

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

In the Matter of

Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc., and  
BellSouth Long Distance, Inc., for  
Provision of In-Region, InterLATA  
Services in South Carolina

CC Docket No. \_\_\_\_\_

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY BELL SOUTH FOR  
PROVISION OF IN-REGION, INTERLATA SERVICES IN SOUTH CAROLINA**

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## EXECUTIVE SUMMARY

The Commission has labored since passage of the 1996 Act to establish the preconditions for competitive local telephone markets. BellSouth has worked equally hard to fulfill its responsibilities under the Act. Yet, as is the case in other parts of the country, facilities-based local competition is limited in much of BellSouth's service territory. Outside of the most obviously profitable cities and service categories, potential local competitors appear unwilling to seize the opportunities Congress, regulators, and BellSouth have made available.

Competition in interLATA services likewise has stalled. Congress determined that entry by the Bell companies is the best way to end years of lock-step price increases by the incumbent long distance carriers, yet the Commission and the Department of Justice have thus far opposed such entry. SNET and GTE meanwhile are energizing long distance competition in their local service areas, highlighting what is being lost by keeping Bell companies on the sidelines.

Twenty months of experience under the 1996 Act shows it is futile and enormously costly to delay interLATA competition while waiting for facilities-based local competition to spread to both business and residential customers. If incumbent long distance carriers believe they can prevent Bell companies from capturing a piece of the long distance market simply by focusing their local entry on lucrative business customers, that is what they will do. Residential callers pay the price, including foregone long distance savings of about \$7 billion each year.

With this application, BellSouth offers a solution. Rather than relying solely on regulation, the Commission can use its authority under section 271 to let market forces jump-start competition in local and interLATA services. South Carolina is the perfect laboratory for proving this more promising approach, for several reasons.

First, BellSouth has fully complied with the local competition provisions of the 1996 Act in South Carolina. The South Carolina Public Service Commission (“SCPSC”) unanimously concluded after exhaustive inquiry that BellSouth has done everything it reasonably can to facilitate local competition. Among other things, BellSouth has voluntarily negotiated over 80 interconnection and resale agreements with requesting carriers in South Carolina; filed and received approval of a statement of generally available terms and conditions that satisfies all statutory and regulatory requirements; invested hundreds of millions of dollars to make interconnection and network access available to local competitors; and demonstrated its ability to process competitors’ orders and furnish local facilities and services upon request.<sup>i</sup>

The SCPSC’s detailed factual findings, developed in its capacity as a trier of fact after a full evidentiary review, with the benefit of decades of experience in overseeing local telecommunications in South Carolina, establish BellSouth’s satisfaction of all relevant requirements under sections 251 and 252. They rule out the possibility that shortfalls of local competition are attributable to BellSouth rather than the business decisions of potential competitors themselves.

BellSouth has also followed the guidance regarding interLATA entry given by this Commission in its Michigan Order<sup>ii</sup> to the extent possible while preserving BellSouth’s right to

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<sup>i</sup>. See Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996, Entry of BellSouth Telecommunications, Inc., into InterLATA Toll Market, Docket No. 97-101-C, Order No. 97-640 (SCPSC Jul. 31, 1997) (“Compliance Order”).

<sup>ii</sup>. Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC No. 97-298 (rel. Aug. 19, 1997) (“Michigan Order”).

have a court decide whether those requirements are consistent with the Act based on the facts as they exist in South Carolina. As part of its commitment to working cooperatively with the Commission, BellSouth even has included extensive evidence requested by the Commission notwithstanding pending proceedings that bear on the relevance and necessity of such evidence.

Second, and despite BellSouth's efforts to ease their entry, potential competitors are not entering the residential market in South Carolina on a facilities basis. AT&T, MCI, and Sprint have all disavowed an intention to offer such service. Compliance Order at 19. No potential provider had taken any substantial steps to offer facilities-based service to residential customers as of three months ago, which is the relevant time under "Track B." 47 U.S.C. § 271(c)(1)(B).

The situation in South Carolina reflects a general problem: potential local competitors are turning their backs on residential and rural customers to pursue more profitable opportunities and keep the Bell companies out of long distance. Although the Commission cannot solve this problem by further regulating incumbent LECs, it can break the logjam by authorizing interLATA competition under Track B, thereby sending a signal that long distance carriers and other potential local providers cannot delay interLATA competition by tailoring their local entry.

This application may be proper under "Track A" (47 U.S.C. § 271(c)(1)(A)) as well. One competitor in South Carolina recently has taken steps that may indicate an intention to provide residential service — possibly in a belated effort to thwart BellSouth's Track B application. To resolve this issue and develop a full record, the Commission should request that parties who provide or intend to provide local services in South Carolina detail their current and planned services in their comments on this application.

Third, the benefits to consumers of granting this application are crystal clear. Over five years, fuller competition as a result of BellSouth's interLATA entry will result in nearly 13,000 new jobs in South Carolina and increase the gross state product by more than \$1.2 billion. BellSouth has submitted to the SCPSC a proposed tariff that would establish basic interLATA rates at least five percent below those of AT&T. This tariff would guarantee low-volume callers, who are most in need of price relief, the opportunity to realize savings from a long distance carrier they know and can trust.

These benefits will be secured without any threat of harm to competition. The traditional justification for excluding Bell companies from interLATA services is that they might dominate interexchange markets through cost misallocation or discrimination. Yet the 1996 Act, together with longstanding Commission regulations and market realities, renders such misconduct inconceivable. The local exchange in South Carolina is open to competitors. BellSouth will start with zero market share in a business dominated by entrenched incumbents with vast resources and high sunk costs, factors that make successful predation unimaginable. Commission rules and procedures have successfully protected regulated ratepayers when incumbent local exchange carriers have entered other markets adjacent to the local exchange. The Commission has confirmed that the 1996 Act gives it ample authority to deter anticompetitive behavior and to facilitate detection of potential violations of the Act. The SCPSC and South Carolina Attorney General likewise have committed themselves to protecting against any possible harm from BellSouth's in-region, interLATA entry.

The unqualified benefits of granting this application have been recognized by those who are most affected. Included in Appendix D to this application are more than 450 letters from South Carolinians who support BellSouth's request for permission to compete, sent by the Governor and Attorney General of South Carolina and other representatives at the local and State levels, public and private educational institutions, non-profit organizations, community and business leaders, and ordinary business and residential consumers.

Fourth, BellSouth's entry into interLATA services likely will end long distance carriers' lack of interest in South Carolina's local markets. As the SCPSC found, the major long distance carriers "will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities." Compliance Order at 66-67. AT&T, MCI, and Sprint also will be freed of all restrictions on offering bundled service packages, adding an additional dimension to local competition.

The SCPSC has determined that the "last avenue" to achieving Congress's goal of competition across all telecommunications markets in South Carolina is to allow BellSouth to provide interLATA services. Id. at 7-8, 66-67. This Commission will be slowing competition in South Carolina if it fails to embrace and act on this finding by the state agency that is closest to the facts.

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Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 271(d)(1), BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, “BellSouth”) hereby seek authorization to provide interLATA services originating in the State of South Carolina, including all services treated as such under 47 U.S.C. § 271(j). BellSouth has satisfied each of the four requirements for approval of its application. Part I of this Brief explains that, pursuant to section 271(c)(1), BellSouth has received state approval of a statement of the terms and conditions under which it generally offers interconnection and network access to competitive local exchange carriers (“CLECs”)<sup>1</sup> and is

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

eligible to apply for interLATA entry on the basis of that statement pursuant to section 271(c)(1)(B). Part II shows that BellSouth's statement satisfies the competitive checklist of section 271(c)(2)(B). Part III confirms that BellSouth will abide by the safeguards of section 272.<sup>2</sup> Part IV demonstrates that approving BellSouth's application "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3). This Brief and supporting affidavits are available in electronic form at <<http://www.bellsouthcorp.com>>.

Virtually all of the issues presented by this application were fully briefed and argued before the SCPSC. Pursuant to section 271(d)(2)(B) — which provides state commissions a formal consultative role on local issues in section 271 proceedings — the SCPSC established a docket to consider BellSouth's eligibility to provide interLATA services in its State. Compliance Order at 2. That docket involved a full four months of review, including discovery, hearings, and evidentiary submissions from long distance carriers and other potential competitors that oppose BellSouth's interLATA entry.<sup>3</sup> Acting as the trier of fact, the SCPSC adduced evidence,

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

<sup>3</sup> In addition to BellSouth, ACSI, AT&T, Communications Workers of America, the Consumer Advocate for the State of South Carolina, LCI, MCI, the South Carolina Cable Television Association, South Carolina Competitive Carriers Association, South Carolina Telephone Coalition, and Sprint all participated in the SCPSC's proceedings. BellSouth contacted each of these entities in an effort to narrow the issues in dispute for this proceeding. See App. D at Tab 2

evaluated the credibility of witnesses who were exposed to cross examination under oath, and reached conclusions on a record containing over 1600 pages of live and prepared sworn testimony and another 1500 pages of pleadings. All parties who wished to be heard had that opportunity, and the SCPSC had the opportunity to assess these parties' positions and credibility. The record of the SCPSC's proceedings is reproduced as Appendix C of this application.

