

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Application by BellSouth Corporation, et al.
Pursuant to Section 271 of the
Communications Act of 1934, as amended,
To Provide In-Region, InterLATA Services
In Louisiana
CC Docket No. 97-231

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1998

Released: February 4, 1998

By the Commission:

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I. INTRODUCTION

1. On November 6, 1997, BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed an application for authorization under section 271 of the Communications Act of 1934, as amended,¹ to provide interLATA services in the State of Louisiana.² In many respects, the instant application is materially indistinguishable from BellSouth's application to provide interLATA services in South Carolina.³ As we recently determined, the BellSouth South Carolina application failed to

¹ 47 U.S.C. § 271. Section 271 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 151 *et seq.* We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act." The Telecommunications Act of 1996 will be referred to as "the 1996 Act."

² *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231 (filed Nov. 6, 1997)(BellSouth Louisiana Application). *See Comments Requested on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Public Notice, DA 97-2330 (rel. Nov. 6, 1997). Unless an affidavit or appendix reference is included, all cites to the "BellSouth Louisiana Application" refer to BellSouth's "Brief in Support of Application." References to all affidavits or other sources contained in the appendices submitted by BellSouth are initially cited to the Appendix, Volume, and Tab number indicating the location of the source in the record. Subsequent citation to affidavits are cited by the affiant's name, *e.g.*, "BellSouth Wright Aff." Comments on the current application are cited herein by party name, *e.g.*, "ACSI Comments." Documents, such as affidavits and declarations, submitted by commenters are cited by the affiant's name and the entity submitting the affidavit, *e.g.*, "AT&T Bradbury Aff.," "MCI King Decl." A list of parties that submitted comments or replies is set forth in the Appendix.

³ *Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208 (filed Sept. 30, 1997); *see also Comments Requested on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina*, Public Notice,

demonstrate that BellSouth has fully implemented the competitive checklist in section 271(c)(2)(B).⁴ Applying the legal standard we adopted in the *BellSouth South Carolina Order* to what are materially indistinguishable facts with respect to two of the checklist items that BellSouth failed to meet in its South Carolina application, we are compelled to deny BellSouth's application to provide interLATA services in Louisiana. Specifically, we conclude that BellSouth has not demonstrated that it provides to competing carriers nondiscriminatory access to its operations support systems (OSS) functions.⁵ In addition, we conclude that BellSouth's refusal to offer contract service arrangements⁶ for resale at a wholesale discount violates the requirement in section 271(c)(2)(B)(xiv) that a Bell Operating Company (BOC) must make telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3) of the Act. We therefore deny BellSouth's Louisiana application.

II. OVERVIEW

2. We recently considered BellSouth's application for entry into the long distance market in South Carolina. In the *BellSouth South Carolina Order*, we determined that BellSouth had not fully implemented the competitive checklist, as required by section 271. We concluded, *inter alia*, that BellSouth failed to demonstrate that it offers nondiscriminatory access to its operations support systems.⁷ We also determined that BellSouth's refusal to make its contract service arrangements available for resale at a wholesale discount violates the requirement in checklist item (xiv) that it make telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3) of the Act.⁸

DA 97-2112 (rel. Sept. 30, 1997).

⁴ *Application of BellSouth Corp. et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997) (*BellSouth South Carolina Order*).

⁵ Incumbent LECs, such as BellSouth, maintain a variety of computer databases and "back-office" systems that are used to provide service to customers. We collectively refer to these computer databases and systems as operations support systems, or OSS. These systems enable the employees of incumbent LECs to process customers' orders for telecommunications services, to provide the requested services to their customers, to maintain and repair network facilities, and to render bills. In order for competing carriers to provide these same services to their customers, the new entrants must have access to the incumbent LEC's systems. *See* Section IV.A., *infra*.

⁶ Contract service arrangements are contractual agreements made between a carrier and a specific, typically high-volume, customer, tailored to that customer's individual needs. *See* Section IV.B., *infra*.

⁷ *BellSouth South Carolina Order* at paras. 101-81.

⁸ *Id.* at paras. 215-24.

3. BellSouth's OSS are region-wide systems, deployed throughout BellSouth's nine-state region.⁹ We reviewed BellSouth's OSS in the *BellSouth South Carolina Order* and found that its OSS were deficient.¹⁰ Because our assessment of BellSouth's OSS in the *BellSouth South Carolina Order* applies to BellSouth's region-wide system as a whole, we use the determinations made in that Order as a starting point for our review of BellSouth's OSS in its Louisiana application and review any new data or information that BellSouth has provided to determine whether a different result is justified.

4. As discussed in further detail in Section IV.A. below, we have reviewed the new information BellSouth has provided and find that BellSouth has not remedied the deficiencies in its OSS that we identified in the *BellSouth South Carolina Order*. We note that BellSouth's application to provide in-region, interLATA services in Louisiana was filed on November 6, 1997, just 37 days after BellSouth filed its application to provide long distance service in South Carolina.¹¹ Although we commend BellSouth for continuing to improve its OSS functions during the 37-day interval, we find that the marginal improvements made during this short time do not address the major deficiencies we identified in our *BellSouth South Carolina Order*.

5. In addition, we conclude, as we did in the *BellSouth South Carolina Order*, that BellSouth's refusal to offer its contract service arrangements for resale at a wholesale discount is inconsistent with the requirement in section 271(c)(2)(B)(xiv) that it make telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3).¹² In this Order, we affirm our conclusion in the *BellSouth South Carolina Order* that neither incumbent LECs nor states may create a general exemption from the requirement that incumbent LECs offer their promotional or discounted offerings, including contract service arrangements, at a wholesale discount.

6. Finally, in light of our conclusion that BellSouth does not meet the competitive checklist, we need not and do not decide whether the Personal Communications Services (PCS) carriers on which BellSouth relies to satisfy the requirements of section 271(c)(1)(A)¹³ are "competing providers of telephone exchange service" in the State of Louisiana. In an effort to provide BellSouth and others with guidance on this issue for future applications, we conclude in Section V, below, that section 271(c)(1)(A) excludes only cellular providers, not PCS providers,

⁹ As discussed below in Section IV.A., BellSouth relies on data from its entire region to support its assertion that it complies with the requirements of section 271. See BellSouth Louisiana Application, App. A, Vol. 3a, Tab 9, Affidavit of W. Keith Milner (BellSouth Milner Aff.) at para. 5.

¹⁰ *BellSouth South Carolina Order* at paras. 101-81.

¹¹ BellSouth filed its application to provide in-region, interLATA services in South Carolina on September 30, 1997.

¹² See *BellSouth South Carolina Order* at paras. 215-24.

¹³ 47 U.S.C. § 271(c)(1)(A).

from being considered "facilities-based competitors." We also note, however, that the Commission has recently concluded in other contexts that, although PCS providers appear to be positioning their service offerings to become competitive with wireline service, they are still making the transition from a complementary service to a competitive equivalent to wireline services.¹⁴

III. BACKGROUND

A. Statutory Framework

7. The 1996 Act conditions BOC entry into in-region, interLATA services¹⁵ on compliance with certain provisions of section 271.¹⁶ Pursuant to section 271, BOCs must apply to this Commission for authorization to provide interLATA services originating in any in-region state.¹⁷ The Commission must issue a written determination on each application no later than 90 days after receiving such application.¹⁸ In acting on a BOC's application for authority to provide in-region, interLATA services, the Commission must consult with the Attorney General and give

¹⁴ See Section V, *infra*.

¹⁵ We note here that, for the provision of international services, a U.S. carrier must obtain section 214 authority. See 47 U.S.C. § 214; see also *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398 (rel. Nov. 26, 1997), *recon. pending*. This requirement to obtain a section 214 authorization will apply to a BOC even after it is authorized to provide in-region interLATA service. Several BOCs have applied for, and have obtained, section 214 authority to provide out-of-region international services. See, e.g., *NYNEX Long Distance Co., Ameritech Communications, Inc., Bell Atlantic Communications, Inc., Application for Authority Pursuant to Section 214 of the Communications Act, as Amended, to Provide International Services from Certain Parts of the United States to International Points through Resale of International Switched Services*, Order, Authorization and Certificate, 11 FCC Rcd 8685 (Int'l Bur. 1996). Several BOCs have applied for section 214 authority to provide in-region international services. See, e.g., *Bell Atlantic Communications, Inc. (BACI) and NYNEX Long Distance (NLD)*, File Nos. ITC-98-002, ITC-98-003, & ITC-98-004 (filed Dec. 23, 1997) (seeking section 214 authority for in-region international facilities-based and resale services); *Southwestern Bell Communications Services, Inc.*, File Nos. ITC-97-776 & ITC-97-777 (filed Dec. 5, 1997) (seeking section 214 authority for in-region international facilities-based and resale services).

¹⁶ We note that on December 31, 1997, the United States District Court for the Northern District of Texas held that sections 271-275 of the Act are a bill of attainder and thus are unconstitutional as to SBC Corporation and U S WEST. *SBC Communications, Inc. v. Federal Communications Comm'n*, No. 7:97-CV-163-X, 1997 WL 800662 (N.D. Tex. Dec. 31, 1997) (*SBC v. FCC*) (ruling subsequently extended to Bell Atlantic), *request for stay pending*.

¹⁷ 47 U.S.C. § 271(d)(1).

¹⁸ *Id.* § 271(d)(3).

substantial weight to the Attorney General's evaluation of the BOC's application.¹⁹ In addition, the Commission must consult with the applicable state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, as required in section 271(c)(1)(A),²⁰ or a statement of generally available terms and conditions (SGAT), as required in section 271(c)(1)(B),²¹ and that either the agreement(s) or general statement satisfy the "competitive checklist."²²

8. To obtain authorization to provide in-region, interLATA service under section 271, the BOC must show that: (1) it satisfies the requirements of either section 271(c)(1)(A), known as "Track A," or 271(c)(1)(B), known as "Track B;" (2) it has "fully implemented the competitive checklist" or the statements approved at the state level under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B);²³ (3) the requested authorization will be carried out in accordance with the requirements of section 272;²⁴ and (4) the BOC's entry into the in-region, interLATA market is "consistent with the public interest, convenience, and necessity."²⁵

B. State Verification of BOC Compliance with Section 271(c)

9. Under section 271(d)(2)(B), the Commission "shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)."²⁶ In the *Ameritech*

¹⁹ *Id.* § 271(d)(2)(A).

²⁰ *Id.* § 271(c)(1)(A).

²¹ *Id.* § 271(c)(1)(B).

²² *Id.* § 271(d)(2)(B).

²³ *Id.* § 271(c)(2)(B). The critical, market-opening provisions of section 251 are incorporated into the competitive checklist found in section 271. 47 U.S.C. § 251; *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively, *Iowa Utils. Bd. v. FCC*), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

²⁴ 47 U.S.C. § 271(d)(3)(B).

²⁵ *Id.* § 271(d)(3)(C).

²⁶ *Id.* § 271(d)(2)(B). Subsection (c)(1) defines the requirements for Track A or Track B entry, and subsection (c)(2) contains the competitive checklist.

Michigan Order, the Commission determined that, because the Act does not prescribe any standard for Commission consideration of a state commission's verification under section 271(d)(2)(B), it has discretion in each section 271 proceeding to determine the amount of deference to accord to the state commission's consultation, in light of the nature and extent of the state commission's proceedings on the applicant's compliance with section 271 and the status of local competition.²⁷ Although the Commission will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the Commission's role to determine whether the factual record supports a conclusion that particular requirements of section 271 have been met.²⁸

1. The Louisiana Commission's 271 Proceeding

10. The Louisiana Commission reviewed BellSouth's compliance with the requirements of section 271 and provided us with its written evaluation. On December 18, 1996,²⁹ the Louisiana Commission commenced a proceeding to consider BellSouth's compliance with section 271 of the Act.³⁰ Pursuant to the procedural schedule established in the proceeding, parties filed testimony and conducted discovery. The Louisiana Commission conducted a public hearing in May 1997, during which BellSouth and parties opposed to BellSouth's entry into the long distance market presented testimony and conducted cross-examinations.³¹ The Louisiana Commission broadened the scope of the *Louisiana Section 271 Proceeding* to encompass

²⁷ *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, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997) (*Ameritech Michigan Order*) at para. 30, writ of mandamus issued sub nom. *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998).

²⁸ *Id.*

²⁹ See BellSouth Louisiana Application, App. C-1, Vol. 1, Tab 1, Complete Transcript of the December 18, 1996 Open Session of the Louisiana Public Service Commission at 124-125.

³⁰ Louisiana Public Service Commission, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252 (*Louisiana Section 271 Proceeding*).

³¹ See BellSouth Louisiana Application, App. C-1, Vols. 5a-b, 6-10, Tabs 63-65, 67-68, 70-71, Hearing Transcript: Volumes I-VII (May 19-23, 1997, May 27-28, 1997). According to BellSouth, the state commission adduced evidence, evaluated the credibility of witnesses who were subjected to cross examination under oath, and reached conclusions based on a nearly 6,200-page record that included over 3,800 pages of testimony. BellSouth Louisiana Application at 3, BellSouth Louisiana Reply at 4.

specific consideration of BellSouth's SGAT.³² Following the hearings, parties and the Louisiana Commission staff filed post-hearing briefs.³³

11. On September 5, 1997, by a vote of three-to-two, the Louisiana Commission approved BellSouth's SGAT, subject to modifications, and concluded that BellSouth's SGAT makes available to new entrants each of the items in the competitive checklist.³⁴ The Louisiana Commission also found that BellSouth's entry into the interLATA market would create the potential for immediate rate reductions for long-distance services and would, therefore, serve the public interest.³⁵ BellSouth modified its SGAT to comply with modifications ordered in the

³² See BellSouth Louisiana Application, App. C-1, Vol. 6, Tab 66, *Notice of Commission Consideration of BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms Within This Docket*, Docket No. U-22252 (May 22, 1997). In its May 30, 1997 Official Bulletin, the Louisiana Commission published notice of the broadened scope of the *Louisiana Section 271 Proceeding* to provide those not already a party to the proceeding with an opportunity to participate in the Louisiana Commission's consideration of BellSouth's SGAT. Although several new parties intervened at this point in the proceeding and some submitted comments, none responded to the state commission's offer of additional hearing dates. Louisiana Commission Comments at 4-5.

³³ See, e.g., BellSouth Louisiana Application, App. C-1, Vol. 11, Tab 94, Post-Hearing Memorandum of MCI Telecommunications Corporation, Docket No. U-22252 (June 18, 1997); BellSouth Louisiana Application, App. C-1, Vol. 11, Tab 96, AT&T Communications of the South Central States, Inc.'s Post-Hearing Brief in Opposition to Approval of BellSouth's Statement of Generally Available Terms and Conditions, and in Opposition to BellSouth's Request for a Recommendation of Preapplication Compliance with § 271 to Provide InterLATA Services Originating In-Region, Docket No. U-22252 (June 18, 1997); BellSouth Louisiana Application, App. C-1, Vol. 11, Tab 99, Post-Hearing Brief of WorldCom, Inc., Docket No. U-22252 (June 18, 1997); BellSouth Louisiana Application, Appendix C-1, Vol. 11, Tab 98, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Louisiana Public Service Commission Staff Post Hearing Brief, (June 18, 1997).

