch Aff. ¶ 55. As former Chairman Hundt has put it, "[c]ompetition delayed is competition denied."[91]

## CONCLUSION

Louisiana consumers have been denied the benefits of competitive interLATA and local telecommunications markets long enough. The Commission should end that situation, as

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[91] Separate Statement of Reed Hundt, Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, FCC 97-342, WT Dkt 97-82, at 6 (rel. Oct. 16, 1997).

recommended by the Louisiana PSC, by authorizing BellSouth to provide in-region, interLATA services under section 271. Because BellSouth has satisfied all specific statutory prerequisites to provide interexchange services in Louisiana and such service would promote the public interest, the application should be granted.

Respectfully submitted,

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**Materials not included on this diskette are on file with the Federal Communications Commission.**