Following its review, the SCPSC certified in a unanimous decision that "none of [BellSouth's] potential competitors are taking any reasonable steps towards implementing any business plan for facilities-based local competition for business and residential customers in South Carolina." Compliance Order at 19. The SCPSC based this certification not only on the testimony of potential competitors themselves, but also on its intimate knowledge of local markets, acquired in the course of reviewing scores of local interconnection and resale agreements, issuing certificates of public convenience, and generally "tak[ing] every step available to [the SCPSC] to encourage and to foster local competition in the State of South Carolina." Id. at 20.

The SCPSC also provided an in-depth analysis of BellSouth's checklist offerings. Id. at 27-59. After reviewing the terms of BellSouth's statement of generally available terms and conditions and extensive evidence regarding BellSouth's actual ability to furnish each of the items it formally holds out, the SCPSC concluded that "[a]lthough not all of the functions, capabilities, and services in the Statement have been requested by CLECs for use in South Carolina,"

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(copies of BellSouth letters). That effort has not resulted in any narrowing of the issues to date. BellSouth will, however, notify the Commission within five days of the filing of this application if its efforts do narrow disputed issues.

BellSouth had “demonstrated that it is functionally able to provide [these] items in South Carolina when ordered by a CLEC.” Id. at 5-6.

Finally, the SCPSC concluded that BellSouth’s “entry into the interLATA market in South Carolina would lead to increased long distance competition and more choices for consumers, which is in the public interest.” Id. at 61. The SCPSC noted BellSouth’s commitment to set its basic rates at least 5 percent below those of AT&T. Id. at 6. On the other side of the coin, the SCPSC explained that extensive “legal obligations and safeguards,” at both the federal and state levels, protect against any possible adverse effects from BellSouth’s entry. Id. at 65-66. The SCPSC also considered and rejected arguments that these benefits would be offset by a reduction in local competition if BellSouth were permitted to compete for long distance customers. Id. at 63. The SCPSC found, to the contrary, that “local competition may speed up considerably” and that BellSouth’s entry “will create real incentives for the major [interexchange carriers] to enter the local market rapidly in South Carolina, because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial facilities.” Id. at 66.

These findings by the expert agency responsible for overseeing telecommunications markets in South Carolina provide the framework for BellSouth’s application.

**I. BELLSOUTH MAY PROCEED UNDER TRACK B**

This Commission held in its Oklahoma Order that a Bell company may apply for interLATA relief on the basis of an approved or effective statement of generally available terms and conditions under Track B where no potential competitors are taking reasonable steps toward

providing facilities-based service to business and residential customers. Oklahoma Order ¶¶ 57-58. The SCPSC determined after a full review that this is precisely the situation in South Carolina, and this shortfall of local competition is not attributable to any failing by BellSouth.

**A. BellSouth Has Taken All Required Steps to Open Local Markets in South Carolina**

BellSouth has done its part to allow competitive entry by negotiating agreements with individual CLECs and offering interconnection and network access through its statement of generally available terms and conditions.

*1. BellSouth Has Negotiated Agreements with Numerous CLECs*

“BellSouth has devoted substantial resources involving the efforts of hundreds of employees and the expenditure of hundreds of millions of dollars to meet or to exceed the requirements of the 1996 Act to open its local markets to competition.” Compliance Order at 20. BellSouth’s negotiators have devoted countless hours to fielding CLEC requests, negotiating arrangements that meet individual CLECs’ needs, and obtaining state approval of the resulting agreements. As a result of these efforts, BellSouth has executed agreements with 83 different telecommunications carriers in South Carolina. See Wright Aff. Ex. 1 Attach. WPE-A (App. A at Tab 16). BellSouth’s SCPSC-approved agreements and the SCPSC orders approving them are reproduced in Appendix B of this application.<sup>4</sup> All the agreements, except BellSouth’s agreement

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<sup>4</sup> The SCPSC has approved BellSouth’s agreements with the following 67 telecommunications carriers: 360° Communications Company; ALEC, Inc.; Alliance Telecommunications, Inc.; ALLTEL Mobile Communications, Inc.; American MetroComm Corporation; American Communication Services, Inc. (ACSI); Annox, Inc.; AT&T; AT&T Wireless Services, Inc.; AXSYS, Inc.; BellSouth Personal Communications, Inc. d/b/a BellSouth Mobility DCS; BTI Telecommunications, Inc.; Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile, Columbia

with AT&T, were completed without the need for an SCPSC arbitration order. A copy of the SCPSC's decision in the AT&T/BellSouth arbitration is reproduced in Appendix B (at Tab 69).<sup>5</sup> No other carrier has sought arbitration or identified any outstanding dispute with BellSouth that would require arbitration.

2. *BellSouth Has Obtained State Approval of its Statement of Generally Available Terms and Conditions*

BellSouth has also actively invited entry by CLECs through its Statement of Generally Available Terms and Conditions ("Statement"). The Statement sets out specific terms and conditions under which BellSouth offers to provide interconnection and access to its network, as

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Cellular Telephone Company, Andersen Cellular Telephone Company (BANM); Comm South Companies; Comm. Depot, Inc.; Competitive Communications, Inc. (CCI); Cybernet Group; Data & Electronic Services, Inc. (DES); DeltaCom, Inc.; EZ Phone, Inc.; FiberSouth, Inc.; Georgia Comm South, Inc. and Fla. Comm South; GNet Telecom, Inc.; GTE Mobilnet Incorporated; GTE Mobilnet of Florence, South Carolina Inc.; GTE Mobilnet of South Carolina Inc.; Hart Communications Corporation; ICG Telecom Group, Inc.; Inter-World Communications; Interlink Telecommunications, Inc.; Intermedia Communications, Inc. (ICI); Interstate Telephone Group; JETCOM, Inc.; KMC Telecom Inc.; LCI International Telecom Corp.; National Tel; Netel, Inc.; Nextel Communications, Inc.; NOW Communications, Inc.; OmniCall, Inc.; Palmer Wireless, Inc.; Payphone Consultants, Inc.; Powertel, Inc.; Preferred Carrier Services, Inc.; Prime Time Long Distance Services, Inc.; Public Service Cellular, Inc.; RGW Communications, Inc.; SouthEast Telephone, LTD; Southern Phon-Reconnek; Sterling International Funding, Inc. d/b/a Reconex; Supra Telecommunications & Information Systems, Inc.; Tel-Link, L.L.C. d/b/a Tel-Link, L.L.C. and Tel-Link of Florida, L.L.C.; Tele-Sys, Inc.; Teleconex, Inc.; The Telephone Company of Central Florida; TriComm, Inc.; TTE, Inc.; U.S. Dial Tone, Inc.; U.S. Long Distance, Inc. (USLD); Unidial Communications, Inc.; United States Cellular Corporation and Central Florida Cellular Telephone Company; US LEC of North Carolina, L.L.C.; Vanguard Cellular Financial Corp.; WinStar Telecommunications, Inc.; and Wright Businesses, Inc. BellSouth's agreements with MCImetro Access Transmission Services, Inc., and Time Warner Communications were recently approved and are reproduced in Appendix D.

<sup>5</sup> AT&T has appealed the SCPSC's arbitration decision to the United States District Court. AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., No. 3:97-2164-17 (D.S.C. filed Jul. 18, 1997). The arbitration decision remains fully effective.

well as resale opportunities on a nondiscriminatory basis to any requesting CLEC in South Carolina. These offerings reflect the Act and federal and State rules and decisions, as well as what BellSouth has learned about CLECs' requirements in the course of negotiating its numerous interconnection agreements. See Varner Aff. ¶¶ 17-18, 23-24 (App. A at Tab 14). In order to ease entry by CLECs (and particularly smaller CLECs) that do not want to negotiate carrier-specific terms, and to establish a useful model for carriers that do want to negotiate, the Statement sets out offerings regarding all of the capabilities needed to compete in the local market in "as straightforward and simple" a way as possible. Varner Aff. ¶ 13.

Pursuant to section 252(f) of the Act, the SCPSC approved BellSouth's Statement, with modifications, on July 31, 1997, finding that "the rates, terms and conditions of interconnection, unbundling and resale in the Statement comply with Section 251 and 252(d) of the Act" and "reflect in a very specific and detailed way the [SCPSC's] rulings in the BellSouth-AT&T arbitration proceeding." Compliance Order at 27.<sup>6</sup> On September 9, 1997, in response to a Motion for Clarification filed by AT&T, the SCPSC approved further modifications to the Statement to make the document more consistent with the Eighth Circuit's decision in Iowa Utilities Board v. FCC, 1997 U.S. App. LEXIS at 18183, \*48 (July 18, 1997). See App. D at Tab 9 (SCPSC order); see also Varner Aff. ¶¶ 5-12. A copy of the Statement reflecting the

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<sup>6</sup> See Varner Aff. ¶¶ 5-11 (discussing SCPSC modifications). AT&T has appealed the SCPSC's approval of the Statement notwithstanding its own decision to arbitrate a custom-tailored interconnection agreement rather than relying upon the terms contained in the Statement. See AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., No. 3:97-2388-17 (D.S.C. filed Aug. 8, 1997). The Statement and the Compliance Order remain in full effect and AT&T's appeal does not affect this application under section 271.

modifications approved by the SCPSC is provided as an exhibit to the Affidavit of Alphonso Varner (App. A at Tab 14).