³⁴ BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 136, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Order U-22252-A (decided Aug. 20, 1997, issued Sept. 5, 1997) (*Louisiana Commission 271 Compliance Order*). The dissenting commissioners proposed a motion that would grant the Louisiana Commission an additional 60 days to review BellSouth's SGAT in order to complete its cost docket, analyze the implications of the Eighth Circuit's decision in *Iowa Utils. Bd. v. FCC* and the Commission's *Ameritech Michigan Order*, and allow BellSouth to improve its OSS, particularly in the area of capacity. BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 135, *Partial Minutes of August 20, 1997 Open Session of the Louisiana Public Service Commission* (Aug. 20, 1997) at 2-4.

³⁵ *Louisiana Commission 271 Compliance Order* at 14. See also Louisiana Commission Comments at 19-20.

Louisiana Commission 271 Compliance Order and filed a revised SGAT on September 9, 1997.³⁶

12. On November 24, 1997, the Louisiana Commission submitted its comments to this Commission concerning BellSouth's Louisiana application. In its comments, the Louisiana Commission reiterated its view that BellSouth should be granted interLATA authority, because it has satisfied the requirements of section 271. We note that, although the Louisiana Commission has addressed every checklist item, it has not included an analysis of the state of local competition in Louisiana, as the Commission has encouraged state commissions to perform.³⁷

2. The Louisiana Commission's Cost Proceedings

13. In addition to its *Section 271 Proceeding*, the Louisiana Commission also conducted extensive proceedings to establish cost-based rates for interconnection and unbundled network elements pursuant to section 252(d)(1). The Louisiana Commission's consolidated cost proceeding commenced in 1996 upon BellSouth's filing of a tariff introducing rates, terms, and conditions for interconnection and unbundled network elements and supporting cost studies for the tariff.³⁸ Pursuant to a revised procedural schedule established in July 1997, parties conducted discovery; AT&T and MCI filed revised cost studies; BellSouth, AT&T, and MCI conducted tutorials regarding their cost studies; and intervenors filed testimony and rebuttal testimony.³⁹ The Louisiana Commission conducted nine days of hearings in September 1997, during which 34 witnesses and the Louisiana Commission staff testified and conducted cross-examinations.⁴⁰

14. On October 17, 1997, following the filing of post-hearing briefs by the parties and the Louisiana Commission staff, and the issuance of a recommendation by the Chief

³⁶ BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 137, *Statement of Generally Available Terms and Conditions for Interconnection, Unbundling, and Resale Provided by BellSouth Telecommunications, Inc. in the State of Louisiana, as Modified by Louisiana Public Service Commission Order No. 22252-A* (Sept. 9, 1997) (SGAT). Unless otherwise expressly noted, all references herein to the BellSouth SGAT refer to the September 9, 1997, revised SGAT.

³⁷ See *Ameritech Michigan Order* at para. 34 (suggesting that state commissions, in future proceedings, develop a record concerning the state of local competition as part of their consultation).

³⁸ Louisiana Commission Comments at 21. BellSouth filed its tariff on April 1, 1996, and supporting cost studies on June 25, 1996. *Id.* On October 30, 1996, the Louisiana Commission consolidated these two pending cost proceedings. See BellSouth Louisiana Application, App. C-3, Vol. 25, Tab 210, *Notice of Consolidation of Proceedings*, Docket. Nos. U-22022, U-22093 (Oct. 30, 1996).

³⁹ See Louisiana Commission Comments at 23.

⁴⁰ See *id.* at 23-24; see also BellSouth Louisiana Application, App. C-3, Vols. 28-34, Tabs 265-73, *In the Matter of: Louisiana Public Service Commission Docket No. U-22022 and U-22093*, Hearing Transcript: Volumes 1-9 (Sept. 8-12, 1997; Sept. 15-17, 1997; Sept. 24, 1997).

Administrative Law Judge, the Louisiana Commission adopted rates that, in its view, are based on a forward-looking, long-run, incremental cost methodology, as proposed by the Louisiana Commission's independent consultant.⁴¹ The Louisiana Commission ordered BellSouth to replace the interim rates in its SGAT with the permanent rates established in the *Louisiana Commission Pricing Order*. BellSouth incorporated into its SGAT the rates established by the Louisiana Commission in its costing proceeding.⁴²

15. The Louisiana Commission also conducted a proceeding to establish the wholesale discount for services offered for resale pursuant to section 252(d)(3). Pursuant to the procedural schedule established in the proceeding, parties reviewed BellSouth's resale cost study,⁴³ filed testimony, and conducted discovery. Hearings were held on this issue in September 1996.⁴⁴ On October 16, 1996, the Louisiana Commission adopted a wholesale discount of 20.72 percent.⁴⁵ BellSouth incorporated into its SGAT the 20.72 percent wholesale discount established by the Louisiana Commission.⁴⁶

⁴¹ BellSouth Louisiana Application, Appendix C-3, Vol. 34, Tab 285, *In re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost-Based Tariffed Rates; and In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market, Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms, and Conditions for Such Service Offerings*, Docket Nos. U-22022/U-22093, Order No. U-22022/22093-A (Consolidated) (decided Oct. 22, 1997, issued Oct. 24, 1997) (*Louisiana Commission Pricing Order*).

⁴² Louisiana Commission Comments at 27.

⁴³ BellSouth Louisiana Application, App. C-4, Vol. 35, Tab 286, BellSouth Telecommunications, Inc. Cost Study Documentation (June 17, 1996).

⁴⁴ BellSouth Louisiana Application, Appendix C-4, Vols. 36-37, Tabs 307-309, *Review and Consideration of BellSouth Telecommunications, Inc. Resale Cost Study Submitted Pursuant to Section 1101(D) of the Regulations For Competition in the Local Market as Adopted by General Order Dated March 15, 1996, in order to Determine the Wholesale Resale Rates for Unbundled Retail Features, Functions, Capabilities, and Services, and Bundled Retail Services Including Vertical Features, as Provided under Section 1001(D)*, Docket No. U-22020, Hearing Transcripts: Volumes 1-3 (Sept. 16-18, 1996).

⁴⁵ BellSouth Louisiana Application, App. C-4, Vol. 38, Tab 329, *In re: Review and Consideration of BellSouth Telecommunications, Inc. Resale Cost Study Submitted Pursuant to Section 1101(D) of the Regulations For Competition in the Local Market as Adopted by General Order Dated March 15, 1996, in order to Determine the Wholesale Resale Rates for Unbundled Retail Features, Functions, Capabilities, and Services, and Bundled Retail Services Including Vertical Features, as Provided under Section 1001(D)*, Docket No. U-22020, Order No. U-22020 (decided Oct. 16, 1996, issued Nov. 12, 1996) (*Louisiana Commission Resale Order*) at 15.

⁴⁶ See BellSouth SGAT § XIV.B. and Att. H.

C. The Department of Justice's Evaluation

16. Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application.⁴⁷ The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate,"⁴⁸ and the Commission is required to "give substantial weight to the Attorney General's evaluation."⁴⁹ Section 271(d)(2)(A) specifically provides, however, that "such evaluation shall not have any preclusive effect on any Commission decision."⁵⁰ We found in the *Ameritech Michigan Order* that the Commission is required to give substantial weight not only to the Department of Justice's evaluation of the effect of BOC entry on long distance competition, but also to its evaluation of each of the criteria for BOC entry under section 271.⁵¹

17. The Department of Justice recommends that BellSouth's application for entry into the long distance market in Louisiana be denied.⁵² As summarized more fully below, the Department of Justice concluded that the Louisiana market is not fully and irreversibly open to competition, and that BellSouth has failed to demonstrate that it is offering access and interconnection that satisfy the requirements of the competitive checklist.

18. Evaluation of Openness of Market to Competition. The Department of Justice found that the Louisiana local market is not "fully and irreversibly open to competition."⁵³ In evaluating whether competition in a local market satisfies this standard, the Department of Justice considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving construction of new networks, the use of unbundled network elements, and resale of the BOC's services -- are fully and irreversibly open to competition to serve both business and residential consumers.⁵⁴ The Department of Justice examines the extent of actual local competition, whether significant barriers continue to impede the growth of competition,

⁴⁷ 47 U.S.C. § 271(d)(2)(A).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Ameritech Michigan Order* at para. 37.

⁵² DOJ Louisiana Evaluation at iii.

⁵³ *Id.* at 20-34. The Department of Justice first adopted the "fully and irreversibly open to competition" standard in its evaluation of SBC's section 271 application for Oklahoma. *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, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997).

⁵⁴ DOJ Louisiana Evaluation at 2.

and whether benchmarks to prevent backsliding have been established.⁵⁵ Applying these standards, the Department of Justice concluded that BellSouth faces no significant competition in local exchange service in Louisiana.⁵⁶ The Department of Justice further found that the Louisiana market is not sufficiently open to competition because BellSouth has not instituted performance measurements to ensure consistent wholesale performance, *i.e.*, to prevent "backsliding" once section 271 authority is granted.⁵⁷ In light of its conclusion that the Louisiana market is not "fully and irreversibly open to competition," the Department of Justice found that it is not in the public interest to grant BellSouth's application.⁵⁸

19. Evaluation of Compliance with Competitive Checklist. The Department of Justice concluded that BellSouth has failed to demonstrate that it is offering access and interconnection that satisfy the competitive checklist requirements. The Department of Justice reaffirmed the conclusions it made in its South Carolina evaluation that, *inter alia*, BellSouth has not demonstrated its ability to provide adequate, nondiscriminatory access to its operations support systems.⁵⁹ The Department of Justice discounted the Louisiana Commission's determination that BellSouth's OSS satisfy the checklist, because that determination: (1) was not based on this Commission's approach for assessing checklist compliance; (2) did not articulate the reasoning for the Louisiana Commission's conclusion; and (3) appears to have been based on a technical demonstration of BellSouth's OSS instead of a thorough test.⁶⁰ The Department of Justice also noted that other states -- such as Florida, Georgia, and Alabama -- have concluded that BellSouth's region-wide OSS are insufficient.⁶¹

IV. CHECKLIST COMPLIANCE

A. Operations Support Systems

1. Background

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 31-33.

⁵⁸ *Id.* at 33-35.

⁵⁹ *Id.* at 17.

⁶⁰ *Id.* at 18-19.

⁶¹ *Id.* at 19.

20. Congress requires incumbent LECs to share their networks with new entrants to hasten the development of competition in the local exchange market.⁶² In order for a new entrant to have access to an incumbent LEC's network, the Commission has required that incumbent LECs offer nondiscriminatory access to the systems, information, and personnel that support those network elements or services.⁶³ These systems, databases, and personnel are commonly referred to, collectively, as operations support systems, or OSS.⁶⁴ Properly functioning operations support systems allow a carrier to receive, process, and install customers' orders promptly and accurately. To ensure that all carriers are able to compete fairly for customers, the Commission has consistently emphasized that the incumbent LEC must give its competitors nondiscriminatory access to the functions of its operations support systems.⁶⁵ More simply put, new entrants must be able to provide service to their customers at a level that matches the quality of the service provided by the incumbent LEC. Because the incumbent LEC owns and controls its operational support systems, competing carriers' entry into the local market depends upon the incumbent LEC's willingness and ability to make its OSS available in a nondiscriminatory manner. A competing carrier that lacks access to operations support systems equivalent to those the incumbent LEC provides to itself, its affiliates, or its customers, "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.⁶⁶

2. Discussion

21. In the *BellSouth South Carolina Order*, this Commission concluded that BellSouth failed to offer nondiscriminatory access to its OSS functions to competing carriers.⁶⁷

⁶² See *BellSouth South Carolina Order* at para. 82; see also *Ameritech Michigan Order* at para. 13; *Iowa Utils. Bd.*, 120 F.3d at 816 ("Congress clearly included measures in the Act, such as the interconnection, unbundled access, and resale provisions, in order to expedite the introduction of pervasive competition into the local telecommunications industry").

⁶³ *Local Competition Order*, 11 FCC Rcd at 15499, 15767; *BellSouth South Carolina Order* at para. 82.

⁶⁴ See *Ameritech Michigan Order* at para. 129; *BellSouth South Carolina Order* at para. 82. We note that the Department of Justice, in its evaluation, uses the term "wholesale support processes," which it defines as "the automated and manual processes required to make resale services and unbundled elements, among other items, meaningfully available to competitors." DOJ Louisiana Evaluation, Ex. 4 at 1. We believe the terms "operations support systems," as used by the Commission, and "wholesale support processes," as used by the Department of Justice, are the same. See *Ameritech Michigan Order* at para. 129, n.315; *BellSouth South Carolina Order* at para. 82, n.234.

⁶⁵ *Ameritech Michigan Order* at paras. 129-30; see also *Local Competition Order*, 11 FCC Rcd at 15763; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19741-43; *BellSouth South Carolina Order* at para. 82.

⁶⁶ *Local Competition Order*, 11 FCC Rcd at 15763-64; *BellSouth South Carolina Order* at para. 82.

⁶⁷ See *BellSouth South Carolina Order* at paras. 101-69.

BellSouth has deployed the same operations support systems throughout its nine-state region,⁶⁸ and, in its application, BellSouth relies on data from its entire region to support its assertion that it is in compliance with the requirements of section 271.⁶⁹ We use the determinations we made about BellSouth's operations support systems in our *BellSouth South Carolina Order* as a starting point. We then review any new data or information that BellSouth has provided in the context of its Louisiana application and decide whether the new information justifies a different result.

22. We find in this proceeding, as we did in the *BellSouth South Carolina Order*, that BellSouth's operations support systems fail to offer nondiscriminatory access to OSS functions for the pre-ordering, ordering,⁷⁰ and provisioning⁷¹ of resale services. During the 37-day interval between the two applications, BellSouth continued to improve its operations support systems. We commend BellSouth for these efforts. We agree with the Department of Justice and the majority of commenters, however, that the marginal improvements that BellSouth made during this short time do not address the major deficiencies of BellSouth's operations support systems, *i.e.*, that competing carriers do not have access to the basic functionalities at parity with BellSouth's own retail operations.⁷² We identified these same deficiencies in the *BellSouth South Carolina Order*. BellSouth's deficiencies with respect to its operational support systems preclude competing carriers from being able to compete fairly with BellSouth and render it noncompliant with the competitive checklist.

a. Ordering and Provisioning Functions

⁶⁸ BellSouth states that it "uses the same processes with respect to checklist items in all of its nine states" BellSouth Louisiana Application at 39; *see BellSouth South Carolina Order* at para. 100; Hyperion Comments at 9; KMC Comments at 11; WorldCom Comments at 17; LCI Comments, Decl. 2, Declaration of Albert D. Witbrodt (LCI Witbrodt Decl.) at para. 2. We note that several states have examined BellSouth's operational support systems. In particular, the Alabama, Florida, and Georgia Commissions identified deficiencies with BellSouth's operational support systems. *BellSouth South Carolina Order* at para. 100; *see* ALTS Reply Comments at 7; Hyperion Comments at 8-9; WorldCom Comments at 16-17.

⁶⁹ BellSouth Louisiana Application, App. A, Vol. 4a, Tab 12, Affidavit of William N. Stacy (BellSouth Stacy OSS Aff.), Exs. WNS-38, WNS-41; BellSouth Louisiana Application, App. A, Vol. 5, Tab 12, Affidavit of William N. Stacy (BellSouth Stacy Perf. Aff.) at para. 42, Exs. WNS-9, WNS-11, WNS-12.

⁷⁰ Pre-ordering and ordering include the exchange of information necessary for a competing carrier to order services and products from the BOC. *See* 47 C.F.R. § 51.5.

⁷¹ Provisioning includes those activities necessary to install services and products to the competing carrier and its customers as well as the exchange of information necessary to inform competing carriers of the status of that work. *See* 47 C.F.R. § 51.5.

⁷² DOJ Louisiana Evaluation at 4, 20; *see* AT&T Comments, App. L, Vol. VII, Affidavit of Michael Pfau (AT&T Pfau Aff.) at para. 19; MCI Comments, Ex. C, Supplemental Declaration of Samuel L. King (MCI King Supp. Decl.) at paras. 2-3; AT&T Reply Comments at 20.

23. For the reasons stated below, we conclude that BellSouth has failed to remedy the problems with its ordering and provisioning functions that we identified in our *BellSouth South Carolina Order*. In the *BellSouth South Carolina Order*, we concluded that BellSouth failed to establish that it is providing nondiscriminatory access for the ordering and provisioning of resale services because, among other things, (1) evidence in the record shows that a significant number of orders submitted by competing carriers via BellSouth's electronic interface are rejected, resulting in substantial delays in processing new entrants' orders, and (2) BellSouth fails to provide competing carriers with information on the status of their orders in a timely manner.⁷³ In the *BellSouth South Carolina Order*, we concluded that these deficiencies were significant and prevented competing carriers from providing service to their customers at parity with BellSouth's retail operations.⁷⁴ Moreover, in the *BellSouth South Carolina Order*, we found that BellSouth failed to provide us with data establishing that it is offering nondiscriminatory access to the various operational support systems so that a competing carrier could provide service to its customers in substantially the same time and manner that BellSouth provides such service to its own retail customers.⁷⁵ Each of these deficiencies is discussed in more detail below.

(i) Order Rejections

24. We conclude here, as we did in our *BellSouth South Carolina Order*, that BellSouth has failed to demonstrate that it is offering competing carriers the ability to order services for resale on a nondiscriminatory basis, *i.e.*, within substantially the same time and manner as the BOC provides the service to itself.⁷⁶ BellSouth claims that competing carriers' access to its ordering functions is "substantially the same as the access provided to BellSouth's own retail operations."⁷⁷ But the data show that when BellSouth representatives place an order, over 97 percent of BellSouth's residential orders and 81 percent of its business orders electronically flow through BellSouth's ordering systems and databases.⁷⁸ In contrast, when competing carriers place an order, a significant percentage of their orders are rejected, and thus

⁷³ *BellSouth South Carolina Order* at paras. 101-31.

⁷⁴ *Id.* at para. 103.

⁷⁵ *Id.* at paras. 132-40.

⁷⁶ *Id.* at paras. 104-14.

⁷⁷ BellSouth Louisiana Application at 31.

⁷⁸ DOJ Louisiana Evaluation, Ex. 4 at A-22; *see also* BellSouth Reply Comments, App., Tab 11, Affidavit of William N. Stacy (BellSouth Stacy Reply OSS Aff.) at para. 54. An order "flows through" BellSouth's ordering and provisioning systems when it is processed through those systems without additional human intervention. Rejected orders are those orders that do not flow through BellSouth's ordering and provisioning systems. Orders are rejected or "drop out" from electronic processing for a number of reasons, such as missing information, incorrect information, incorrect ordering codes, *etc.* Order flow-through rates can also be expressed as order rejection rates. For example, if the order flow-through rate is 25 percent, the order rejection rate is 75 percent.

require manual intervention before the order can be processed. For example, in July 1997, only 25 percent of competing carriers' resale orders submitted through the Electronic Data Interchange (EDI) flowed through BellSouth's system.⁷⁹ In August 1997, the flow-through rate was 40 percent,⁸⁰ and in September 1997, the flow-through rate was 54 percent.⁸¹

25. While we note that improvements in new entrants' flow-through rates have occurred, we conclude that the substantial differences between these rates and the flow-through rate that BellSouth experiences for its own orders impose a significant competitive disadvantage on new entrants. When orders do not flow through BellSouth's ordering and provisioning systems, they are rejected and sent to one of BellSouth's Local Carrier Service Centers (service centers) for manual processing.⁸² It is virtually impossible for orders that are processed

⁷⁹ BellSouth Stacy OSS Aff., Exs. WNS-38, WNS-41; *BellSouth South Carolina Order* at para. 105. BellSouth claims that it is providing nondiscriminatory access for ordering using the Electronic Data Interchange (EDI) interface. Hence, we only considered orders submitted via the EDI interface. BellSouth Stacy OSS Aff. at para. 46. These percentages were determined by separating the EDI orders from all orders, using Stacy OSS Aff. Exs. WNS-38 and WNS-41. EDI has been adopted by the Ordering and Billing Forum (OBF) of the Alliance for Telecommunications Industry Solutions (ATIS) as the industry standard for the ordering and provisioning of resale services. See Transcript of Forum on Operations Support Systems for Unbundled Network Elements and Resale Services in Docket No. 96-98 (May 28-29, 1997), Ordering and Billing Forum Attachment, "Overview: Industry Guidelines for Operations Support Systems Functions." BellSouth provides an electronic interface utilizing the EDI protocol to provide access to competing carriers for ordering and provisioning of resold services. The EDI protocol enables BellSouth both to receive resale orders electronically from competing carriers and to transmit information to competing carriers concerning the status of their orders. BellSouth's EDI interface supports electronic ordering for 34 resale services. BellSouth Stacy OSS Aff. at para. 67; Ex. WNS-27.

⁸⁰ Stacy OSS Aff., Exs. WNS-38, WNS-41; *BellSouth South Carolina Order* at para. 105. The July and August data were the basis for our finding in the *BellSouth South Carolina Order* that BellSouth was not providing competing carriers with nondiscriminatory access to its ordering and provisioning systems. *BellSouth South Carolina Order* at paras. 104-07.

⁸¹ Stacy OSS Aff., Exs. WNS-38, WNS-41. The order flow-through rates for all electronic "local service requests," were 25 percent for July 1997, 34 percent for August 1997, and 39 percent for September 1997. On reply, BellSouth claims that the order flow-through rate was 45 percent for November 1997. BellSouth Stacy Reply OSS Aff. at para. 54. BellSouth did not include such data for the month of October 1997.

⁸² Stacy OSS Aff. at para. 75; LCI Comments at 5; BellSouth Stacy Reply OSS Aff. at para. 53. BellSouth has established two service centers that serve as central contact points for new entrants for pre-ordering, ordering, and provisioning of resale services and network elements. BellSouth Stacy Perf. Aff. at para. 4. Each competing carrier is assigned to one of the two service centers. *Id.* Each competing carrier is assigned to a customer support manager at one of the service centers who acts as a single point of contact for any "operational issues that are not satisfactorily resolved by the normal center process." *Id.* The service centers will accept "manual orders" via facsimile, telephone, or mail requests from those competing carriers that do not want to implement BellSouth's "electronic" operational support systems for pre-ordering, ordering, and provisioning. *BellSouth South Carolina Order* at para. 90. The service centers also handle manual processing of orders for services not supported by the electronic interfaces. In addition, if there is an error in the processing of an order, even when using BellSouth's electronic OSS, the service centers either manually process the order or notify the new entrant of the error, via facsimile or telephone. *Id.*

manually to be completed in the same amount of time as orders that flow through electronically.⁸³ Therefore, it is difficult for equivalent access to exist when BellSouth processes a significant number of competing carriers' orders manually.⁸⁴ Although we noted in the *Ameritech Michigan Order* and *BellSouth South Carolina Order* that there may be limited instances in which it is appropriate for a BOC to intervene manually, we also found that excessive reliance on manual processing, especially for routine transactions, impedes the BOC's ability to provide equivalent access to these fundamental operational support systems.⁸⁵ The disparity in order flow-through rates is of particular concern here because the rejections are occurring for routine transactions -- resale orders for simple "plain old telephone service" (POTS), which should be among the easiest orders to submit and process.⁸⁶

26. The delays in manually processing orders that "drop out" from BellSouth's electronic OSS are aggravated by the poor performance of BellSouth's service centers and the lack of electronic order rejection notices. First, evidence on the record indicates that BellSouth's service centers were inefficient and had inadequately trained employees, raising operating costs and contributing to delays in customer service.⁸⁷ The problems at the service centers resulted in rejected orders being returned to AT&T and MCI "an average of 1.7 times -- meaning that, on average, local service requests were being returned almost twice to the two [competing carriers]

⁸³ *Ameritech Michigan Order* at para. 196; *BellSouth South Carolina Order* at para. 107.

⁸⁴ *Ameritech Michigan Order* at para. 196; *BellSouth South Carolina Order* at para. 107.

⁸⁵ *Ameritech Michigan Order* at para. 178; *BellSouth South Carolina Order* at para. 107; *but see* Bell Atlantic Reply Comments at 4-5.

⁸⁶ *See Ameritech Michigan Order* at para. 173; *BellSouth South Carolina Order* at para. 105. According to AT&T, the current EDI interface provided by BellSouth provides the capability to order only business and residential POTS. AT&T Comments, App. B, Vol. I, Affidavit of Jay M. Bradbury (AT&T Bradbury Aff.) at para. 116.

⁸⁷ AT&T Bradbury Aff. at paras. 243-247; ACSI Comments at 37-44; LCI Comments at 6; LCI Witbrodt Decl. at para. 6; LCI Comments, Decl. 3, Declaration of Beth Rausch (LCI Rausch Decl.) at para. 11. Both AT&T and ACSI point to a study conducted by the consulting firm of DeWolff, Boberg & Associates. AT&T Bradbury Aff. at paras. 243-247; ACSI Comments at 37-44; ACSI Comments, Ex. 4, "Analysis Conducted for BellSouth - LCSC, Atlanta, GA - Birmingham, AL, March 3, 1977 - March 13, 1997" (DeWolff Audit). The DeWolff Audit found that: (1) the service centers' basic work processes "lack process documentation, compliance, and the accuracy to provide a predictable high quality output;" (2) the "current level of quality is unnecessarily low. Due to numerous operating problems, training deficiencies and process non-compliance, this level of quality is inflating [the service centers'] operating costs per order, and contributing to delays in customer service;" (3) the "current level of labor utilization is inflating [service center] operating costs, and building excessive lead-times into [service centers'] order process;" (4) different employees were using different methods to perform the same task, impacting customer service and unnecessarily inflating order processing time; (5) employees were trained ineffectively; and, (6) there was a "passive management style" resulting from "a lack of an effective management operating system." ACSI Comments, Ex. 4, DeWolff Audit at 002773, 002790, 002797, 002773, 002772.

before the order was finally processed."⁸⁸ In its reply comments BellSouth responds to service center complaints by submitting a one-page letter from an outside consulting firm noting that BellSouth's service center performance has improved and that the service centers are operationally ready.⁸⁹ While we are encouraged by these statements, we agree with AT&T that BellSouth supplies no supporting data or reports to verify these claims.⁹⁰

27. Second, BellSouth does not electronically notify competing carriers that an order has been rejected. Service center personnel either send an error notice to the competing carrier via facsimile or they undertake to resolve the problem and resubmit the order, causing further delay in the processing of these orders.⁹¹ We agree with competing carriers that prompt notification of order rejections is important so that competing carriers may make the necessary corrections and avoid further delay in processing an order.⁹² BellSouth's failure to return order rejections promptly is compounded by the fact that a competing carrier must manually input these notices into its own OSS before it can respond to them.⁹³ Moreover, BellSouth's manual rejection notices do not "readily communicate" the cause for rejection of the order and sometimes require competing carriers to contact BellSouth for clarification.⁹⁴ By contrast, the on-line edits in BellSouth's own systems instantaneously advise BellSouth representatives of any errors and prevent them from releasing orders until the errors have been corrected.⁹⁵ This lack of prompt notification of order rejections aggravates the disparity between order flow-through rates.

28. We find that the substantial disparity between the flow-through rates of BellSouth's orders and those of competing carriers, on its face, indicates that BellSouth is not providing competing carriers with nondiscriminatory access to its OSS.⁹⁶ Commenters' claims of poor service by BellSouth's service centers,⁹⁷ and BellSouth's failure to provide any data on

⁸⁸ AT&T Bradbury Aff. at para. 244; ACSI Comments at 43.

⁸⁹ BellSouth Stacy Reply OSS Aff. at para. 77; Ex. WNS-5.

⁹⁰ AT&T Bradbury Aff. at para. 247.

⁹¹ *BellSouth South Carolina Order* at para. 106; see MCI Comments at 15-17; MCI Comments, Ex. D, Declaration of Samuel L. King (MCI King Decl.) at paras. 132-34.

⁹² AT&T Bradbury Aff. at para. 231; MCI Comments at 15-16.

⁹³ AT&T Bradbury Aff. at para. 120; MCI King Decl. at para. 133.

⁹⁴ AT&T Bradbury Aff. at para. 124; MCI King Decl. at para. 133.

⁹⁵ AT&T Bradbury Aff. at para. 232; MCI King Decl. at para. 132.

⁹⁶ See *supra* paras. 24-25.

⁹⁷ See *supra* para. 26.

the processing of manual orders,⁹⁸ further support our conclusion that BellSouth is not providing parity in the processing of orders.⁹⁹ Under such circumstances, the customer is likely to view the competing carrier as slow, inefficient, or unreliable when compared to the BOC, even if the competing carrier is not at fault.

29. The record does not support BellSouth's claim that the low flow-through rates are caused primarily by new entrants making mistakes on the orders they submit.¹⁰⁰ BellSouth made the same argument in its South Carolina application. We rejected this claim in the *BellSouth South Carolina Order* because the record there did not support these claims.¹⁰¹ Specifically, we could not determine how many of the errors assigned by BellSouth to the actions of competing carriers resulted from BellSouth's failure to provide information, such as business rules, concerning how BellSouth's internal systems process orders.¹⁰² Given the lack of evidence presented by BellSouth, we find no reason to alter our prior conclusion that BellSouth has not met its burden of establishing that it is providing nondiscriminatory access, because it has failed to demonstrate that competing carriers are to blame for the high order rejection rates. In reaching this decision, we are not suggesting that BellSouth is responsible if the quality of work performed by the competing carrier's workforce is, indeed, inferior. BellSouth, however, has

⁹⁸ See *infra* Section IV.A.2.a.iii. BellSouth's measurements fail to take into account the interval between when a competing carrier submits an order and the order flows through BellSouth's Service Order Control System (SOCS). (For a description of SOCS, see *infra* note 151.) Given the number of order rejections, and the fact that such rejections require manual intervention, the efficiency of BellSouth's service centers is critical. BellSouth's failure to provide measures that cover these intervals makes it impossible for us to compare BellSouth's ordering/provisioning of its retail customers and the ordering/provisioning of competing carriers, and therefore impossible for us to conclude that BellSouth has shown that it provides nondiscriminatory access. Such comparisons must be made to ensure that a competing carrier can provide service to its customers in substantially the same time and manner that the BOC provides service to its own retail customers. See *infra* Section IV.A.2.a.iii.

⁹⁹ See *Ameritech Michigan Order* at para. 196; *BellSouth South Carolina Order* at para. 107; see *Florida Commission, Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-TL, Order No. PSC-97-1459-FOF-TL (Nov. 19, 1997) (*Florida Commission Section 271 Order*) at 98.