**B. No CLEC Has Taken Reasonable Steps Toward Providing Facilities-Based Residential Service in South Carolina**

Despite all these efforts by BellSouth, no CLEC made any significant, timely effort to provide the sort of facilities-based competition that legislators “consistently . . . contemplated” when drafting the 1996 Act. S. Conf. Rep. No. 104-230, at 148 (1996) (“Conference Report”). As the SCPSC has certified, “none of [BellSouth’s] potential competitors are taking any reasonable steps towards implementing any business plan for facilities-based local competition for business and residential customers in South Carolina.” Compliance Order at 19.

Congress recognized that facilities-based local competition may not emerge immediately in every State. See Oklahoma Order ¶ 43 (citing Conference Report at 148). Yet legislators wanted to ensure that Bell companies would open local markets and enhance long distance competition even in those States where facilities-based competition is slower to develop. The House Commerce Committee thus drafted Track B “to ensure that a BOC is not effectively prevented from seeking entry into the long distance market because no facilities-based carrier which meets the criteria specified in the Act sought to enter the market.” H. R. Rep. No. 104-204, at 77 (1995) (“House Report”); see Conference Report at 148.<sup>7</sup>

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<sup>7</sup> See also 142 Cong. Rec. H1152 (daily ed. Feb. 1, 1996) (statement of Rep. Hastert) (“section 271(c)(1)(B) provides that a BOC may petition the FCC for this in-region authority if it has . . . not received . . . any request for interconnection from a facilities-based competitor that meets the criteria in section 271(c)(1)(A)”); 141 Cong. Rec. H8458 (daily ed. Aug. 4, 1995) (statement of Rep. Tauzin) (Track B available unless “the exclusively or predominantly facilities based provider described in subparagraph (A)” has requested interconnection and access from the BOC).

In South Carolina, the SCPSC has concluded that potential competitors, and particularly the large interexchange carriers, are positioned to become facilities-based CLECs but are “pursu[ing] other opportunities” instead. Compliance Order at 66-67. If Track B were not available in such instances companies such as AT&T, MCI, and Sprint would have a strong incentive to continue delaying facilities-based local entry so as to protect their own shares of the interLATA market against Bell company competition. See Oklahoma Order ¶ 56. In the words of the Commission, “Track B appropriately safeguards the [Bell companies’] interests where there is no prospect of local exchange competition that will satisfy the requirements of section 271(c)(1)(A).” Id. ¶ 55.<sup>8</sup>

In some cases the Bell company’s eligibility to file under the Commission’s standard can readily be established. For instance, Track B would be available where potential competitors have sought only resale agreements, but would not be available under the Commission’s test if a CLEC had committed itself to provide facilities-based service to businesses and residences under a reasonable timetable and was in compliance with that schedule. Where the request for

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<sup>8</sup>. The Commission has read section 271(c)(1)(B) to condition Bell company interLATA entry on the absence of a request for negotiation to obtain access and interconnection “from a prospective competing provider of the type of telephone exchange service described in section 271(c)(1)(A).” Oklahoma Order ¶ 31 (emphasis added). This interpretation of Track B is the subject of an appeal before the U.S. Court of Appeals for the District of Columbia. See SBC Communications, Inc. v. FCC, No. 97-1425 (D.C. Cir. to be argued Jan. 9, 1998). BellSouth believes the Commission’s position is incorrect and Track B is foreclosed only if the BOC has received a request from a qualifying “competing provide[r]” that actually meets the criteria of Track A as of “the date which is 3 months before the date the company makes its application.” 47 U.S.C. § 271(c)(1)(B). In South Carolina, BellSouth had not received any such request, which alone establishes BellSouth’s eligibility to file under Track B. See Wright Aff. ¶ 4 (no facilities-based provider of business and residential service on June 30, 1997).

interconnection is open-ended and potential competitors have neither ruled out nor committed themselves to providing facilities-based service to residential and business customers, however, the Commission must “engage in a difficult predictive judgment.” Oklahoma Order ¶ 57. This assessment must be informed by the requester’s actions as well as its words. Thus, the Commission has held that a request can preclude an application under Track B only if the requester (1) has made a request that on its face will, if implemented, “lead to the type of telephone exchange service described in section 271(c)(1)(A)” and (2) is “taking reasonable steps toward implementing its request in a fashion that will satisfy section 271(c)(1)(A).” Id. ¶¶ 54, 57, 58.<sup>9</sup>

In deciding whether requesting carriers are reasonably proceeding toward providing facilities-based service to residential and business customers, the Commission’s inquiry must address the state of local competition as of “3 months before the date the [Bell] company makes its application.” 47 U.S.C. § 271(c)(1)(B). Congress established this cut-off date to “ensure” the Bell companies’ ability to file Track B applications when facilities-based local competition is not developing despite an open market. Conference Report at 148. Because of the three-month cut-off, interexchange carriers and other CLECs cannot “game” the system by waiting until the BOC is close to filing (or has filed) its application, and then professing a desire to provide facilities-based local service. See Oklahoma Order ¶ 56 (construing Track B in light of CLECs’ incentive

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<sup>9</sup> In the Oklahoma Order, the Commission set out its “reasonable steps” standard as part of an illustrative example involving a second section 271 application for a given State. Oklahoma Order ¶ 58. A CLEC’s status as a qualifying potential Track A competitor at a given moment would not, however, depend upon whether the incumbent Bell company has previously filed a section 271 application.

to game section 271 process). Accordingly, the relevant question under Commission precedent is whether — as of June 30, 1997 — any potential facilities-based competitor had made a request for interconnection and access from BellSouth in South Carolina that satisfied the two-part test set forth above.

In answering this question, the Commission must look to the SCPSC's assessment of the local market. Like other state commissions, the SCPSC has been “doing the hard job of promoting competition in [its] jurisdiction” and thus is intimately familiar with the activities of BellSouth and new entrants alike. Chairman Reed E. Hundt, Speech to Commission Staff (Washington, D.C. May 27, 1997) <<http://www.fcc.gov/speeches/hundt/spreh.726.html>>. State commissions are responsible for licensing CLECs, 47 U.S.C. § 253(b), for ensuring that CLECs may obtain access and interconnection at reasonable prices, id. § 252(d), for reviewing interconnection agreements between CLECs and incumbent Bell companies, id. § 252(e), and for resolving any implementation disputes that may arise and enforcing agreement terms, see Iowa Utils. Bd., 1997 U.S. App. LEXIS at 18183, \*48. In South Carolina, for instance, the SCPSC has had the benefit of not only extensive hearings on local competition issues generally, but also its review of carrier-specific agreements and applications for local service authority, as well as its experience arbitrating an agreement between BellSouth and AT&T. Compliance Order at 19-20. This extensive experience puts the SCPSC in the best position to make the “highly fact-specific” determination whether any CLEC in South Carolina is taking reasonable steps to become a facilities-based competing provider of business and residential service. Oklahoma Order ¶ 60.

Section 271(d)(2)(B) reflects the state commissions' unique expertise by requiring this Commission to "consult with the State commission . . . in order to verify the compliance of the Bell operating company with the requirements of subsection [271](c)," including fulfillment of Track A or Track B.<sup>10</sup> Moreover, section 271(c)(1)(B) authorizes state regulators to "certify" if a CLEC has "(i) failed to negotiate in good faith as required by section 252, or (ii) violated the terms of an agreement approved under section 252 of this title by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement." Like the inquiry into whether a carrier is "taking reasonable steps toward implementing a request in a fashion that will satisfy section 271(c)(1)(A)," resolving these issues requires familiarity with local markets and the activities of local competitors. Congress evidently believed that this expertise resides with the state commissions. Consistent with the structure of the 1996 Act, therefore, this Commission should defer to the SCPSC's determination that "none of [BellSouth's] potential competitors are taking any reasonable steps towards implementing any business plan for facilities-based local competition for business and residential customers in South Carolina." Compliance Order at 19.

The SCPSC's conclusion is, moreover, amply supported by the materials provided in the Appendices to this application. Most of the requests for negotiations that BellSouth has received

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<sup>10</sup> Where the Commission has been subject to a comparable instruction to "consul[t] with" the Secretary of State on foreign policy matters, it has decided to "defer to the State Department." Cable News Network, Inc., File No. 907-DSE-L-85 (IB, rel. Nov. 19, 1985). Here "the value of federalism" provides an additional reason for according deference, University of Tenn. v. Elliot, 478 U.S. 788, 798 (1986), to minimize "friction" between federal and state officials. Sumner v. Mata, 449 U.S. 539, 550 (1981).

are exclusively for resale of BellSouth's local services and thus could never lead to facilities-based Track A service. Wright Aff. ¶ 6. Of all the CLECs with signed interconnection agreements, only 26 indicated in negotiations that they might at some future time provide facilities-based local exchange services. Id. And of these 26 CLECs, only nine have sought certification from the SCPSC to provide competitive local exchange services in South Carolina. Id. ¶ 6 & Ex. 1 Attach. WPE-A.