¹⁰⁰ See *BellSouth Stacy OSS Aff.* at para. 112; *BellSouth Reply Comments, App.*, Tab 12, Affidavit of William N. Stacy (*BellSouth Stacy Reply Perf. Aff.*) at para. 23.

¹⁰¹ *BellSouth South Carolina Order* at para. 108.

¹⁰² *Id.* at para. 110. Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders. *Id.* These protocols define valid relationships in the creation and processing of orders, as well as other interactions involved in the BOC's provision of OSS functions. *Ameritech Michigan Order* at para. 137, n.33; *BellSouth South Carolina Order* at para. 110, n.333. In both the *Ameritech Michigan* and *BellSouth South Carolina Orders*, we established that BOCs have an affirmative obligation to provide such information and support to competing carriers. *Ameritech Michigan Order* at para. 137; *BellSouth South Carolina Order* at para. 111.

failed to provide us with such information and, therefore, it has failed to substantiate its claim that competing carriers are to blame for the low order flow-through rate.¹⁰³

(ii) Failure to Provide Order Status Notices to Competing Providers in Substantially the Same Time and Manner

30. We conclude here, as we did in the *BellSouth South Carolina Order*, that BellSouth fails to provide competitors with information about the status of their orders in substantially the same time and manner as it provides such order status notices to itself.¹⁰⁴ We agree with commenters that order status notices have a direct impact on a new entrant's ability to serve its customers, because they allow competing carriers to monitor the status of their resale orders and to track the orders both for their customers and their own records.¹⁰⁵ If competing carriers are not informed of changes to an order or that a due date is in jeopardy, the customer is likely to blame the competing carrier for the delay, even if the competing carrier is completely without fault.¹⁰⁶ To the customer, the new entrant may appear to be a less efficient and responsive service provider than its competitor, BellSouth. Thus, we find that, in order for a competing carrier to compete through the use of resale services, it must receive information concerning the status of its customers' orders in substantially the same time and manner as the BOC provides such information to its retail operations.¹⁰⁷

31. In the *BellSouth South Carolina Order*, we found that BellSouth failed to provide order error and rejection notices, firm order commitment notices, and order jeopardy notices in

¹⁰³ AT&T Bradbury Aff. at paras. 234-36; *see* AT&T Pfau Aff. at paras. 66-67. BellSouth's alleged "analysis" of orders purportedly shows that errors caused by competing carriers "represented 50%, 87%, and 82% of the total errors [for July, August, and September] respectively." Stacy OSS Aff. at para. 112; *see* Stacy OSS Aff., Ex. WNS-41. In its reply comments, BellSouth restates its argument attributing blame to competing carriers. BellSouth Stacy Reply Perf. Aff. at para. 23. Again, BellSouth does not provide any support for its assertion. BellSouth does not provide any description of the analysis it used to make its determinations, *i.e.*, BellSouth does not describe its "SOER error analysis." AT&T Bradbury Aff. at para. 234. Nor does BellSouth explain what it means by "CLEC-caused input errors." *Id.*; *see* Stacy OSS Aff., Ex. WNS-41. Finally, BellSouth does not offer any basis for its conclusion that, if competing carriers' errors were eliminated, the projected flow-through rates would improve to the percentages it suggests. AT&T Bradbury Aff. at para. 234. AT&T asserts that such "'CLEC-caused errors' may well be the fault of BellSouth itself. . . . AT&T's own experience has shown that a number of AT&T orders were rejected for errors because BellSouth had not provided AT&T with the business rules necessary to avoid such errors." AT&T Bradbury Aff. at para. 236.

¹⁰⁴ Order status notices include, at a minimum, order receipt, order rejection, firm order confirmation, order jeopardy, and order completion notices. *BellSouth South Carolina Order* at para. 115, n.347.

¹⁰⁵ MCI Comments at 15-19; MCI King Decl. at paras. 133-35; *see* AT&T Pfau Aff. at para. 38.

¹⁰⁶ *BellSouth South Carolina Order* at para. 115.

¹⁰⁷ *Id.*

substantially the same time and manner as BellSouth provides to its retail operations.¹⁰⁸ Order rejection notices inform the competing carrier that there is a problem with its order that prevents the order from being processed. BellSouth's firm order commitment notices inform the competing carrier that BellSouth has accepted the order and provide the due date for installation of service. Order jeopardy notices inform the competing carrier that BellSouth will not be able to complete installation on or before the scheduled due date.¹⁰⁹

32. Order Error and Rejection Notices. Timely delivery of order rejection notices directly affects a competing carrier's ability to serve its customers, because new entrants cannot correct errors and resubmit orders until they are notified by BellSouth that the order contains an error.¹¹⁰ Currently, rejected orders¹¹¹ are reviewed for errors by a BellSouth service center employee and then a written error rejection notice is sent to the competing carrier via facsimile.¹¹²

33. The evidence in the record indicates that there are two problems with BellSouth's manual notification of order rejection notices.¹¹³ First, BellSouth does not provide competing carriers with order rejection notices in a timely fashion. AT&T has submitted data showing that BellSouth provided AT&T with order rejection notices within one hour of order submission only six percent of the time.¹¹⁴ BellSouth has not supplied us with data indicating how long it takes to supply itself with the equivalent of an order rejection notice.¹¹⁵ Other evidence, however, indicates that BellSouth's retail operations receive the equivalent of an error notice between a

¹⁰⁸ *Id.* at paras. 115-31.

¹⁰⁹ *See id.* at para. 130.

¹¹⁰ AT&T Comments Bradbury Aff. at para. 231; AT&T Pfau Aff. at para. 45; MCI King Decl. at paras. 133-35; *see BellSouth South Carolina Order* at para. 117.

¹¹¹ *See supra* note 78.

¹¹² *BellSouth South Carolina Order* at para. 117 (citing BellSouth South Carolina Application, App. A, Vol. 4a, Tab 12, Affidavit of William N. Stacy at paras. 75-77). Although Mr. Stacy's affidavits in support of BellSouth's South Carolina and Louisiana applications are quite similar, Mr. Stacy's Louisiana affidavit omits any discussion on the manual processing of order reject errors.

¹¹³ According to BellSouth, "EDI orders rejected by the EDI translator are rejected electronically Orders rejected by subsequent systems are handled manually." BellSouth Stacy Reply OSS Aff. at para. 52; *but see* AT&T Bradbury Aff. at para. 122. Therefore, this discussion is limited to those orders that "cross" the EDI interface and are rejected by one of BellSouth's systems on the other side of the EDI interface.

¹¹⁴ AT&T Bradbury Aff. at para. 232; Att. 42.

¹¹⁵ We also note that BellSouth has once again failed to provide data on the provisioning of order rejection notices to competing carriers. AT&T Pfau Aff. at para. 20.

few seconds and thirty minutes after entering an order.¹¹⁶ Because BellSouth has not provided the Commission with information on how long it takes its own representatives to receive notices of errors, we cannot determine whether BellSouth is providing order rejection notices to competing carriers at parity to that which it provides to itself.¹¹⁷ We are concerned, however, that BellSouth consistently continues to fail to meet the standard identified in its interconnection agreement with AT&T, which obligates BellSouth to use its best efforts to notify AT&T of errors within one hour of receipt.¹¹⁸

34. Second, the manual return of order rejection notices creates additional delay in the ordering process because competing carriers must monitor facsimile machines to receive such notices, and must then route the order rejection notices to appropriate personnel.¹¹⁹ By contrast, BellSouth need not resort to these procedures when an order is rejected, because its systems provide on-line edits that inform the BellSouth service representative of the error so that the representative can correct the problem immediately.¹²⁰ As a result, approximately 97 percent of BellSouth's residential orders and 81 percent of its business orders electronically flow through its back office systems.¹²¹ Competing carriers argue that problems related to manual return of order rejection notices are compounded by the fact that BellSouth's manual order rejections do not contain codes that clearly identify the errors, which requires competing carriers to take time either to interpret the notice or to contact BellSouth service center employees.¹²² Therefore, as we concluded in the *BellSouth South Carolina Order*, BellSouth's manual provision of order rejection notices to competing carriers via facsimile is not equivalent to the access that BellSouth provides its retail operations.¹²³

¹¹⁶ *Florida Commission Section 271 Order* at 161-62.

¹¹⁷ If a BOC performs an analogous activity for its retail operations, it needs to provide comparative information in its application to demonstrate its compliance with the nondiscriminatory standard in the Act. *BellSouth South Carolina Order* at para. 118.

¹¹⁸ AT&T Bradbury Aff. at para. 231.

¹¹⁹ AT&T Bradbury Aff. at paras. 120, 124; MCI King Decl. at para. 133 (MCI also notes that this problem will get worse and "is likely to result in substantial delays" as the volume of orders increases).

¹²⁰ AT&T Bradbury Aff. at para. 232.

¹²¹ *See supra* note 78 and accompanying text.

¹²² AT&T Bradbury Aff. at para. 124; MCI King Decl. at para. 133.

¹²³ *Ameritech Michigan Order* at para. 137 (stating that, if a BOC provides itself with an electronic interface as a means to obtain access to a particular OSS function, it must provide equivalent electronic access for competing carriers); *BellSouth South Carolina Order* at para. 120; *see Local Competition Order*, 11 FCC Rcd at 15766-67; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19739.

35. Firm Order Confirmation Notices. Timely return of a firm order confirmation or FOC notice is critical because it provides the competing carrier with the status of its order by (1) confirming that the order has been accepted, and (2) providing the due date for installation.¹²⁴ Providing the due date for installation is significant because, as discussed below, the ability of new entrants to obtain due dates from BellSouth's pre-ordering system is highly constrained.¹²⁵ Thus, the first opportunity that competing carriers may have to inform their customers of the due date is when the firm order confirmation notice is returned. Prompt notification is important, because competing carriers need to inform their customers, who in turn may need to make special arrangements to accommodate installation.¹²⁶ If competing carriers are not able to inform their customers of due dates in a timely manner, customers are likely to conclude that service provided by competing carriers is inferior to service provided by the BOC.

36. In the *Ameritech Michigan Order* and *BellSouth South Carolina Order*, the Commission stated that BOCs are required to include data on the timeliness of their delivery of firm order confirmation notices to competing carriers.¹²⁷ BellSouth's application does not provide such data, nor does it indicate how long it takes to provide the equivalent information to its retail operations.¹²⁸ In its reply comments, BellSouth presents two weeks of data for two carriers.¹²⁹ Some of the data relate to BellSouth activity after the date of its application. Evidence that concerns BellSouth's post-application performance is not demonstrative of its performance at the time of the application.¹³⁰ Therefore, we give this evidence no weight. Furthermore, even if we were to consider the evidence, we would not find the data to be persuasive. Instead of providing evidence of BellSouth's performance for numerous carriers consistently over a specified period of time, BellSouth provides only selected weeks' data on its

¹²⁴ *BellSouth South Carolina Order* at para. 122; LCI Comments at 4; LCI Rausch Decl. at para. 5; KMC Comments, Att. 4, Declaration of Lynn W. Davis at para. 5.

¹²⁵ See *infra* Section IV.A.2.b.ii.; see also *BellSouth South Carolina Order* at paras. 122, 167-69.

¹²⁶ See *infra* Section IV.A.2.b.ii.; see also *BellSouth South Carolina Order* at paras. 167-69.

¹²⁷ *Ameritech Michigan Order* at para. 187; *BellSouth South Carolina Order* at para. 123.

¹²⁸ AT&T Pfau Aff. at paras. 20, 42; ACSI Reply Comments at 16. In the *Ameritech Michigan Order*, the Commission concluded that the retail analogue of a firm order confirmation notice occurs when an order placed by the BOC's retail operations is recognized as valid by its internal OSS. The Commission concluded that the BOC needs to provide firm order confirmation notices to competing carriers in substantially the same time that its retail operations receive the retail analogue. *Ameritech Michigan Order* at para. 187, n.479; *BellSouth South Carolina Order* at para. 122. KMC claims that BellSouth service representatives receive a firm order confirmation notice within a matter of minutes. KMC Comments, Att. 3, Declaration of Larry Miller at para. 13.

¹²⁹ BellSouth Stacy Reply OSS Aff. at para. 62.

¹³⁰ *BellSouth South Carolina Order* at para. 128.

performance for two carriers.¹³¹ We find that providing performance data pertaining to particular carriers in particular weeks does not demonstrate overall performance.

37. Several commenters, however, provide data on how long it takes BellSouth to provide firm order confirmation notices to them.¹³² AT&T submits evidence showing that BellSouth took longer than 24 hours to return a firm order confirmation notice for 38 percent of its August 1997 orders and 44 percent of its September 1997 orders.¹³³ LCI claims that it received only 20 percent of its firm order confirmation notices from BellSouth within 24 hours of submitting an order and that, on average, it has taken 3.5 workdays from submission of an order to receive a firm order confirmation notice.¹³⁴

38. Therefore, as in the *BellSouth South Carolina Order*, we conclude that, because BellSouth has not provided any data that compares its delivery of firm order confirmation notices to competing carriers to delivery of equivalent notices to its own retail operations for its own orders, BellSouth has failed to demonstrate that it is providing nondiscriminatory access and therefore we cannot conclude that it has met the competitive checklist. We also conclude, based on the evidence submitted by AT&T and LCI, that BellSouth is not providing competing carriers with firm order confirmation notices on a timely basis.¹³⁵ Our decision is based on the

¹³¹ See BellSouth Stacy Reply OSS Aff. at para. 62.

¹³² BellSouth claims that competing carriers who have experienced longer delays in receiving firm order confirmation notices "are likely formatting their requests incorrectly . . . [and] that those [competing carriers] who are experiencing high error rates must bear responsibility for those mistakes." BellSouth Reply Comments at 50. We stated in the *BellSouth South Carolina Order*, however, that competing carrier orders that are truly in error should receive timely order rejection notices, not untimely firm order confirmation notices. *BellSouth South Carolina Order* at para. 128. We reiterate that BellSouth has not provided evidence or explanation to support its contention that most errors in the ordering process are caused by new entrants. See *supra* Section IV.A.2.a.i.; see also *BellSouth South Carolina Order* at paras. 108-14.

¹³³ AT&T Bradbury Aff. at para. 227, Pfau Aff. at paras. 40-41. Pursuant to its interconnection agreement with AT&T, BellSouth must return firm order confirmation notices to AT&T within twenty-four hours. AT&T Bradbury Aff. at para. 226. AT&T notes that BellSouth's "poor performance occurred despite the fact that BellSouth has unilaterally limited its FOC measure to only those `orders that flow through mechanically and entirely without human intervention' . . . thereby excluding from its FOC measurement those [competing carrier] orders most likely not to meet the contractual standard." AT&T Comments at 52-53; see AT&T Pfau Aff. at para. 44; BellSouth Stacy Perf. Aff., Ex. WNS-3 at 2; BellSouth Stacy Reply Perf. Aff. at para. 27.

¹³⁴ LCI Comments at 4; LCI Rausch Decl. at para. 7, Ex. B. LCI claims that its data are only for those orders for which it received a firm order confirmation notice. LCI Rausch Decl. at para. 7. According to LCI, on approximately 38 percent of its orders, BellSouth has not provided a firm order confirmation notice via the EDI ordering interface. *Id.* We note that these figures represent an improvement over those LCI submitted in response to BellSouth's South Carolina application, where LCI claimed that only ten percent of its orders received firm order confirmation notices within twenty-four hours. See *BellSouth South Carolina Order* at para. 124.

¹³⁵ See *supra* para. 37; see also *BellSouth South Carolina Order* at para. 126.

fact that BellSouth consistently fails to meet the standard identified in its interconnection agreement.¹³⁶

39. Order Jeopardy Notices. As stated above, order jeopardy notices inform the competing carrier that BellSouth will not be able to complete installation on or before the scheduled due date. It is critical that a BOC provide a competing carrier with timely notice if the BOC, for any reason, can no longer meet the scheduled due date, so that the competing carrier can inform its customer of the delay before it occurs and reschedule the time for service installation.¹³⁷ The alternative would be that the scheduled due date is not met and the customer discovers this after the fact. Evidence in the record shows that BellSouth provides competing carriers with notice of those order jeopardies caused by the competing carrier or its customer, but not for delays caused by BellSouth.¹³⁸ Thus, as we found in the *BellSouth South Carolina Order*, because BellSouth is not providing order jeopardy notices for those delays it causes, we conclude that BellSouth is not providing competing carriers with nondiscriminatory access to OSS functions.¹³⁹

40. In sum, we reiterate our finding in the *BellSouth South Carolina Order* that BellSouth has failed to establish that it is providing competitors with information about their orders in a nondiscriminatory manner. BellSouth has not provided sufficient data on (1) the timeliness of its delivery of order rejection notices or firm order confirmation notices to competing carriers, or (2) the amount of time it takes to provide the equivalent information to its retail operations. We identified the lack of such data as a deficiency in BellSouth's South Carolina application, and we find the lack of such data to be a deficiency here.¹⁴⁰ Competing carriers, however, have added another month's worth of data showing that BellSouth is still not providing such notices in a timely manner.¹⁴¹ With respect to order jeopardy notices, the record

¹³⁶ See *supra* note 133 and accompanying text.

¹³⁷ *BellSouth South Carolina Order* at para. 130; see, e.g., MCI Comments at 17-19; MCI King Decl. at para. 139; AT&T Pfau Aff. at 49; AT&T Bradbury Aff. at paras. 119-21.

¹³⁸ AT&T Bradbury Aff. at para. 121; MCI King Decl. at paras. 137-39.

¹³⁹ *BellSouth South Carolina Order* at para. 131.

¹⁴⁰ *Id.* at paras. 118, 123, 126; see *supra* paras. 33, 36. In the *Ameritech Michigan Order*, the Commission directed Ameritech to provide such information in subsequent applications. *Ameritech Michigan Order* at para. 187.

¹⁴¹ LCI Comments at 4; see *supra* paras. 33, 37. We continue to disagree with BellSouth that mere compliance with the industry standard--which does not provide for returning information to the competing carriers when orders contain errors--is sufficient. Stacy OSS Aff. at para. 75. Moreover, we agree with commenters that BellSouth's manual provision of order rejection notices to competing carriers is not equivalent to that which BellSouth provides itself. MCI Comments at 17; MCI King Decl. at para. 132.

indicates that BellSouth fails to notify carriers promptly when the due date cannot be met due to delays caused by BellSouth.¹⁴²

(iii) Average Installation Intervals

41. We conclude here, as we did in our *BellSouth South Carolina Order*, that BellSouth has failed to supply us with the data required to determine whether a competing carrier is able to provide service to its customers, using BellSouth's resold service, in substantially the same time and manner that BellSouth provides service to its own retail customers.¹⁴³ As we stated in the *BellSouth South Carolina Order*, to demonstrate nondiscriminatory access, BellSouth must establish that the ordering/provisioning intervals are at parity.¹⁴⁴ A critical measurement in determining whether a BOC has been providing competing carriers with nondiscriminatory access to its operational support systems is average installation intervals.¹⁴⁵ As we stated in the *BellSouth South Carolina Order*, the most meaningful average installation interval measure is the average time it takes from when BellSouth first receives an order from a competing carrier to when BellSouth provisions the service for that order.¹⁴⁶ Without data on average installation intervals comparing a BOC's retail performance with the performance provided to competing carriers, the Commission is unable to conclude that a BOC is providing nondiscriminatory access to OSS functions for the ordering and provisioning of resale.¹⁴⁷ Parity is especially important with respect to average installation intervals for both resale and retail services because competing carriers will be at a competitive disadvantage if their customers have to wait a longer period for their service to be installed.

42. BellSouth, however, has not provided data showing average installation intervals as we defined them in the *BellSouth South Carolina Order*.¹⁴⁸ Instead, attempting to demonstrate parity in its provision of resale services, BellSouth provided other performance

¹⁴² See *supra* para. 39; see also *BellSouth South Carolina Order* at para. 131.

¹⁴³ *BellSouth South Carolina Order* at paras. 132-40; *Ameritech Michigan Order* at paras. 166-67, 170-71; see generally Hyperion Comments at 5; AT&T Reply Comments at 26; CFA Reply Comments at 44-45, Table 7. As we noted in the *BellSouth South Carolina Order*, competing carriers' ability to provide timely service to its end user customers is, in large measure, dependent on the ability of the BOC to process competing carriers' orders for resale in a timely fashion. *BellSouth South Carolina Order* at para. 132.

¹⁴⁴ *BellSouth South Carolina Order* at para. 132.

¹⁴⁵ *Ameritech Michigan Order* at para. 168.

¹⁴⁶ *BellSouth South Carolina Order* at para. 137.

¹⁴⁷ *Id.* at para. 167.

¹⁴⁸ *Id.* at para. 137.

measurements.¹⁴⁹ The first measure, "percentage of provisioning appointments met," shows how often BellSouth met the due date it assigned to itself and how often BellSouth met the due dates it assigned to new entrants.¹⁵⁰ The second measure, "issue to original due date intervals," presents data on the number of days between the date the order was issued, *i.e.*, the day it was processed by the Service Order Control System,¹⁵¹ and the original due date.¹⁵² BellSouth claims that "the use of both sets of data accurately portrays the provisioning service parity comparison for [competing carrier] end users and [BellSouth Telecommunications, Inc.] retail end users."¹⁵³ BellSouth claims that these measures provide "more meaningful information regarding BellSouth's performance than average service order intervals [because] service order intervals reflect end user preferences and sales campaign nuances whereas the interval data, combined with the [percentage of] Provisioning Appointments Met measurement, reflect BellSouth's actual service performance."¹⁵⁴

¹⁴⁹ See BellSouth Stacy Perf. Aff. at para. 45; Exs. WNS-9, WNS-11. In addition to the measurements described in this paragraph, BellSouth also provides a third measure, "issue-to-due-date average interval." According to BellSouth, this measure shows "the average service order interval results for BST [BellSouth Telecommunications, Inc.] and [competing carriers.]" BellSouth Stacy Perf. Aff. at para. 46. BellSouth claims that "the performance results reflect non-discriminatory performance." *Id.* BellSouth does not, however, explain how this measure reflects nondiscriminatory performance, nor does it explain the significance of this measure.

¹⁵⁰ *Id.* at para. 45; Ex. WNS-9.

¹⁵¹ BellSouth uses several systems to process competing carriers' orders received through the EDI interface. Orders are initially reviewed by the local exchange ordering system for correctness and completeness. Orders supported by mechanized processing are then sent to the local exchange service order generator system which translates the EDI order into a format that can be accepted by the Service Order Control System or SOCS. Although the local exchange ordering system and local exchange service order generator system are used exclusively for processing orders from competing carriers, SOCS processes both orders from competing carriers and BellSouth's retail operations. See BellSouth Stacy OSS Aff. at paras. 52, 75-76. SOCS then generates a valid service order, and creates a firm order confirmation notice that is sent to competing carriers via the EDI interface. *Id.* at 75. If one of these systems encounters an error in the processing of a competing carrier's order, the order is sent to one of BellSouth's service centers for manual processing. As noted above, the service centers will either correct the order and resubmit it for completion, or manually return an error notice to the ordering carrier via facsimile or telephone. *Id.* at para. 75. In response to error notices, competing carriers can provide additional information to the service center representative, or submit a corrected order through the EDI interface. Finally, when an order is completed, SOCS creates an order completion notice that is sent to the ordering carrier via the EDI interface. *Id.*

¹⁵² BellSouth Stacy Perf. Aff. at para. 45. BellSouth asserts that the starting point should be the point in the ordering process at which a correct order has been received, *i.e.*, the date an order has successfully cleared SOCS, and the endpoint of the measurement should be the original due date for the order. *Id.* BellSouth claims that the measurement would show how many orders were assigned a due date of the same day, one day, two days, three days, four days, five days, and over five days. *Id.*, Ex. WNS-11.

¹⁵³ BellSouth Stacy Perf. Aff. at para. 45.

¹⁵⁴ *Id.*

43. As we found in the *BellSouth South Carolina Order*, we conclude that these measures are not sufficient to demonstrate parity.¹⁵⁵ First, the "issue to original due date interval" measures the number of days between the date the order was processed by SOCS and the scheduled due date. By only measuring the time from when the order clears BellSouth's SOCS system, rather than when the order is first submitted, these measures fail to capture the delays in order processing time caused by the high order rejection rates discussed above.¹⁵⁶ In addition, BellSouth's measures do not provide information on the time it takes BellSouth actually to install service.¹⁵⁷ Rather, they simply measure whether assigned due dates have been met. They may thus mask discriminatory treatment of competing carriers' orders. As explained by the Department of Justice:

Fundamentally, a report that shows the side of the line on which an order falls, either met or missed, does not reveal where it is in the range. As to provisioning appointments met, if all [competing carriers'] customers receive service on the due date while all BellSouth retail customers receive service in half the scheduled time, then a report of provisioning appointments met will show parity of performance, not revealing the discriminatory difference in performance between BellSouth and the [competing carrier]. Likewise, as to provisioning appointments missed, if all BellSouth retail customers receive service after one additional day while all [competing carriers'] customers receive service after five additional days, then a report of provisioning appointments met will again show parity of performance and fail to reveal the discriminatory difference.¹⁵⁸

Therefore, as in the *BellSouth South Carolina Order*,¹⁵⁹ we conclude that the measurements provided by BellSouth can mask discriminatory conduct, because they do not permit a direct comparison to BellSouth's retail performance.¹⁶⁰

44. We find here, as in the *BellSouth South Carolina Order*, that a far more meaningful measure of parity is one that measures the interval from when BellSouth first

¹⁵⁵ *BellSouth South Carolina Order* at paras. 132-140; see Sprint Comments at 35.

¹⁵⁶ DOJ Louisiana Evaluation, Ex. 3 Affidavit of Michael J. Friduss - South Carolina (DOJ Friduss Aff.) at para. 60; see AT&T Reply Comments at 26-27; Hyperion Comments at 6; KMC Comments at 14-15; WorldCom Comments at 13.

¹⁵⁷ By contrast, the average installation interval measure we outline above, which begins when BellSouth first receives an order and ends when BellSouth provisions service, would capture the time it takes to install service.

¹⁵⁸ See DOJ Louisiana Evaluation, Ex. 4 at A-34 to A-35; see also AT&T Pfau Aff. at para. 28.

¹⁵⁹ *BellSouth South Carolina Order* at para. 134.

¹⁶⁰ DOJ Louisiana Evaluation, Ex. 4 at A-34; AT&T Pfau Aff. at paras. 26-28; ACSI Reply Comments at 15-16.

receives an order to when service is installed.¹⁶¹ From a customer's perspective, what is important is the average length of time it takes from when the customer first contacts the carrier for service to when that service is provided.¹⁶² This period of time is a crucial point of comparison between the incumbent's performance and the competing carrier's performance. Therefore, the most meaningful data would measure the interval from when BellSouth first receives an order to when service is actually installed,¹⁶³ regardless of whether or not the order electronically flows through BellSouth's operational support systems.¹⁶⁴ This interval can then be compared with the average time from when BellSouth's own service representatives first submit an order for service to when BellSouth completes provision of the service for its retail customers. Unlike the data BellSouth provides, which measure intervals that begin when orders are processed by SOCS,¹⁶⁵ such a measure would expose any delays in the processing of orders. As we stated in the *BellSouth South Carolina Order*, we expect BellSouth to provide such a measure in future applications.¹⁶⁶

45. As we stated in the *BellSouth South Carolina Order*, we recognize that the average installation interval can be influenced by a number of variables.¹⁶⁷ Nevertheless, as we previously concluded, these issues do not justify the withholding of information on average installation intervals by the BOC, but rather go to the weight the Commission should attach to the information.¹⁶⁸

46. For the reasons discussed above, we find that BellSouth's performance measures do not provide sufficient evidence for us to determine whether it is providing nondiscriminatory access to the ordering and provisioning of resale services.

b. Pre-Ordering Functions

47. Pre-ordering generally includes those activities that a carrier undertakes with a customer to gather and confirm the information necessary to formulate an accurate order for that

¹⁶¹ *BellSouth South Carolina Order* at para. 137.

¹⁶² *Id.*

¹⁶³ *Id.*; DOJ Louisiana Evaluation, Ex. 3, DOJ Friduss Aff. at para. 60 (the average [installation] interval "is very visible to end users and highly correlates with their perception of their service provider").

¹⁶⁴ *See supra* note 98 and accompanying text.

¹⁶⁵ *See BellSouth Stacy Perf. Aff.* at paras. 45-46; Exs. WNS-9, WNS-11, WNS-12.

¹⁶⁶ *BellSouth South Carolina Order* at para. 137.

¹⁶⁷ *Id.* at para. 138.

¹⁶⁸ *Id.*; *Ameritech Michigan Order* at para. 170.

customer.¹⁶⁹ BellSouth states that it provides the following functions as part of its pre-ordering: (1) street address validation; (2) telephone number information; (3) services and features information; (4) due date information; and (5) customer service record information.¹⁷⁰ BellSouth currently provides access to pre-ordering functions through its Local Exchange Navigation System or LENS interface.¹⁷¹ BellSouth states that LENS "is an interactive system that allows the [competing carrier] direct, real-time access to BellSouth's pre-ordering OSS."¹⁷²

48. In the *BellSouth South Carolina Order*, we concluded that BellSouth did not offer nondiscriminatory access to pre-ordering OSS functions, because: (1) competing carriers cannot readily connect LENS electronically to their operations support systems and to the EDI ordering interface, and (2) BellSouth did not provide equivalent access to due dates for service installation.¹⁷³ We found that these deficiencies place competitors at a significant disadvantage in relation to BellSouth. Because BellSouth has not corrected either of the deficiencies identified in our *BellSouth South Carolina Order*, we conclude that BellSouth has failed to establish in its Louisiana application that it offers nondiscriminatory access to all OSS functions.

(i) Lack of Equivalent Access in General

49. We conclude here, as we did in our *BellSouth South Carolina Order*, that BellSouth's current pre-ordering system does not provide competing carriers with equivalent access to operational support systems for pre-ordering.¹⁷⁴ BellSouth provides competing carriers with two separate systems for pre-ordering and ordering: LENS for pre-ordering and EDI for ordering.¹⁷⁵ BellSouth does not integrate these two systems for competing carriers, nor has

¹⁶⁹ 47 C.F.R. § 51.5; *BellSouth South Carolina Order* at para. 147.

¹⁷⁰ BellSouth Stacy OSS Aff. at para. 5.