Unlike other BellSouth States, no carriers have ordered unbundled loops from BellSouth in South Carolina. Milner Aff. ¶ 37 (App. A at Tab 9). Only one carrier has requested an unbundled switch port in South Carolina. Id. ¶ 50. And, as discussed below, just three requesters (ACSI, ITC DeltaCom, and Time Warner) have placed self-provided facilities in South Carolina. Wright Aff. ¶ 9.

ACSI has fiber-optic networks in Columbia, Charleston, Greenville, and Spartanburg, South Carolina and has executed an SCPSC-approved interconnection agreement with BellSouth. Wright Aff. ¶¶ 10-13. However, ACSI told the SCPSC that it has installed those facilities not "as a local service provider, but rather only as an access provider" — which does not count for purposes of Track A and Track B. Compliance Order at 19; see 47 U.S.C. § 271(c)(1)(A) (excluding exchange access from scope of telephone exchange service for purposes of BOC interLATA entry). Indeed, the SCPSC concluded, based on ACSI's own testimony, that ACSI "had no business plan or firm commitment to place the necessary facilities in South Carolina to begin to provide [facilities-based] competition" and "had no intent to compete for residence customers in South Carolina," as well as that ACSI's "decision not to compete in South Carolina

is related not to any action on the part of [BellSouth], but rather its own business decision to deploy its capital in other areas, such as Georgia, Texas, New Orleans and Baltimore.”

Compliance Order at 19. The most recent information available to BellSouth confirms that, although ACSI may in the future serve South Carolina businesses over its networks, it will not seek to offer facilities-based service to residential customers in the State. Wright Aff. ¶¶ 11-12.

A second CAP that has signed an SCPSC-approved interconnection agreement with BellSouth — ITC DeltaCom — also has fiber-optic networks in place. Id. ¶¶ 14-21. ITC DeltaCom did not provide — and was not taking any steps to provide — facilities-based local exchange service in South Carolina as of June 30 of this year. Id. ITC DeltaCom’s more recent activities are discussed in Part I (C), below.

The third facilities-based provider, Time Warner Communications, owns fiber routes in Columbia, South Carolina. Time Warner Communications has focused its local telephony initiatives in BellSouth’s region almost entirely on business customers. When and if the company enters the local exchange market in South Carolina, it is expected to focus exclusively on business customers. Wright Aff. ¶¶ 22-23 & Attach. WCE-C.

The SCPSC has confirmed that CLECs’ failure to move more quickly to launch facilities-based local service — particularly for residential customers — is due solely to their own business decisions, for BellSouth has not “taken any action to prevent or to retard the development of local competition in South Carolina.” Compliance Order at 20. As Professor Glenn Woroch of the University of California at Berkeley demonstrates, the simple fact is that demographic and economic conditions unrelated to BellSouth’s offerings make other States more attractive

candidates for competitive local entry, at least as long as BellSouth can be kept out of long distance in South Carolina. Woroch Aff. ¶¶ 16-19, 21, 86-92 (App. A at Tab 15). Although AT&T and other interLATA incumbents will argue that this means that long distance competition should also be delayed in South Carolina, Congress decided otherwise. Under the Act and Commission precedent Track B ensures that customers in South Carolina will not be penalized simply because CLECs' priorities lie elsewhere.

**C. Information Held by BellSouth's Competitors May Demonstrate that BellSouth Has Satisfied Track A as Well**

Of course, BellSouth does not have access to complete information about its actual and potential competitors. It is possible that some CLEC recently started to take reasonable steps to meet a specific, near-term schedule for rolling out facilities-based residential service. That, however, would not affect BellSouth's ability to file under Track B on the basis of market conditions as they stood three months before the date of this application.

It is even possible that CLEC(s) in South Carolina have begun to offer facilities-based service to residential as well as business subscribers in South Carolina in recent weeks, perhaps in an effort somehow to stop BellSouth's entry into long distance. In particular, just six days after the SCPSC's July 24 vote to approve the Statement and BellSouth's proposed application under Track B, ITC DeltaCom filed a retroactive tariff for local service, backdated with an effective date of January 23, 1997. See Wright Aff. Ex. 1 Attach. WPE-E (ITC DeltaCom tariff). ITC DeltaCom's new tariff was noticed to the SCPSC at its meeting on August 21, 1997. ITC DeltaCom also is now giving potential residential customers in Greenville, South Carolina directly contradictory information whether it serves residential customers in that city. Compare Affidavit

of David S. Wyatt (App. D at Tab 5 ) with Affidavit of Beth B. Hughes (App. D at Tab 6). Such conduct may be part of an improper attempt to thwart approval of BellSouth's application without actually moving ITC DeltaCom into the residential market, or it may reflect that ITC DeltaCom just recently determined to enter the local residential market in Greenville.

The Commission should get to the bottom of the matter. To develop a full record supporting its decision on this application, the Commission should request that all commenters give specific details regarding their telephone exchange service operations, if any, in South Carolina, including descriptions of all services now being offered and furnished, all steps currently being taken to enter the market, and timetables for introducing new services.<sup>11</sup> The Commission should issue an Order to that effect immediately, to give commenters the greatest possible notice.

If the evidence shows that ITC DeltaCom or some other carrier(s) are in fact offering facilities-based service to residential and business customers in South Carolina, Track A (as well as Track B) would be satisfied and BellSouth's application could go forward on that basis. Likewise, if the evidence shows that a CLEC has begun supplementing facilities-based service to business customers with resale of BellSouth's residential service in South Carolina, BellSouth would be eligible for interLATA relief under both Track A and Track B. The Department of Justice has explained that the Act "does not . . . require that each class of customers (i.e., business and residential) must be served over a facilities-based competitor's own facilities." Addendum to

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<sup>11</sup> Such information could, of course, be filed with the Commission in accordance with the same confidentiality procedures adopted in prior section 271 proceedings. See, e.g., Protective Order, Application of SBC Communications, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Oklahoma, 12 FCC Rcd 6157 (1997).

DOJ Oklahoma Evaluation at 3, CC Dkt. No. 97-121 (May 21, 1997). “[I]t does not matter whether the competitor reaches one class of customers — e.g., residential — only through resale, provided the competitor’s local exchange services as a whole are provided ‘predominantly’ over its own facilities.” Id.<sup>12</sup> Furthermore, the requirements of Track A can be satisfied by a combination of CLECs, rather than the activities of just one CLEC alone. See Michigan Order ¶¶ 82-85. To apply these standards, however, it is critical that the Commission collect the best available information from those parties who have it.

## **II. BELLSOUTH’S STATEMENT MAKES INTERCONNECTION AND ACCESS AVAILABLE IN COMPLIANCE WITH THE ACT’S COMPETITIVE CHECKLIST**

Whenever CLECs in South Carolina decide they are ready to compete, they will have ready and waiting under the terms of their existing agreements and/or BellSouth’s Statement each of the fourteen checklist items. See 47 U.S.C. § 271(c)(2)(B). The affidavits submitted with this brief, including particularly the Affidavits of W. Keith Milner and Alphonso J. Varner, and the two affidavits of William N. Stacy, explain exactly how BellSouth makes each of the Act’s fourteen checklist items available to any CLEC that requests them.

The SCPSC also has verified that BellSouth’s Statement meets or exceeds every requirement of the Act’s competitive checklist and that the Statement’s offerings are not mere paper promises, but rather are demonstrably ready and waiting for CLECs who choose to place orders. Compliance Order at 29-59. These local competition issues are at the core of the

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<sup>12</sup> Supplementing facilities-based residential service with resold business service would qualify just as much as the opposite combination.

SCPSC's established expertise and the state commissions' continuing jurisdiction over such matters was confirmed by the 1996 Act. See Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183. This Commission, moreover, is required to consult with the SCPSC "to verify" BellSouth's satisfaction of the checklist, further driving home that the SCPSC's determinations are entitled to great weight. 47 U.S.C. § 271(d)(2)(B).<sup>13</sup>

The Statement legally requires BellSouth to provide all fourteen checklist items and BellSouth stands ready to furnish each item in the quantities that competitors may reasonably demand and at a level of quality that enables competitors to provide service on par with BellSouth's. See Michigan Order ¶ 110.<sup>14</sup> Moreover, through actual commercial usage in South

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<sup>13</sup>. See supra n.10. There is no conflict between the statute's requirement of consultation with the state commission to verify checklist compliance and the additional requirement of consultation with the Attorney General. See 47 U.S.C. § 271(d)(2)(A). Unlike the state commissions, the U.S. Department of Justice has no special expertise on checklist issues and chose not to be a participant in state-level evidentiary proceedings. Accordingly, the Department of Justice's views would be entitled to less weight than the SCPSC's even if one did not consider the legislative history of the Act. When that legislative history is considered, it shows that Congress intended to limit the Attorney General's consultative role to antitrust issues under the public interest test. See, e.g., 142 Cong. Rec. H1176 (daily ed. Feb. 1, 1996) (statement of Rep. Jackson-Lee) ("substantial weight" to be accorded to the views of the Attorney General is limited to her "expertise in antitrust matters"); id. at H1178 (statement of Rep. Sensenbrenner) ("FCC's reliance on the Justice Department is limited to antitrust related matters"); see also id. at H1157 (statement of Sen. Hyde) ("the Department of Justice will apply any antitrust standard it considers appropriate").