¹⁷¹ BellSouth provides an electronic interface, the Local Exchange Navigation System or LENS, for pre-ordering of both resale services and unbundled network elements. LENS is a proprietary terminal-type interface that allows a competing carrier to use a browser software program to retrieve information from a BellSouth server on a real-time basis. BellSouth Stacy OSS Aff. at para. 6. Competing carriers can connect to LENS through dedicated local area network (LAN-to-LAN) connections, through dial-up connections, or through the public internet. *Id.* at para. 10.

¹⁷² BellSouth Louisiana Application at 27.

¹⁷³ *BellSouth South Carolina Order* at para. 151. For a detailed description of BellSouth's pre-ordering OSS, see *supra* note 171; *BellSouth South Carolina Order* at para. 91.

¹⁷⁴ *BellSouth South Carolina Order* at para. 155.

¹⁷⁵ BellSouth Stacy OSS Aff. at paras. 6, 53; LCI Comments at 2; Intermedia Comments at 5; see BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 131, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify*

BellSouth provided competing carriers with the technical specifications necessary to integrate BellSouth's pre-ordering interface with competing carriers' operational support systems and the EDI ordering interface.¹⁷⁶ As a result, competing carriers cannot readily connect electronically the LENS interface to either their operations support systems or to BellSouth's EDI interface for ordering, notwithstanding their desire to do so.¹⁷⁷ Without this ability, competing carriers must first retrieve information from the LENS pre-ordering interface and then manually re-key the information into their own operational support systems and the EDI ordering interface. By contrast, BellSouth's retail operations use an integrated pre-ordering/ordering system, which eliminates the need for re-keying information.¹⁷⁸ We therefore concluded that LENS did not provide competing carriers with equivalent access to OSS functions for pre-ordering,¹⁷⁹ and that this lack of parity had a significant impact on a competing carrier's ability to compete effectively in the local exchange market and to provide service to customers in a timely and efficient manner.¹⁸⁰ We based this decision on a number of reasons.

50. First, because many "pre-ordering" activities generally occur in the context of actually negotiating a service order, and thus there is no strict delineation between pre-ordering and ordering, an integrated pre-ordering/ordering system is much more efficient.¹⁸¹ Without an integrated system, a new entrant is forced to enter information manually to use the EDI interface

Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region, Docket No. U-22252, Recommendation (Aug. 14, 1997) (*ALJ 271 Recommendation*) at 26-27. We note that LENS can be used for ordering as well as pre-ordering. BellSouth Stacy OSS Aff. at para. 57; BellSouth Reply Comments at 44. BellSouth notes, however, that, "[t]he primary function of LENS is *pre-ordering*. Non-discriminatory access for ordering is supplied by the industry-standard Electronic Data Interchange (EDI) and Exchange Access Control and Tracking (EXACT) interfaces." BellSouth Stacy Aff. at para. 46 (emphasis in original). Because BellSouth claims to be offering nondiscriminatory access for ordering through EDI, it is that method of ordering we consider here.

¹⁷⁶ *BellSouth South Carolina Order* at paras. 159-161.

¹⁷⁷ *Id.* at para. 155.

¹⁷⁸ *Id.* at para. 166; BellSouth Stacy OSS Aff at paras. 8, 51-52; LCI Comments at 2; Intermedia Comments at 5; AT&T Bradbury Aff. Att. 19 at 1. An integrated pre-ordering/ordering system means that BellSouth can enter information once and then transfer the information electronically from one system to the other. AT&T Bradbury Aff. at para. 33

¹⁷⁹ *BellSouth South Carolina Order* at para. 166.

¹⁸⁰ *Id.* at para. 156.

¹⁸¹ *See, e.g., BellSouth South Carolina Order* at para. 156 (citing testimony of Gloria Calhoun, BellSouth, South Carolina Commission July 7, 1997, 11:00 a.m. Hr'g, Tr. at 198.)

for ordering and to import the data into its operations support systems.¹⁸² In comparison to BellSouth's integrated ordering and pre-ordering system, entering information manually can lead to significant delays while the customer is on the line, assuming that a carrier wants to complete the order while speaking to the customer.¹⁸³ Moreover, whether a carrier completes the order while the customer is on the line, as BellSouth's customer service representatives generally do, or enters the information at a later time, such manual entry of data requires a greater amount of time than BellSouth's retail operation requires.¹⁸⁴ As a result, the need to reenter information would require a new entrant to expend more resources than BellSouth to conduct the same number of pre-ordering transactions.¹⁸⁵

51. Second, manual entry of data could also lead to increased errors in entering information when placing an order.¹⁸⁶ As discussed above, BellSouth's systems are rejecting the majority of orders submitted by competing carriers.¹⁸⁷ Although BellSouth claims that these high rejection rates are due to mistakes made by competing carriers, we conclude above that BellSouth failed to substantiate its claim and that BellSouth's actions may have contributed to such errors.¹⁸⁸ Moreover, as we found in the *BellSouth South Carolina Order*, and as commenters contend, it is reasonable to assume that manual entry of information is a contributing factor to the high error rate.¹⁸⁹

¹⁸² DOJ Louisiana Evaluation, Ex. 4 at A-12 to A-13; Sprint Comments at 28; Sprint Comments, App. B, Affidavit of Melissa L. Cloz (Sprint Cloz Aff.) at para. 47; AT&T Comments at 44; AT&T Bradbury Aff. at paras. 28, 30-31; MCI Comments at 25; MCI King Decl. at para. 43-44; LCI Comments at 2; *see also* CFA Reply Comments at 49, Table 9; ALTS Comments at 19-20 (citing *ALJ 271 Recommendation* at 26); Hyperion Comments at 6 (citing *ALJ 271 Recommendation* at 26-27); KMC Comments at 12-13 (citing *ALJ 271 Recommendation* at 26-27); WorldCom Comments at 14-15 (citing *ALJ 271 Recommendation* at 26-27).

¹⁸³ Sprint Cloz Aff. at para. 47; AT&T Bradbury Aff. at para. 33; MCI King Decl. at paras. 43-44; LCI Comments at 2.

¹⁸⁴ DOJ Louisiana Evaluation, Ex. 4 at A-12; *see* Sprint Cloz Aff. at para. 47; AT&T Comments at 44-45; AT&T Bradbury Aff. at para. 33; MCI Comments at 26; MCI King Decl. at paras. 43-46; LCI Comments, Tab 1, Declaration of Betty Baffer (LCI Baffer Decl.) at para. 5.

¹⁸⁵ DOJ Louisiana Evaluation, Ex. 4 at A-12 to A-14; Sprint Cloz Aff. at para. 47; *see* AT&T Bradbury Aff. at para. 33; MCI King Decl. at paras. 43-44.

¹⁸⁶ DOJ Louisiana Evaluation, Ex. 4 at A-12; Sprint Cloz Aff. at para. 47; AT&T Comments at 44; AT&T Bradbury Aff. at para. 33; MCI Comments at 25-26; MCI King Decl. at 43-44; LCI Comments at 2.

¹⁸⁷ *See supra* Section IV.A.2.a.i.

¹⁸⁸ *See supra* Section IV.A.2.a.i; *BellSouth South Carolina Order* at para. 157.

¹⁸⁹ *BellSouth South Carolina Order* at para. 157; DOJ Louisiana Evaluation, Ex. 4 at A-12 to A-13; Sprint Cloz Aff. at para. 47; AT&T Comments at 44; AT&T Bradbury Aff. at para. 33; MCI Comments at 25-26; MCI King Decl. at 43-44.

52. Finally, as we found in the *BellSouth South Carolina Order*, the lack of a machine-to-machine interface prevents a carrier from developing its own customized interface that its customer service representatives could use on a nation-wide basis. As a result, new entrants that seek to enter other BOC markets would need to train their staff on BellSouth's proprietary system and also on systems used in other regions of the country.¹⁹⁰ For these reasons, as in the *BellSouth South Carolina Order*, we conclude that BellSouth's pre-ordering interface significantly restricts competing carriers' ability to market their services.¹⁹¹

53. BellSouth suggests three methods for overcoming the problem of transferring data from LENS to competing carriers' operational support systems and the EDI-ordering interface: "cut and paste," HTML parsing, and Computer Gateway Interface (CGI).¹⁹² In the *BellSouth South Carolina Order*, we rejected BellSouth's "cut and paste" and HTML parsing methods for overcoming the lack of integration, because they did not provide access to operational support system functions for pre-ordering that was equivalent to BellSouth's integrated pre-ordering/ordering interface for its retail operations.¹⁹³ The record indicates that BellSouth has not provided any more information than it provided in its South Carolina application regarding HTML parsing and "cut and paste."¹⁹⁴ We therefore find no reason to alter the conclusion we reached in the *BellSouth South Carolina Order*.

54. BellSouth's other method for electronically connecting its pre-ordering interface with competing carriers' operational support system, Computer Gateway Interface or CGI, is also deficient because BellSouth has failed to provide the necessary technical specifications to develop such an interface. BellSouth claims that competing carriers can integrate LENS and

¹⁹⁰ DOJ Louisiana Evaluation, Ex. 4 at A-12 n.17, A-13, A-14; Sprint Closz Aff. at para. 46; MCI Comments at 25; MCI King Decl. at para. 45; WorldCom Comments, Att. 2, Declaration of Gary J. Ball at para. 14.

¹⁹¹ *BellSouth South Carolina Order* at para. 159.

¹⁹² "Cut and paste" requires a new entrant to highlight information that appears on a LENS screen, electronically copy the data, and then electronically paste the information into another computer application, either the new entrant's OSS or the EDI ordering interface. See DOJ Louisiana Evaluation, Ex. 4 at A-13; MCI King Decl. at 44. The new entrant's personnel would therefore be required to switch from one computer screen to the other, and back again. Also, both computer applications would have to support "cut and paste." HTML parsing requires the development of a software program that extracts the data and computer code underlying each LENS screen. HTML parsing involves separating the data from the computer code, identifying the type of information in each data field (*e.g.*, customer name, address, current service), and transferring the data to the appropriate place in a competing carrier's operations support systems or in the EDI interface. See BellSouth Stacy OSS Aff. at para. 43; MCI King Decl at paras. 49-50. BellSouth describes CGI as "a specification for communicating data between an information server, such as the LENS server, and another independent application, such as a [competing carriers'] operations support system. A CGI script is a program that negotiates the movement of data between the server and an outside application." BellSouth Stacy OSS Aff. at para. 44.

¹⁹³ *BellSouth South Carolina Order* at paras. 162-65.

¹⁹⁴ MCI King Supp. Decl. at para. 5; AT&T Bradbury Aff. at paras. 32-35.

EDI by developing CGI.¹⁹⁵ To develop CGI, however, a competing carrier would need detailed technical specifications of BellSouth's interface, and BellSouth has failed to provide the necessary technical specifications.¹⁹⁶ We previously found that a BOC has an obligation "to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with the BOC's legacy systems and any interfaces utilized by the BOC for such access."¹⁹⁷ Thus, as in the *BellSouth South Carolina Order*, we conclude that BellSouth has not met its obligation to provide complete, detailed, and updated specifications that competing carriers need to use CGI to connect electronically their operations support systems to BellSouth's interface.¹⁹⁸

55. Therefore, we agree with commenters that BellSouth has not met the competitive checklist because it has failed to demonstrate that competing carriers are able to use or develop a machine-to-machine interface or CGI that is substantially similar to what BellSouth's

¹⁹⁵ BellSouth Stacy OSS Aff. at para. 68; BellSouth Reply at 44. For a description of CGI, see *supra* note 192.

¹⁹⁶ AT&T Comments at 45; AT&T Bradbury Aff. at para. 36; Att. 3, Testimony of Gloria Calhoun, BellSouth, Alabama Commission Docket No. 25835, Aug. 19, 1997 Hr'g (Alabama Commission Aug. 19, 1997 Hr'g), Tr. at 686-87; DOJ Louisiana Evaluation, Ex. 4 at A-10 n.16. In its pleadings, BellSouth claims that it has provided CGI specifications to requesting competing carriers. BellSouth Stacy OSS Aff. at para. 44; BellSouth Reply Comments at 45 (citing BellSouth Stacy OSS Reply Aff. at paras. 36-40); BellSouth Stacy OSS Reply Aff. At para. 39. MCI claims, however, that it has requested and not received updated technical specifications necessary to develop CGI. MCI King Supp. Decl. at para. 5; MCI King Decl. at paras. 48-50. BellSouth admits that it is in the process of updating its CGI specifications and that it had not provided the updated specifications at the time it filed its application. BellSouth Stacy OSS Aff. at para. 44; BellSouth Stacy OSS Reply Aff. at para. 39. Nevertheless, BellSouth indicates that competing carriers could begin developing CGI by using the currently available, *i.e.*, out-of-date, specifications. *Id.* By failing to provide updated and complete CGI specifications, however, BellSouth has failed to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with BellSouth's legacy systems and any interfaces utilized by BellSouth for such access. *Ameritech Michigan Order* at para. 137; *BellSouth South Carolina Order* at paras. 160-61.

¹⁹⁷ *Ameritech Michigan Order* at para. 137. Moreover, in the *Local Competition Second Reconsideration Order*, the Commission noted that "[i]nformation regarding interface design specifications is critical to enable competing carriers to modify their existing systems and procedures or develop new systems to use these interfaces to obtain access to the incumbent LEC's OSS functions." *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19742.

¹⁹⁸ *BellSouth South Carolina Order* at para. 161. In its reply comments, BellSouth claims that updated CGI specifications were given to MCI on December 15, 1997. BellSouth Stacy OSS Reply Aff. at para. 40. We do not consider this evidence, however, because BellSouth provided the updated specifications after November 25, 1997 (the date on which comments were due), and therefore parties were not provided with an opportunity to comment on the adequacy of such specifications. See *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 97-330 (rel. Sept. 19, 1997); *Ameritech Michigan Order* at para. 51 (stating that "under no circumstance is a BOC permitted to counter any arguments with new factual evidence *post-dating* the filing of comments" (emphasis in original)).

representatives use.¹⁹⁹ Moreover, BellSouth's other methods of electronically transferring information, "cut and paste" and HTML parsing, are inadequate. Therefore, as we found in the *BellSouth South Carolina Order*, we conclude that competing carriers cannot readily transfer information electronically from LENS to their operations support systems and deploy an integrated pre-ordering and ordering system.²⁰⁰

(ii) Lack of Equivalent Access to Due Dates

56. As we concluded in the *BellSouth South Carolina Order*, we find that BellSouth does not offer competing carriers nondiscriminatory access to due dates.²⁰¹ New entrants do not obtain actual due dates from LENS during the pre-ordering stage; rather, LENS provides information that competing carriers can use to determine a due date.²⁰² The actual, firm due date is assigned once BellSouth processes the order through SOCS.²⁰³ A new entrant therefore will not be informed of the actual due date until it receives a firm order confirmation from BellSouth.²⁰⁴

57. BellSouth states that this same process is used for its retail operations, *i.e.*, it does not provide actual due dates for its service representatives until the order is processed through SOCS.²⁰⁵ This fact, however, does not lead to parity in the access to due dates, because, as explained above, competing carriers are experiencing significant delays in the processing of their

¹⁹⁹ MCI King Supp. Decl. at para. 5.

²⁰⁰ *BellSouth South Carolina Order* at para. 166. This lack of parity in the access to OSS functions offered by BellSouth places competing carriers at a significant disadvantage because this deficiency leads to increased costs, delays, and human error. *Id.*

²⁰¹ *Id.* at paras. 167-69. A due date is the date on which the order is scheduled to be completed.