<sup>14</sup>. The relevant inquiry under Track B is whether BellSouth "generally offer[s]" the relevant items. 47 U.S.C. § 271(d)(3)(A)(ii). To address that issue, Exhibit AJV-3 to the Varner Affidavit cross-references each checklist item with the Statement's provisions. If BellSouth also (or alternatively) qualifies under Track A, the first checklist inquiry under the Commission's decisions is whether BellSouth has "a concrete and specific legal obligation to furnish" Track A competitor(s) the checklist items upon request. Michigan Order ¶ 110. In addition to the specific terms of BellSouth's agreements, that obligation is satisfied by the Statement itself insofar as CLECs with existing interconnection agreements can avail themselves of the Statement as an

Carolina and its other in-region States as well as thorough testing, BellSouth has accumulated extensive evidence regarding its ability to furnish these items in compliance with the Act. The empirical evidence accumulated by BellSouth and provided with this application confirms that all checklist items are available today on a nondiscriminatory basis that enables CLECs to provide the same quality telecommunications services as BellSouth.

Consistent with the recommendations of this Commission and the Department of Justice, moreover, BellSouth has established performance measurements that will allow regulators and private parties to confirm BellSouth's continued compliance with the checklist after interLATA relief has been granted. See generally Stacy Performance Aff. (App. A at Tab 13). BellSouth also has established specific provisioning targets for many unbundled network elements ("UNEs"), which offer competitors a further guarantee of nondiscriminatory access. See Stacy Performance Aff. ¶ 36 & Ex. WNS-7.

There are a few areas in which BellSouth disagrees with the interpretations of checklist requirements suggested in the Commission's Michigan Order, particularly regarding pricing, combinations of unbundled network elements, and certain OSS performance measurements and standards. BellSouth and other parties have properly presented these issues to the Courts and the

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alternative to the terms of their agreements. See Compliance Order at 25 (BOC may use Statement to supplement interconnection agreements under Track A). See also, e.g., ACSI Agreement § XXII (giving ACSI access to terms of any SCPSC interconnection order) (App. B at Tab 9); DeltaCom Agreement § XXII(C) (giving ITC DeltaCom access to terms of any SCPSC interconnection order) (App. B at Tab 27).

Commission;<sup>15</sup> in this application BellSouth preserves its positions for resolution by the courts if necessary.<sup>16</sup> No one who fully reviews this application, however, could genuinely question BellSouth's good-faith commitment to satisfying the local-market requirements of the checklist and the 1996 Act. BellSouth thus believes not only that the Commission should change its position on the disputed legal issues, but also that the Commission should look beyond these narrow disagreements about the meaning of the legislation to the broad effort BellSouth is making to accommodate competitive entry by CLECs. This effort, which BellSouth believes amply satisfies the requirements for in-region, interLATA relief, is detailed below.

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<sup>15</sup> The Eighth Circuit has pending before it petitions arguing that because pricing matters are reserved to the States under section 252, and the checklist simply requires compliance with section 252's pricing rules, the checklist does not authorize the Commission to condition BOC interLATA entry upon compliance with federal pricing rules. See Petition of the State Commission Parties and the National Association of Regulatory Utility Commissioners for Issuance and Enforcement of the Mandate (filed Sept. 17, 1997) & Petition for Immediate Issuance and Enforcement of the Mandate (filed Sept. 18, 1997), Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir.). The Commission's policies regarding combinations of unbundled network elements — discussed in paragraphs 160 and 336 of the Michigan Order — are the subject of a petition for rehearing before the Eighth Circuit, Petition for Rehearing, Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir. filed Aug. 29, 1997), and also are at issue in another appeal in the same court. Petition for Review, Southwestern Bell Tel. Co. v. FCC, No. 97-3389 (8th Cir. filed Sept. 5, 1997). In addition, BellSouth has petitioned the Commission to reconsider and clarify portions of the Michigan Order, including those dealing with OSS performance measurements and standards and evidentiary matters. Petition of BellSouth Corporation for Reconsideration and Clarification, Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (FCC filed Sept. 18, 1997).

<sup>16</sup> BellSouth recognizes that the Commission has no power now to grant relief on BellSouth's belief that section 271, along with other provisions of the 1996 Act that single out and impose burdens on the BOCs by name, constitutes an unconstitutional bill of attainder and also violates both separation of powers and equal protection principles. Accordingly, BellSouth hereby preserves these arguments for future review in the Courts.

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

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

CLECs are able to perform traditional OSS functions such as pre-ordering, ordering, provisioning, maintenance and repair, and billing “in substantially the same time and manner” as BellSouth. First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15764, ¶ 518 (“Local Interconnection Order”), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC, No. 96-3321, 1997 U.S. App. LEXIS 18183 (8th Cir. July 18, 1997). As demonstrated in a videotape provided as part of Appendix D (at Tab 7) to this application, BellSouth has modified its OSSs to process CLEC transaction requests and has developed interfaces that allow CLECs to obtain access to resale services and unbundled elements at parity with BellSouth. With these modifications now in place, CLECs may obtain pre-ordering information, prepare and enter

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

To cater to the differing needs of various CLECs, BellSouth has provided a choice of manual or electronic OSS interfaces. Electronic interfaces currently are available for every aspect of OSS access: pre-ordering functions; ordering and provisioning; maintenance and repair; submitting and checking the status of trouble reports for either resold services or UNEs; and obtaining billing information. BellSouth's electronic interfaces meet existing industry standards; as new industry standards are developed, BellSouth will implement them, too. See Stacy OSS Aff. ¶ 6. In addition, BellSouth has provided CLECs with all information (such as user guides and ordering codes) necessary to enable quick processing of CLEC requests, as well as the training they may need to use BellSouth's systems effectively. Stacy OSS Aff. ¶¶ 135-141 & Exs. WNS-48-51.

Whatever interface(s) a CLEC chooses, BellSouth will provide substantially the same type of functionality at substantially the same level of performance that BellSouth provides to itself. The SCPSC has found as much. Adopting the standard established by the FCC, it concluded that BellSouth's "electronic interfaces provide access to [BellSouth's] operational support systems . . . that is substantially the same as, and in many cases better than, that which [BellSouth] provides to personnel supporting [BellSouth's] retail customers." Compliance Order at 33.

Nor can there be any argument that the access BellSouth provides is not commercially viable. All of BellSouth's OSS interfaces have been subjected to extensive internal testing. See Stacy OSS Aff. ¶¶ 117-134. For example, BellSouth has conducted tests of its combined

electronic interfaces to establish a minimum capacity of 5,000 total requests per day, and the interfaces have sufficient excess capacity to handle double that volume in BellSouth's nine-state region. Stacy OSS Aff. ¶ 119-121. CLECs are successfully using BellSouth's electronic interfaces to submit orders for resale services and UNEs and to enter trouble reports. Almost 1700 trouble reports have been processed through the maintenance and repair interface and BellSouth received more than 10,000 electronic orders for resale services in August alone. Stacy OSS Aff. ¶ 125, 128 & Ex. WNS-46. BellSouth's systems are easily expandable to meet any reasonably foreseeable demand by CLECs without discriminatory delays. Stacy OSS Aff. ¶¶ 119-134.

There will be those who say that even BellSouth's extraordinary efforts to accommodate competitors are inadequate, and that the sufficiency of BellSouth's OSSs can only be shown by processing larger numbers of actual orders from CLECs. In allowing Bell companies to satisfy the checklist by offering interconnection and network access pursuant to a statement of terms and conditions, 47 U.S.C. § 271(c)(2)(A)(i)(II), however, Congress necessarily rejected the notion that the availability of local facilities and services can only be shown by furnishing them to competitors at some minimum volume. The checklist does not allow this Commission to delay long distance competition until CLECs decide to come and get BellSouth's offerings.

Pre-ordering. To access OSSs containing pre-ordering information, CLECs can select a manual or electronic interface. The electronic interface — known as the Local Exchange Navigation System (“LENS”) — is an interactive system that allows the CLEC direct, real-time access to BellSouth's pre-ordering OSSs. Stacy OSS Aff. ¶¶ 7-12. LENS is compatible with

inexpensive, commercially available hardware and software and requires no additional development effort by the CLEC, yet can be customized by the CLEC to whatever extent the CLEC chooses. Id. ¶ 10. To accommodate CLECs of differing sizes and needs, LENS is accessible through direct (LAN-to-LAN) connections, dial-up access, or public Internet access. Id. LENS enables a CLEC to satisfy a customer's needs for pre-ordering information during a single telephone call with the customer, without any assistance or intervention from BellSouth personnel. Stacy OSS Aff. ¶ 12.