²⁰² DOJ Louisiana Evaluation, Ex. 4 at A-17 to A-18; BellSouth Stacy OSS Aff. at paras. 32-34; BellSouth Reply Comments at 48; BellSouth Stacy OSS Reply Aff. at para. 29; MCI King Decl at para. 74; *see also* CFA Reply Comments at 49, Table 9. According to BellSouth, LENS provides installation information for a specific central office. The information will include: (1) what days of the week are open for installation; (2) the appointment interval being offered by BellSouth for each type of service that requires field work; and, (3) upcoming dates that have been restricted. BellSouth Stacy OSS Aff. at para. 32. BellSouth asserts that this information can be used by competing carriers to determine a due date. *Id.* at 32, 34.

²⁰³ DOJ Louisiana Evaluation, Ex. 4 at A-18 n.25; AT&T Bradbury Aff. at paras. 58-61; BellSouth Stacy OSS Aff., Ex. WNS-48 at 26. For a description of the ordering process and SOCS, *see supra* n.151.

²⁰⁴ *See supra* para. 35; *see also* DOJ Louisiana Evaluation, Ex. 4 at A-18; AT&T Bradbury Aff. at paras. 58-60.

²⁰⁵ BellSouth Stacy OSS Aff. at paras. 33-35; Stacy OSS Reply Aff. at para. 29; *see also* DOJ Louisiana Evaluation, Ex. 4 at A-17 to A-18; BellSouth Reply Comments at 48.

orders.²⁰⁶ As a result of these delays, by the time competing carriers' EDI orders are processed, the original due date, *i.e.*, the one the competing carrier determined using the information provided by LENS, might have passed or the relevant central office and work center may no longer be accepting orders for the date the new entrant promised to its customer. New entrants therefore cannot be confident that the due date actually provided after the order is processed will be the same date that the new entrants promised their customers at the pre-ordering stage based on the information obtained from LENS.²⁰⁷ By contrast, BellSouth's retail service representatives can be confident of the due dates they quote customers at the pre-ordering stage, because BellSouth does not experience the same delays in processing orders that competing carriers currently experience.²⁰⁸

58. BellSouth could ameliorate this pre-ordering problem by correcting the deficiencies in its ordering systems and by providing equivalent access to OSS functions through its current systems. We therefore do not suggest that BellSouth must modify its pre-ordering systems to meet the requirement that it offer nondiscriminatory access to due dates. We only conclude, as we did in the *BellSouth South Carolina Order*, that BellSouth's pre-ordering system for providing access to due dates does not, at the present time, offer equivalent access to competing carriers.

B. Resale of Contract Service Arrangements

1. Background

59. Section 271(c)(2)(B)(xiv) of the competitive checklist requires that telecommunications services be "available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."²⁰⁹ In its *BellSouth South Carolina Order*, this Commission determined that BellSouth failed to comply with checklist item (xiv) by, *inter alia*, refusing to offer contract service arrangements at a wholesale discount.²¹⁰ Contract service arrangements are contractual agreements made between a carrier and a specific, typically high-volume, customer, tailored to that customer's individual needs. Contract service arrangements may

²⁰⁶ See *supra* Section IV.A.2.a.i.

²⁰⁷ DOJ Louisiana Evaluation, Ex. 4 at A-17 to A-18; AT&T Bradbury Aff. at para. 61; MCI King Decl. at paras. 73-74.

²⁰⁸ See *supra* Section IV.A.2.a.i.

²⁰⁹ 47 U.S.C. § 271(c)(2)(B)(xiv).

²¹⁰ *BellSouth South Carolina Order* at paras. 215-24. In its *Louisiana Commission Resale Order*, the Louisiana Commission established a general wholesale discount of 20.72 percent to be applied to BellSouth's retail services offered for resale. *Louisiana Commission Resale Order* at 15.

include volume and term arrangements, special service arrangements, customized telecommunications service agreements, and master service agreements.²¹¹

60. The Commission's rules on resale restrictions state that, "[e]xcept as provided in § 51.613 of this part, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC."²¹² Section 51.613 provides in pertinent part that, "[w]ith respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory."²¹³ The United States Court of Appeals for the Eighth Circuit specifically upheld the Commission's findings that determinations on resale restrictions are within the Commission's jurisdiction and also upheld the Commission's resale restriction rules as a reasonable interpretation of the 1996 Act.²¹⁴

61. As in South Carolina, BellSouth does not make contract service arrangements available at a wholesale discount in Louisiana through either its interconnection agreements or its SGAT (Statement of Generally Available Terms and Conditions).²¹⁵ For example, in its arbitrated interconnection agreement with AT&T, BellSouth states that it will not offer for resale at a wholesale discount contract service arrangements it has entered into after the effective date

²¹¹ *BellSouth South Carolina Order* at para. 212. According to BellSouth, "[a] contract service arrangement is simply a price negotiated with a particular customer (that is subject to competition) for telecommunications services that BellSouth makes separately available under its tariffs." BellSouth Louisiana Reply, App., Tab 13, Reply Affidavit of Alphonso J. Varner (Varner Reply Aff.) at para. 41.

²¹² 47 C.F.R. § 51.605(b).

²¹³ *Id.* § 51.613(b). The resale restrictions permitted under subparagraph (a) do not involve contract service arrangements. Those permissible restrictions relate to cross class-selling and short-term promotions. *Id.* § 51.613(a)(1), (a)(2).

²¹⁴ *Iowa Utils. Bd. v. FCC*, 120 F.3d at 818-19. The Eighth Circuit held:

[W]e believe that the FCC has jurisdiction to issue these particular rules and that its determinations are reasonable interpretations of the Act. . . . [S]ubsection 251(c)(4)(B) authorizes the Commission to issue regulations regarding the incumbent LECs' duty not to prohibit, or impose unreasonable limitations on, the resale of telecommunications services. . . . [47 C.F.R. § 51.613] is a valid exercise of the Commission's authority under subsection 251(c)(4)(B) because it restricts the ability of incumbent LECs to circumvent their resale obligations under the Act simply by offering their services to their subscribers at perpetual "promotional" rates.

Id. at 819.

²¹⁵ See, e.g., BellSouth Louisiana Application at 66; BellSouth Louisiana Application, App. A, Vol. 5, Tab 14, Affidavit of Alphonso J. Varner (BellSouth Varner Aff.) at para. 184.

of the *AT&T Arbitration Order*²¹⁶ (i.e., after January 28, 1997).²¹⁷ Pursuant to its resale agreement with ACSI, which applies to all of BellSouth's serving territory including South Carolina and Louisiana, contract service arrangements are not available for resale at any price.²¹⁸ Nor is BellSouth obligated to provide contract service arrangements at a wholesale discount pursuant to the terms of its SGAT, which provides that "BellSouth contract service arrangements entered into after January 28, 1997 are available for resale only at the same rates, terms, and conditions offered to BellSouth end users."²¹⁹ In the *Louisiana Section 271 Proceeding*, the Chief Administrative Law Judge specifically rejected AT&T's contention that BellSouth's SGAT is deficient because it exempts contract service arrangements from the wholesale pricing requirement.²²⁰ The Louisiana Commission did not address BellSouth's refusal to offer contract service arrangements for resale at a wholesale discount when it approved BellSouth's SGAT.²²¹

62. The Department of Justice notes that BellSouth's restrictions on the resale of contract service arrangements are analogous to restrictions the Commission has determined violate the Act and the Commission's regulations.²²² Likewise, new entrants generally argue that

²¹⁶ BellSouth Louisiana Application, App. C-2, Vol. 21, Tab 180, *In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. of the Unresolved Issues Regarding Cost-Based Rates for Unbundled Network Elements, Pursuant to the Telecommunications Act Number 47 U.S.C. 252 of 1996*, Docket U-22145, Order U-22145 at 4 (decided Jan. 15, 1997, issued Jan. 28, 1997) (*AT&T Arbitration Order*).

²¹⁷ BellSouth Louisiana Application, App. B, Vol. 9, Tab 76, *Arbitrated Interconnection Agreement Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc.* (approved by the Louisiana Commission on Oct. 23, 1997) (*AT&T Arbitrated Agreement*) § 25.5.1. According to the *AT&T Arbitrated Agreement*, "BellSouth [contract service arrangements] which are in place as of January 28, 1997, shall be exempt from mandatory resale. [Contract service arrangements] entered into by BellSouth after January 28, 1997, or terminating after January 28, 1997, shall be available for resale, at no discount." *Id.* We note that the Louisiana Commission also amended its regulations to incorporate the contract service arrangement resale restriction adopted in the *AT&T Arbitration Order*. See BellSouth Louisiana Application, App. C-2, Vol. 22, Tab 186, *In re: Amendments to General Order dated March 15, 1996, as Amended October 16, 1996, In re: Regulations for Competition in the Local Telecommunications Market*, General Order at 8 (decided Mar. 19, 1997, issued April 1, 1997).

²¹⁸ BellSouth Louisiana Application, App. B, Vol. 3, Tab 13, *Resale Agreement Between American Communication Services, Inc. and BellSouth Telecommunications, Inc.* (approved by the Louisiana Commission on April 8, 1997) (*ACSI Resale Agreement*) § III.A.

²¹⁹ BellSouth SGAT § XIV.B.1.

²²⁰ *ALJ 271 Recommendation* at 43. The Chief Administrative Law Judge concluded that BellSouth's SGAT provisions relating to the resale of contract service arrangements are consistent with the Louisiana Commission's conclusions in the *AT&T Arbitration Order*. *Id.*

²²¹ See *Louisiana Commission 271 Compliance Order*; see also Louisiana Commission Comments at 19.

²²² DOJ Louisiana Evaluation at 30, n.60.

BellSouth's refusal to offer contract service arrangements for resale at the general wholesale discount violates section 251(c)(4) of the Act, the Commission's rules, and the *Local Competition Order*.²²³

2. Discussion

63. The Commission recently addressed BellSouth's refusal to offer contract service arrangements for resale at a wholesale discount in its review of BellSouth's South Carolina application and concluded that BellSouth did not satisfy the competitive checklist because it did not offer contract service arrangements at a wholesale rate.²²⁴ In this Order, we reaffirm our reasoning in the *BellSouth South Carolina Order* and again conclude that BellSouth does not comply with item (xiv) of the competitive checklist because it refuses to offer at a wholesale discount contract service arrangements entered into after January 28, 1997 in Louisiana.²²⁵

a. No General Exemption for Contract Service Arrangements

64. We conclude, based on facts nearly identical to those presented in the *BellSouth South Carolina Order*,²²⁶ that BellSouth has created, through its interconnection agreements and its SGAT in Louisiana, a general exemption from the requirement that incumbent LECs offer their promotional or discounted offerings, including contract service arrangements, at a wholesale discount. In the *Local Competition Order*, the Commission concluded that resale restrictions are presumptively unreasonable and that an incumbent LEC can rebut this presumption, but only if the restrictions are "narrowly tailored."²²⁷ Moreover, the Commission specifically concluded that the Act does not permit a general exemption from the requirement that promotional or discounted offerings, including contract service arrangements, be made available at a wholesale discount.²²⁸ As we stated in the *BellSouth South Carolina Order*, neither

²²³ See, e.g., AT&T Comments at 59; MCI Comments at 60-61; Sprint Comments at 37-39; TRA Comments at 22-23.

²²⁴ *BellSouth South Carolina Order* at paras. 215-24.

²²⁵ Because we conclude that BellSouth's refusal to offer for resale at a wholesale discount contract service arrangements entered into after January 28, 1997 renders its application deficient, we do not reach the issue of BellSouth's refusal to offer for resale at any price contract service arrangements entered into on or before January 28, 1997.

²²⁶ See *BellSouth South Carolina Order* at paras. 217-18.

²²⁷ *Local Competition Order*, 11 FCC Rcd at 15966.

²²⁸ *Id.* at 15970. The Commission made clear in the *Local Competition Order* that section 251(c)(4) "makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings" and that, therefore, "no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs." *Id.* The United States Court of Appeals for the Eighth Circuit held that determinations on resale restrictions are within the Commission's jurisdiction, and that

the Act nor the Commission's resale rules contemplate that a state commission can generally exempt all contract service arrangements from the Act's requirement that retail offerings be available for resale at a discount from the retail price.²²⁹ For the reasons discussed below, we find that BellSouth's refusal to offer contract service arrangements at a wholesale discount is not narrowly tailored and therefore constitutes an impermissible general exemption of contract service arrangements from the wholesale discount requirement.²³⁰

65. We are unpersuaded by BellSouth's related claims that (1) the wholesale discount should not be applied to contract service arrangements because contract service arrangements are offerings that BellSouth has already discounted in order to compete for a particular end user customer,²³¹ and (2) its refusal to offer contract service arrangements at a wholesale discount does not restrict new entrants' ability to resell such services because new entrants may purchase each of the tariffed services that make up the contract service arrangement separately at the wholesale rate.²³² In the *Local Competition Order*, the Commission specifically considered and rejected incumbent LECs' claims that the wholesale rate obligation should not apply to high volume rate offerings because they are already discounted.²³³ The Commission instead concluded that any service sold to end users is a retail service, and thus is subject to the wholesale discount requirement, even if it is already priced at a discount off the price of another retail service.²³⁴ Because contract service arrangements are discounted retail service offerings that are not exempt from the statutory resale requirement in section 251(c)(4), we reiterate that BellSouth must offer contract service arrangements for resale at a wholesale discount to new entrants.

our resale restriction rules are a reasonable interpretation of the terms of the 1996 Act. *Iowa Utils. Bd. v. FCC*, 120 F.3d at 818-19.

²²⁹ *BellSouth South Carolina Order* at paras. 217-18.

²³⁰ BellSouth does not dispute that, pursuant to the terms of its ACSI Resale Agreement, AT&T Arbitrated Agreement, and its SGAT, it refuses to resell contract service arrangements at a discount. *See* ACSI Resale Agreement § III.A; AT&T Arbitrated Agreement § 25.5.1; and SGAT § XIV.B.1.

²³¹ BellSouth Louisiana Application at 66-67. According to the Louisiana Commission, "[r]equiring BellSouth to offer already discounted contract service arrangements for resale at wholesale prices would create an unfair advantage for AT&T." *AT&T Arbitration Order* at 4.

²³² BellSouth Louisiana Reply at 67.

²³³ *Local Competition Order*, 11 FCC Rcd at 15971; *see also* *BellSouth South Carolina Order* at para. 217.

²³⁴ *Local Competition Order*, 11 FCC Rcd at 15971 ("If a service is sold to end users, it is a retail service, even if it is already priced as a volume-based discount off the price of another retail service").