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

Using either of these interfaces, CLECs may gather and verify street address information, telephone number availability, service and feature availability, due date information, and customer service record information. Stacy OSS Aff. ¶¶ 13-41. For instance, if a CLEC initiates an address verification query through LENS, the LENS server will query the appropriate BellSouth database and verify the address on a real-time basis. Id. ¶¶ 16, 20. A CLEC can use LENS to select and reserve telephone numbers (including vanity numbers) on a real-time basis while the CLEC's customer is on the line. Id. ¶¶ 23-24. LENS also may be used to validate what features are available to particular end-user customers, either by entering a ten-digit telephone number or a street address. Id. ¶ 26.

Additionally, LENS allows CLECs to obtain due date information for installations requiring a premises visit, based on field personnel availability and technical factors such as switch cut-overs. Id. ¶ 32.<sup>17</sup> Authorized CLECs likewise may access customer service records on a real-time basis through the LENS interface. Id. ¶ 38. Not all pre-ordering functions are applicable to unbundled network elements. However, where a particular function is applicable, such as assigning a telephone number for an unbundled port, BellSouth's pre-ordering interface can be used for unbundled network elements as well as resold exchange services. Id. ¶ 48.

For the convenience of CLECs, BellSouth has made the single LENS system available for both business and residential pre-ordering, even though BellSouth's own personnel currently must use different systems to serve these two groups. Id. ¶ 12.<sup>18</sup> LENS, in addition, is more user-friendly than some of the systems used by BellSouth's own service representatives, for it relies exclusively on graphics and English-text prompts rather than code and function keys. Id. ¶¶ 8, 12.

In an effort to make LENS even more useful to larger CLECs, BellSouth has provided to interested CLECs a LENS interface specification that provides data for direct integration into a CLEC's systems. This allows the CLEC to use its own systems to obtain and manipulate the data provided by LENS. Stacy OSS Aff. ¶ 44. Over and above the nondiscriminatory access provided

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<sup>17</sup>. Business rules for other due-date intervals have been provided to CLECs. Stacy OSS Aff. ¶ 35.

<sup>18</sup>. Certain complex services that require extensive design work and are ordered in relatively low volumes, such as SONET rings, may only be pre-ordered and ordered through a paper process. This is true for BellSouth and CLECs alike. Stacy OSS Aff. ¶¶ 63-73. The service inquiry and any subsequent service requests are handled without distinguishing between orders generated by BellSouth and orders generated by a CLEC. Id. ¶ 66. The processes employed by BellSouth for these services thus afford CLECs and their customers the same level of timely service as BellSouth and its retail customers receive. See id. ¶¶ 63-73.

by LENS and required under the Act, moreover, BellSouth makes available machine-to-machine interfaces for access to pre-ordering OSSs that are tailored to individual CLECs' requirements.

Id. ¶¶ 42-45. For instance, even though it is not required to do so to meet its duty of nondiscriminatory access under the Act, BellSouth is developing a customized machine-to-machine interface ("EC-LITE") that meets AT&T's particular specifications. BellSouth expects to deploy this interface in December 1997. Id. ¶ 42.

As described in the attached Stacy OSS Affidavit, tests and actual usage demonstrate that LENS is comparable in speed to the interfaces through which BellSouth's customer service representatives access the same systems. Id. ¶¶ 6, 9, 20, 31. BellSouth's central OSS databases thereafter treat all queries alike, whether they originate with a CLEC or a BellSouth service representative. Id. ¶¶ 16, 24, 28, 34 & Ex. WNS-37. "[E]mpirical data" thus demonstrates that BellSouth is "providing nondiscriminatory access to all [pre-ordering] OSS functions, as required by the Act." Michigan Order at ¶ 128.

Ordering and Provisioning. Ordering and provisioning are the processes whereby a CLEC requests resold services, UNEs, or interconnection trunking from BellSouth and then receives information such as a confirmation that the order has been accepted. See 47 C.F.R. § 51.5. CLECs may use the Exchange Access Control and Tracking ("EXACT") system to request interconnection trunking. This is the same industry-standard interface BellSouth uses to process access service requests from interexchange carriers. Stacy OSS Aff. ¶ 55. In addition, a second interface specifically developed for CLECs, Electronic Data Interchange ("EDI"), has been made available to CLECs since December 31, 1996. Currently, five CLECs have an EDI interface in

actual use with BellSouth. Id. ¶ 54. EDI allows CLECs to order resold services, simple unbundled network elements such as unbundled loops and ports, interim number portability, and some complex services. Id. ¶¶ 59, 63. BellSouth's interface meets the industry standards for EDI developed by the Ordering and Billing Forum (a subcommittee of the Association for Telecommunications Industry Solutions), and allows a CLEC to transmit service requests in standard EDI format to BellSouth. Id. ¶ 50. Using the EDI format, for instance, CLECs may specify that a customer be switched "as is" (no features or functions are added or deleted) or "as specified" (specified features or functions are added or deleted). Id. ¶ 58.

CLECs not choosing to use EXACT or EDI have another alternative. Although not an aspect of BellSouth's provision of nondiscriminatory access under the requirements of the Act, CLECs may submit service requests for most non-complex services through LENS. Id. ¶ 56. In addition, if a CLEC chooses not to use an electronic interface, it may request services or UNEs using a manual process. Stacy Performance Aff. ¶ 8.

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

As the SCPSC determined, “these systems are operational and are capable of processing a sufficient number of orders to permit meaningful competition in South Carolina.” Compliance Order at 37. The capacity of EDI, for instance, greatly exceeds the current volume of CLEC requests. Id. at 37; see Stacy OSS Aff. ¶ 119 & Ex. WNS-43. All of BellSouth’s systems for ordering and provisioning are scalable to meet any reasonably foreseeable demand without discriminatory delays. Id. ¶¶ 119-134.

CLECs’ access to BellSouth’s ordering functions is substantially the same as the access provided to BellSouth’s own retail operations. Mechanized order generation is available on BellSouth’s side of the EDI interface for services that collectively represent 90 percent of BellSouth’s consumer and small business revenues and 80 percent of total retail operating revenue. Stacy OSS Aff. ¶ 58. Mechanized service generation for unbundled loops, ports, and interim number portability has been tested and is available to CLECs as of October 6, 1997. Id. While there have in the past been problems with rejection of electronic orders placed by CLECs, all problems attributable to BellSouth have been corrected. Id. ¶¶ 111-112.

BellSouth has designed its OSSs in accordance with the Eighth Circuit’s conclusion that the text of the Act “cannot be squared” with a requirement that “incumbent LECs, rather than the requesting carriers, . . . recombine network elements that are purchased by the requesting carrier on an unbundled basis.” Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at \*81; see Stacy OSS Aff. ¶ 60. To impose under section 271 any requirement that BellSouth must offer UNEs on a pre-combined basis or as a “platform” would contravene the Court of Appeals’ decision and

violate section 271(d)(4), which forbids the Commission to expand the requirements of the competitive checklist.

Service Maintenance and Repair. CLECs can use BellSouth's interactive Trouble Analysis Facilitation Interface ("TAFI") or a manual interface to initiate maintenance or repair inquiries for services associated with a telephone number. Stacy OSS Aff. ¶¶ 83, 86-95. Thirteen CLECs are presently using TAFI. Id. ¶ 95. For "designed" services (which are associated with a circuit number), BellSouth makes available to CLECs the same T1M1 electronic bonding interface currently used by interexchange carriers for access services and the ability to pass a trouble ticket electronically into the Work Force Administration database using the Exchange Carrier - Common Presentation Manager interface. Id. ¶¶ 82, 96. BellSouth also will develop customized systems such as one now being developed for AT&T based on the T1M1 standard. Id. ¶ 98.

If a CLEC elects to use the manual interface, BellSouth will handle the CLEC's phoned-in trouble reports in the same way it handles reports from its own retail customers — by entering the report into TAFI. Id. ¶¶ 90, 93. But if the CLEC chooses direct access to TAFI, its personnel are themselves able to input trouble reports, obtain commitment times, and check on the status of previously entered reports. CLEC personnel enter trouble reports by inputting information in response to TAFI mechanized questions in the same way BellSouth retail service representatives, who use TAFI themselves, would accomplish the same task. Id. ¶ 93. CLECs have access to information on the resale services and UNEs they have purchased from BellSouth, but not to information about the customers of other CLECs. Id. ¶¶ 90-91. Unlike BellSouth retail service

representatives, CLECs have the advantage of being able to access TAFI for both business and residential customers through the same interface. Id. ¶ 90.

TAFI automatically performs diagnostic tests and, by interacting with other internal BellSouth systems, is often able to correct a trouble report while the customer is still on the line. For example, if a customer were to report a problem with call waiting, TAFI would first verify that the feature is listed on the customer service record. Then, depending on the nature of the problem, TAFI may be able to restore the service to the line. TAFI will verify, for instance, that the program options in the central office switch are correct. If TAFI finds an error in those options, it will automatically reprogram the switch. Id. ¶ 87. In cases where further action is required, BellSouth will advise the CLEC of the steps being taken and the time they will take, so that the CLEC can inform its own customer. Id. ¶ 90. Thereafter, the CLEC can check the status of a repair order by entering a subsequent report into TAFI or, if it placed the initial order manually, by contacting the BellSouth Residence Repair Center or Business Repair Center with which it placed the initial report. See id. ¶¶ 90-91.