66. As in our *BellSouth South Carolina Order*,²³⁵ we also reject BellSouth's contention that application of the wholesale discount to contract service arrangements would greatly overstate the costs avoided by BellSouth because BellSouth does not bear ordinary marketing costs for contract service arrangements, which are individually negotiated arrangements.²³⁶ Neither BellSouth nor the Louisiana Commission has offered any evidence that the general wholesale discount rate would overstate the avoided costs of contract service arrangements, as BellSouth contends.²³⁷ Moreover, as we stated in the *BellSouth South Carolina Order*, the state commission need not apply the general wholesale discount rate, in this case 20.72 percent, to the resale of contract service arrangements, and may instead apply a single discount rate based on the costs avoidable by offering contract service arrangements at wholesale.²³⁸ Because similar marketing, billing, and other costs would be avoided for all contract service arrangements, it would be feasible, and sufficiently accurate, to calculate a single wholesale discount rate to be applied to all contract service arrangements.²³⁹ Such a wholesale discount for contract service arrangements encourages efficient competition because a reseller may compete with an incumbent LEC and facilities-based competitive LECs only to the extent that the reseller can perform marketing and billing services more efficiently and therefore at lower cost.²⁴⁰

67. We are not persuaded by BellSouth's assertion that, if it is required to offer contract service arrangements to resellers at a wholesale discount, it will lose business customers and their contribution to BellSouth's total cost recovery, thus disrupting the balance between residential and business rates and affecting BellSouth's ability to meet the goal of "maximizing access by low-income consumers to telecommunications services."²⁴¹ We specifically rejected BellSouth's identical claims that it would lose profit as a result of wholesale-priced, resale-based competition in the *BellSouth South Carolina Order*.²⁴² In that Order, we concluded that claims of lost contributions to high-cost subsidies do not justify an exception from either the resale

²³⁵ *BellSouth South Carolina Order* at para. 220.

²³⁶ See BellSouth Varner Reply Aff. at para. 41; BellSouth Louisiana Reply at 68-69.

²³⁷ AT&T contends that, in fact, the opposite might be true: contract service arrangements might require a higher wholesale discount rate because certain costs, such as those associated with the special billing arrangements often required by high-volume end users, are typically quite substantial. AT&T Comments at 62, n.36.

²³⁸ *BellSouth South Carolina Order* at para. 220.

²³⁹ *Id.*

²⁴⁰ *Contra* BellSouth Louisiana Reply at 69.

²⁴¹ BellSouth Louisiana Application at 68 (citing *Local Competition Order*, 11 FCC Rcd at 15975).

²⁴² *BellSouth South Carolina Order* at para. 221.

requirements or the requirement to offer unbundled network elements of sections 251 and 271.²⁴³ We further determine that, because the wholesale discount is limited to avoidable costs, BellSouth should lose no more contribution from resold contract service arrangements made available to resellers at an appropriate wholesale discount than it would lose from the resale of tariffed offerings at the general wholesale discount.

68. We also take this opportunity to reiterate the important policy concerns that make restrictions on resale undesirable. In the *BellSouth South Carolina Order*, we expressed concern that BellSouth's failure to offer contract service arrangements for resale at a discount in South Carolina impedes competition for its large-volume customers and thus impairs the use of resale as a vehicle for competitors to enter BellSouth's market.²⁴⁴ As the Commission recognized in the *Local Competition Order*, "the ability of incumbent LECs to impose resale restrictions and conditions is likely to be evidence of market power and may reflect an attempt by incumbent LECs to preserve their market position."²⁴⁵ We are therefore concerned that BellSouth's refusal to offer contract service arrangements at a wholesale discount in Louisiana may impede one of the three methods Congress developed for entry into the BOCs' monopoly market.

69. We remain concerned that, as discussed in the *BellSouth South Carolina Order*, BellSouth might seek to convert customers to contract service arrangements in order to "evade" the Louisiana Commission's wholesale discount.²⁴⁶ In the *Local Competition Order*, the Commission concluded that the presumption against resale restrictions is necessary specifically for promotional or discounted offerings, such as contract service arrangements, in order to prevent incumbent LECs from "avoid[ing] the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."²⁴⁷ We concluded in the *BellSouth South Carolina Order* that BellSouth "appears to be attempting to avoid its statutory resale obligation in South Carolina by shifting its customers to contract service arrangements."²⁴⁸ AT&T contends that, unlike in South Carolina, it is "impossible" to determine whether BellSouth is attempting to evade the resale requirement in Louisiana because BellSouth is not required to disclose contract service arrangements that it has entered into with customers in Louisiana unless the customer "requests and/or consents to the

²⁴³ *Id.*

²⁴⁴ *Id.* at paras. 223-24.

²⁴⁵ *Local Competition Order*, 11 FCC Rcd at 15966.

²⁴⁶ *BellSouth South Carolina Order* at 224.

²⁴⁷ *Local Competition Order*, 11 FCC Rcd at 15970.

²⁴⁸ *BellSouth South Carolina Order* at para. 224.

disclosure."²⁴⁹ AT&T contends, however, that, in other states in which contract service arrangements are publicly disclosed, BellSouth has increased its reliance on contract service arrangements.²⁵⁰ Although we make no specific finding that, in Louisiana, BellSouth is attempting to avoid its statutory resale obligation by shifting its customers to contract service arrangements, we remain concerned that, because many of BellSouth's contract service arrangements apply throughout BellSouth's service territory, BellSouth may impede the development of competition in Louisiana by preventing resellers from competing for large-volume users.

b. State Jurisdiction

70. We further conclude that BellSouth's refusal to offer contract service arrangements at a wholesale discount is not a local pricing matter within the exclusive jurisdiction of the state commission.²⁵¹ We rejected this contention in the *BellSouth South Carolina Order*, noting that the United States Court of Appeals for the Eighth Circuit upheld the Commission's conclusions in the *Local Competition Order* regarding the scope of the resale requirement as it applies to promotions and discounts, including contract service arrangements.²⁵² In upholding the Commission's determination, the court stated that the Commission's rules requiring the resale of promotions and discounts concern the "overall scope of the incumbent LECs' resale obligation" rather than "the specific methodology for state

²⁴⁹ BellSouth Louisiana Application, App. C-2, Vol. 23, Tab 191, *In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., of the Unresolved Issues Regarding Cost-Based Rates for Unbundled Network Elements, Pursuant to the Telecommunications Act Number 47 U.S.C. 252 of 1996*, Docket U-22145, Order U-22145-A at 3-4 (decided on June 10, 1997, issued June 12, 1997) (*Second AT&T Arbitration Order*). The Louisiana Commission reasoned that, "[r]equiring BellSouth to produce copies of each and every contract service arrangement it has entered into would constitute the release of 'non-public customer information regarding a customer's account or calling record' for a specified class, which is prohibited by this Commission's General Order dated March 15, 1996, entitled *Louisiana Public Service Commission Regulations for the Local Telecommunications Market*, § 1201(B)(11)." *Id.* at 4. We do not consider whether such a nondisclosure requirement complies with the requirements of the competitive checklist. *See* 47 U.S.C. § 271(c)(2)(B)(xiv).

²⁵⁰ AT&T Comments, App. Vol. VI, Tab I, Affidavit of Patricia A. McFarland (AT&T McFarland Aff.) at 17. For example, AT&T claims that BellSouth has already filed more than twice as many contract service arrangements in 1997 as it did in 1996, thus insulating a substantial portion of its market from resale competition. According to AT&T, "[i]n 1994 and 1995, prior to the advent of the Act, BellSouth filed with the South Carolina [Commission] only 47 and 41 contract service arrangements respectively. In 1996, with the advent of the Act, BellSouth filed 66 contract service arrangements in South Carolina. And as of September 30, 1997, BellSouth has filed 141 contract service arrangements in South Carolina, more than twice as many as it did in all of 1996." *Id.* AT&T further claims that BellSouth's revenues from existing contract service arrangement contracts will amount to over \$300 million over the next three to five years. *Id.* at 17-18.

²⁵¹ *See* AT&T Comments at 61; Sprint Comments at 38; *but see* BellSouth Louisiana Application at 67; BellSouth Louisiana Reply at 68.

²⁵² *Iowa Utils. Bd. v. FCC*, 120 F.3d at 819; *see also* AT&T Comments at 61; Sprint Comments at 38.

commissions to use in determining the actual wholesale rates."²⁵³ Moreover, as we stated in the *BellSouth South Carolina Order*, allowing incumbent LECs to set the wholesale discount for services subject to the resale requirement at a discount of zero would wholly invalidate such a wholesale pricing obligation. We note that the Louisiana Commission appears to have treated the resale restriction as a matter separate from its establishment of the general wholesale discount and did not conduct an analysis to determine that the appropriate wholesale discount for contract service arrangements should be zero.²⁵⁴ We are thus unconvinced by BellSouth's claim that the Louisiana Commission properly determined that no wholesale discount should be applied to contract service arrangements.

V. COMPLIANCE WITH SECTION 271(c)(1)(A)

71. For the Commission to approve a BOC's application to provide in-region, interLATA services, that BOC must demonstrate that it satisfies the requirements of either section 271(c)(1)(A) or section 271(c)(1)(B) of the Act.²⁵⁵ In this instance, BellSouth argues that its agreements with three Personal Communications Services (PCS) providers, PrimeCo Personal Communications, L.P., Sprint Spectrum, L.P., and MereTel Communications L.P., "qualify BellSouth to file this application for authority to provide interLATA service in Louisiana under section 271(c)(1)(A)."²⁵⁶

72. Given our conclusion that BellSouth does not meet the competitive checklist, we need not and do not decide in this Order whether, for purposes of section 271(c)(1)(A), the PCS carriers listed above are "competing providers of telephone exchange service" in the State of Louisiana. Nevertheless, we do wish to provide BellSouth and others with as much guidance as possible, consistent with the limitations of the 90-day deadline and the large number of section 271-related issues on which various parties have presented contrasting interpretations and arguments. In this regard, we note that the exclusion in the final sentence of subparagraph 271(c)(1)(A) excludes only cellular carriers, and not PCS carriers, from being considered "facilities-based competitors." The final sentence states: "For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R.

²⁵³ *Iowa Utils. Bd. v. FCC*, 120 F.3d at 819.

²⁵⁴ In the *Louisiana Commission Resale Order*, the Louisiana Commission established the general wholesale discount of 20.72 percent to be applied to BellSouth's resold retail services. *Louisiana Commission Resale Order* at 15. The Louisiana Commission exempted contract service arrangements from the wholesale discount requirement, however, in the arbitration of the AT&T and BellSouth interconnection agreement and its review of BellSouth's SGAT. See *AT&T Arbitration Order* at 4; *Louisiana Commission Compliance Order* at 14.

²⁵⁵ 47 U.S.C. §§ 271(c)(1)(A) and (B).

²⁵⁶ BellSouth Louisiana Application at 8-9.

22.901 et seq.)²⁵⁷ shall not be considered to be telephone exchange services." The rules governing PCS services are contained in part 24 of the Commission's rules.²⁵⁸ This statutory exclusion is specific and precise. We find that Congress did not intend such a specific reference to a single subpart of our rules to apply to a service that is subject to a different subpart of a different part of our rules.²⁵⁹ We, therefore, conclude that section 271 does not preclude the Commission from considering the presence of a PCS provider in a particular state as a "facilities-based competitor."

73. We also emphasize, however, that an applicant must demonstrate that a PCS provider on which the applicant seeks to rely to proceed under section 271(c)(1)(A) offers service that both satisfies the statutory definition of "telephone exchange service" in section 3(47)(A) and competes with the telephone exchange service offered by the applicant in the relevant state. In previous orders, the Commission has stated that the use of the term "competing provider" in section 271(c)(1)(A) suggests that there must be "an actual commercial alternative to the BOC."²⁶⁰ We also note that, in other contexts, the Commission recently concluded that PCS providers appear to be positioning their service offerings to become competitive with

²⁵⁷ We note that subpart K of part 22 of our rules, which formerly governed cellular service, no longer exists. Effective January 1, 1995, the Commission replaced former subpart K ("Domestic Public Cellular Radio Telecommunications Service") with subpart H ("Cellular Radiotelephone Service"). In the *Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services*, Report and Order, 9 FCC Rcd 6513 (1994). Both the pre-1995 cellular rules of former subpart K and the revised cellular rules of subpart H begin at section 22.900, 47 C.F.R. § 22.900. Because these rule changes preceded passage of the 1996 Act, we conclude that Congress intended the language in section 271(c)(1)(A) -- "subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.)" -- to mean "subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq. (1994), as amended)."

²⁵⁸ 47 C.F.R. Part 24.

²⁵⁹ That Congress appears to have made a sharp distinction for purposes of this particular subparagraph, however, should not be read to suggest that we will draw any unnecessary distinctions between cellular and PCS services in other contexts. The Commission has consistently found that section 332 of the Act requires that similar types of mobile service, such as broadband PCS and cellular, be regulated similarly. See, e.g., *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1413 (1994); *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 7992, 7994 (1994). In past proceedings, the Commission has treated cellular service similarly to other types of broadband CMRS, e.g., PCS and Specialized Mobile Radio (SMR) service. E.g., *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services*, WT Docket 96-162, Report and Order, FCC 97-352, at para. 35 (rel. Oct. 3, 1997) (local exchange carriers providing in-region, broadband CMRS must do so through a separate affiliate); *Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket 96-59, Report and Order, 11 FCC Rcd 7824, 7869 (1996) (no licensee in broadband PCS, cellular, or SMR service may have an attributable interest in more than 45 MHz of licensed spectrum for those services in any geographic area).

²⁶⁰ *SBC Oklahoma Order* at para. 14; *Ameritech Michigan Order* at para. 75.

wireline service, but they are still in the process of making the transition "from a complementary telecommunications service to a competitive equivalent to wireline services."²⁶¹

VI. CONCLUSION

74. For the reasons discussed above, we deny BellSouth's application for authorization under section 271 of the Act to provide in-region, interLATA services in the state of Louisiana. We find that BellSouth has not satisfied all the requirements of the competitive checklist in section 271(c)(2)(B). Specifically, BellSouth fails to provide nondiscriminatory access to operational support systems and refuses to offer contract service arrangements at a wholesale discount. Except as otherwise provided herein, we make no findings with respect to BellSouth's compliance with other checklist items or other parts of section 271.

VII. ORDERING CLAUSE

75. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 271, BellSouth Corporation's application to provide in-region, interLATA service in the State of Louisiana filed on November 6, 1997, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁶¹ *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 97-75, Second Report, WT 97-14 at 55-56 (rel. Mar. 25, 1997); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, File No. NSD-L-96-10, FCC 97-286 at para. 90 (rel. Aug. 14, 1997) (stating that mobile telephone service providers, including PCS, "are currently positioned to offer products that largely complement, rather than substitute for, wireline local exchange").

APPENDIX

**BellSouth Corporation's 271 Application for Service in Louisiana
CC Docket No. 97-231
List of Commenters**

1. American Communications Services, Inc. (ACSI)
2. Ad Hoc Coalition of Corporate Telecommunications Service Managers and Telecommunications Manufacturing Companies
3. Ameritech
4. Association of Directory Publishers
5. Association for Local Telecommunications Services (ALTS)
6. AT&T Corp.
7. Bell Atlantic Telephone Companies
8. BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.
9. Competition Policy Institute
10. Competitive Telecommunications Association (CompTel)
11. Consumer Federation of America
12. Cox Communications, Inc.
13. Hyperion Telecommunications, Inc.
14. Independent Payphone Service Providers for Consumer Choice
15. Intermedia Communications, Inc.
16. Keep America Connected!
17. KMC Telecom Inc.
18. LCI International Telecom Corp.
19. Louisiana Public Service Commission
20. MCI Telecommunications Corporation
21. National Business League Management Education Alliance
22. Organizations Concerned About Rural Education, *et al.*
23. Paging and Narrowband PCS Alliance of the Personal Communications Industry Association
24. Sprint Communications Company L.P.
25. Telecommunications Resellers Association (TRA)
26. U S WEST, Inc.
27. World Institute on Disability
28. WorldCom, Inc.