TAFI currently will support 130 simultaneous users with a volume of 2600 trouble reports per hour. Stacy OSS Aff. ¶ 127; see Compliance Order at 39 (“[t]he current capacity far exceeds usage to date and forecasted usage in the immediate future”). BellSouth is able to add additional capacity almost immediately. Stacy OSS Aff. ¶ 127. As of August 31, 1997, 143 users from 13 CLECs have generated a total of 1690 trouble reports in TAFI. 664 reports were generated in the month of August alone. Usage data and testing confirm that the access provided

to CLECs through TAFI is nondiscriminatory. See Stacy OSS Aff. ¶¶ 126-129 & Exs. WNS-33, 39.

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

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

BellSouth additionally offers CLECs access, either electronically or using a magnetic tape, to usage-sensitive data in a manner that facilitates end-user billing. Hollett Aff. ¶ 8 (App. A at Tab 6). Twenty-four CLECs in BellSouth’s region are presently using this daily data transfer. Id. Daily usage information is available for resold lines, interim number portability accounts, and some unbundled network elements such as unbundled ports. Id. This system, the SCPSC

determined, provides CLECs “access to the data they need in substantially the same time and manner as BST.” Compliance Order at 39.

Testing and actual usage prove that CLECs are able to receive billing information on a nondiscriminatory basis. See Hollett Aff. ¶¶ 9-18 (discussing measures to ensure adequacy of billing systems for CLECs’ needs); Stacy Performance Aff. Ex. WNS-53. BellSouth has adopted a variety of safeguards to prevent double-billing and other billing errors and has addressed the few issues of this sort that have arisen. Hollett Aff. ¶¶ 9-17.

Performance Measurements. BellSouth has collected extensive data on the real-world performance of its systems for this application. This information, which confirms the nondiscriminatory access provided by BellSouth, is presented in the attached affidavits of William Stacy. See Stacy OSS Aff. ¶¶ 108-134 & Exs. WNS 33, 36-43, 45-48, 53. BellSouth also has committed to provide data that will allow CLECs to confirm their continued receipt of nondiscriminatory access to OSSs in the future. Stacy Performance Aff. ¶¶ 40-43 & Exs. WNS 4-6, 8 (discussing BellSouth’s agreement with AT&T and “permanent” performance measures).

As BellSouth has explained in its petition for reconsideration of the Michigan Order, the Commission may not enforce substantive performance standards for other checklist items under the rubric of access to OSSs. What happens after CLECs’ requests have made it through BellSouth’s support systems is governed not by the Act’s OSS provisions, but rather by the checklist requirements (if any) that address the underlying item ordered. The right of access to OSSs cannot be extended to overlap or trump those independent checklist requirements — nor vice-versa — for the Act expressly states that “[t]he Commission may not, by rule or otherwise,

limit or extend the terms used in the competitive checklist . . . .” 47 U.S.C. § 271(d)(4).

However, the performance measurement commitments that BellSouth has made allow the Commission and CLECs to verify that BellSouth is providing nondiscriminatory access to its OSSs. See infra Part II (C) (discussing performance measurements). In that respect, they are just part of a comprehensive effort by BellSouth to ensure CLECs ongoing access to BellSouth’s OSSs that is — at a bare minimum — in full compliance with the Act.

**B. All Fourteen Checklist Items Are Legally and Practically Available**

OSSs enable CLECs to obtain local network facilities and services the CLECs use in their own services. The checklist requires that fourteen categories of BellSouth facilities and services be made available on a nondiscriminatory basis. 47 U.S.C. § 271(c)(2)(B). As explained below, BellSouth fully satisfies all fourteen requirements by virtue of the legally binding offerings of its Statement and BellSouth’s extensive, successful efforts to make the required items available in practice.

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

BellSouth's Statement satisfies sections 251(c)(2) and 252(d)(1) and applicable Commission regulations by offering local interconnection of equal quality, at any technically feasible point, at cost-based rates. Statement § I; Varner Aff. ¶¶ 43-66; Milner Aff. ¶¶ 10-14. The Statement provides interconnection at the line-side or trunk-side of the local switch, as well as at trunk interconnection points for a tandem switch, central office cross-connect points, and out-of-band signal transfer points. Statement § I.A.1. The SCPSC confirmed that interconnection is available at each of these points. Compliance Order at 29. Pursuant to a "Bona Fide Request Process" that was developed jointly with AT&T and is available to all CLECs, BellSouth also will provide local interconnection at any other technically feasible point, including meet-point arrangements. Statement § I.A.2 & Attach. B; Varner ¶¶ 19, 52; Milner Aff. ¶ 10. Interconnection is available through several alternative methods, including virtual and physical collocation and interconnection via purchase of facilities from either company by the other company. Statement § I.C; Varner Aff. ¶ 49.

The SCPSC found that the Statement's interconnection offerings are actually available to competitors. It noted that "BellSouth had installed approximately 19,360 interconnection trunks from CLECs' switches to BellSouth's switches in BellSouth's nine-state region." Compliance Order at 30. As of September 1, 1997, that number had risen to more than 28,000 trunks, including 288 trunks in South Carolina. Milner Aff. ¶ 11. The SCPSC also found that "there is no dispute that virtual collocation is available from BellSouth, as evidenced by the five virtual collocation arrangements in place [in South Carolina] at the time of the hearing and one additional arrangement in progress." Compliance Order at 32; see Milner Aff. ¶ 26 & Ex. WKM-2 (current

list of BellSouth's virtual collocations). There are 14 physical collocation arrangements in place in BellSouth's region and 86 in progress, including one in South Carolina. See Milner Aff. ¶ 20 (discussing and providing list of physical collocations). Because BellSouth uses the same processes with respect to checklist items in all of its nine states, this experience within and outside South Carolina confirms the practical availability of interconnection in South Carolina. Milner Aff. ¶ 5.

To demonstrate that the interconnection BellSouth provides competitors is equal in quality to that BellSouth provides itself, BellSouth has furnished with this application: detailed technical service descriptions outlining its local interconnection trunking arrangements and switched local channel interconnection, Milner Aff. ¶¶ 10-11 & Ex. WKM-9; BellSouth's Collocation Handbook, which establishes standardized procedures for collocation, Milner Aff. ¶ 15; Varner Ex. AJV-4; and blockage rates for trunks that route BellSouth traffic and for trunks that route competitors' traffic, see Stacy Performance Aff. ¶¶ 23, 55-85. Each of these three bases for comparison confirms that the interconnection BellSouth provides competitors equals what it provides to itself. Milner Aff. ¶ 12; Stacy Performance Aff. ¶¶ 55-85 & Exs. WNS-11-14. In every instance in which a trunk has been blocked, BellSouth has cooperated with competitors to resolve the problem. See Milner Aff. ¶ 14 (describing examples).

The Statement also addresses the rates at which interconnection will be provided. Statement § I.E & Attach. A at 1. The SCPSC approved BellSouth's "interim" rates for interconnection as consistent with section 252(d)(1), noting that they match the rates that the SCPSC had previously approved as consistent with the Act in the AT&T/BellSouth Arbitration

and are within the now-overturned interim proxy rates that had been established by this Commission. Compliance Order at 29-30; see Varner Aff. ¶¶ 53-62 (discussing rates). The SCPSC explained that nothing in the 1996 Act restricts a state commission's ability to approve rates as consistent with section 252 prior to "final" cost proceedings, that rate-setting necessarily "is an ongoing process," and that the FCC itself has employed an interim rate methodology under section 252. Compliance Order at 54-58. Then, to address concerns that an interim approach might "chil[l]" local competition because of the possibility of an upward adjustment, the SCPSC eliminated that possibility. Id. at 58. While BellSouth must guarantee CLECs a retroactive, downward adjustment to their bills if warranted after cost proceedings, it may not recover any undercharges incorporated into the interim interconnection rates. Id. at 58-59.

CLECs thus are guaranteed that they will pay no more than the final cost-based rate set by the SCPSC. Varner Aff. ¶¶ 31-36. There will be no back-billing for items purchased at the Statement's current rates. Id. This approach, the SCPSC determined, "will actually encourage early entry into the local market because potential competitors will want to take the largest possible advantage of the capped interim rates" pending proceedings to establish replacement rates. Compliance Order at 59.

The SCPSC has issued a comment and hearing schedule governing its cost proceeding, under which hearings are to begin on December 1, 1997 and a decision will be rendered in January 1998. Varner Aff. ¶ 28. BellSouth's TELRIC-based cost studies have already been made available to the SCPSC. Id. ¶ 29.

The SCPSC's pricing determinations are conclusive. Section 252(d) reserves to the States pricing authority over local interconnection, unbundled access, resale, and transport and termination of traffic. "[T]he FCC has no valid pricing authority over these areas of new localized competition." Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at \*29. The checklist, in turn, requires only that interconnection pricing comply with the requirements of sections 251(c)(2) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(i). This incorporation of the States' rate-setting authority into the checklist does not suggest any transfer of power to the Commission. Indeed, far from issuing an "explici[t] direct[i]on" that the Commission exercise jurisdiction over intrastate rates (as would be necessary to establish federal authority, California v. FCC, No. 96-3519, 1997 U.S. App. LEXIS 22343, at \*10 (8<sup>th</sup> Cir. Aug. 22, 1997)), Congress forbade the Commission from extending the checklist requirement of State-regulated pricing in accordance with section 252. 47 U.S.C. § 271(d)(4). Simply put, "state commission determinations of the just and reasonable rates that incumbent LECs can charge their competitors for interconnection, unbundled access, and resale" are "off limits to the FCC." Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at \*50.

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

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

The SCPSC found that BellSouth's Statement "provides CLECs with nondiscriminatory access to network elements in accordance with the requirements of the Act." Compliance Order at 40. The Statement provides nondiscriminatory access to all network elements identified in the Commission's rules on an unbundled basis at any technically feasible point. Statement § II & Attach. C; Varner Aff. ¶¶ 67-80; Milner Aff. ¶¶ 27-29; see also supra Part II(A) (OSS access). Dark fiber also is available in South Carolina on an unbundled basis, Milner ¶ 34, consistent with the technical service description provided as Milner Aff. Ex. WKM-9. Elements not specifically provided for in the Statement are available through the Bona Fide Request Process, where technically feasible. Statement §§ II.A & D & Attach. B.

BellSouth does not impose any limitations, restrictions, or requirements on requests for or use of a UNE that would impair a CLEC's ability to provide a telecommunications service in the manner it intends. See Statement § II.G ("Network elements may be combined in any manner."). CLECs obtain exclusive use of an unbundled network facility and may use features, functions, or capabilities, for a set period of time as required by section 51.309(c) of the Commission's rules. Varner Aff. ¶ 70. BellSouth retains the obligation to maintain, repair, or replace UNEs, also in compliance with section 51.309(c). Id.; see Statement Attach. C.

BellSouth permits CLECs to recombine UNEs on an end-to-end (or any other) basis, thereby creating the equivalent of one of BellSouth's retail services or a different service of their own. Varner Aff. ¶ 74. To assist CLECs in doing so, BellSouth will perform necessary software modifications and physically deliver UNEs, where reasonably possible, at no extra charge. Id. Additional software modifications are available through the Bona Fide Request Process. Id.

As the U.S. Court of Appeals for the Eighth Circuit has held, however, the Act's language requiring incumbent LECs to provide UNEs "in a manner that allows requesting carriers to combine such elements," 47 U.S.C. § 251(c)(3), "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at \*82; see also id. ("[W]e do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements. . . . [T]he Act does not require the incumbent LECs to do all of the work.") (emphasis in original). Therefore, if a CLEC wishes to obtain an existing retail service from BellSouth on a pre-combined, "switch-as-is" basis, BellSouth will provide this service at the retail rate less the 14.8 percent resale discount set by the SCPSC. Varner Aff. ¶ 75. That percentage stands in contrast to the effective 52 percent discount that CLECs could reap if they were allowed to circumvent the Act's resale rules and State pricing policies by ordering pre-combined UNEs that comprise a finished, end-to-end retail service at the rates that apply to unbundled, uncombined elements. See Varner Aff. ¶ 76. The SCPSC — exercising its exclusive jurisdiction over pricing of both UNEs and resale services — has confirmed the consistency of this practice with the requirements of the 1996 Act. See AT&T Arbitration Order at 10 (Mar. 10, 1997); Varner Aff. ¶ 79.

The Statement's rates for network elements purchased on an unbundled basis also have been approved by the SCPSC. The SCPSC held that the rates are "cost-based within the requirements of the 1996 Act." Compliance Order at 55; see also Varner Aff. ¶¶ 25-40; see Statement Attach. A at 1 & Attach G.<sup>19</sup> In so doing, it explained that "[i]f rates are subsequently modified by [the SCPSC] in a later proceeding, payments by CLECs will be adjusted retroactively to the new rates" if the new rates are lower; again, this ensures CLECs rates that will be no higher than the rates set by the SCPSC after its cost proceeding. Compliance Order at 53-54, 68. As discussed above, the SCPSC's conclusions on pricing are definitive.

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

BellSouth's Statement provides such non-discriminatory access on terms that fulfill all statutory and regulatory requirements. Statement § III & Attachs. A & D; Varner Aff. ¶¶ 81-84; Milner Aff. ¶¶ 35-36. Nine CLECs authorized to provide service in South Carolina have executed license agreements with BellSouth to attach facilities to BellSouth's poles and place facilities in BellSouth's ducts and conduits. Compliance Order at 40; Milner Aff. ¶ 35. In addition, BellSouth has provided cable television and power companies with access to poles, ducts,

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<sup>19</sup> OSS access is being provided at no charge until the SCPSC establishes rates after its cost proceeding. See Varner Aff. ¶ 72. While the Statement does not include optional payment plans for non-recurring charges, BellSouth will consider CLECs' requests for such plans in negotiations. Id. ¶ 78.

conduits and rights-of-way in South Carolina and throughout its region for many years. Milner Aff. ¶ 35. Such arrangements are “business as usual” for BellSouth. Id. ¶ 36.

(4) Unbundled Local Loops. Section 271(c)(2)(B)(iv) requires BellSouth to make available local loop transmission from the central office to the customer’s premises unbundled from local switching or other services. As noted above, BellSouth’s Statement makes local loop transmission available on an unbundled basis in compliance with section 51.319 of the Commission’s rules. Statement § IV. Standard unbundled local loops available under the Statement include 2- and 4-wire voice-grade analog lines, 2-wire ISDN, 2-wire Asymmetrical Digital Subscriber Line (“ADSL”), 2-wire and 4-wire High-bit-rate Digital Subscriber Line (“HDSL”), and 4-wire DS-1 digital grade line. Varner Aff. ¶ 85; Statement § IV.A. Technical service descriptions of BellSouth’s loop offerings are included in Exhibit WKM-9 to the Affidavit of Keith Milner. Additional loops types may be requested through the Bona Fide Request Process. Varner Aff. ¶ 86. In addition to loops themselves, CLECs are able to obtain loop distribution, loop cross connects, loop concentration, and use of the Network Interface Device (“NID”) under the Statement. Statement § IV.B; Attach. C at 2; Varner Aff. ¶¶ 87-92; Milner Aff. ¶¶ 28-29. In response to a desire expressed by AT&T in state proceedings, BellSouth also offers two alternative ways of providing CLECs access to loops “behind” integrated digital loop carrier equipment, where the necessary facilities exist. Varner Aff. ¶¶ 93-97. As explained in connection with checklist item (ii) above, the SCPSC has found that BellSouth’s prices for local loops are in compliance with Section 252(d)(1). See also id. ¶ 86.

Local loops are available in practice to any CLEC that wishes to order them. Although CLECs in South Carolina have not taken BellSouth up on its offer, the SCPSC explained that “as of June 1, 1997, [BellSouth] had provisioned 2,654 unbundled loops to CLECs in its nine state region,” Compliance Order at 42; that number had grown to 4,316 by August 1. Milner Aff. ¶ 37. BellSouth also has tested its ability to process orders and bill for various loops that the Statement makes available, ensuring that “generated orders for these items . . . flo[w]ed through the [BellSouth] system in a timely and accurate fashion.” Compliance Order at 42; Milner Aff. ¶ 39. In actual practice, BellSouth has confirmed that at least 98 percent of the time it is able to cut-over loops to CLECs within 15 minutes. Milner Aff. ¶ 41.

(5) Unbundled Local Transport. Section 271(c)(2)(B)(v) of the Act requires BellSouth to offer local transport unbundled from switching or other services. BellSouth makes available dedicated and shared transport between end offices, between tandems, and between tandems and end offices. Statement § V.A; Varner Aff. ¶¶ 104-108; see Milner Aff. Ex. WKM-9 (technical service descriptions). CLECs have access to the same transport facilities that BellSouth uses to carry its own traffic, without any distinction between BellSouth’s traffic and the CLEC’s traffic. Varner Aff. ¶ 107. CLECs choosing shared transport have access to the routing tables in BellSouth’s switches. Id.

BellSouth permits a requesting carrier to use shared transport to provide interstate exchange access to customers for whom the carrier provides local service. Varner Aff. ¶ 108. In such cases, the CLEC, and not BellSouth, will collect the corresponding interstate access charges,

regardless of whether the CLEC has purchased a dedicated trunk or shared transport. See Varner Aff. ¶ 108.

The Statement's rates for local transport were derived from the FCC's proxy rates and are subject to a capped true-up. Varner Aff. ¶ 112; see Statement Attach. A at 2. Like the Statement's other rates, they have been approved by the SCPSC. Compliance Order at 29-30, 55.

BellSouth has furnished 10 dedicated local transport trunks to CLECs in South Carolina and nearly 1000 dedicated trunks in its region. Milner Aff. ¶ 47; see also Compliance Order at 43-44 (noting provision of trunks and that BellSouth has "tested its methods and procedures for these services and has demonstrated its ability to place these facilities in service and generate a timely and accurate bill for them"). BellSouth has likewise demonstrated its ability to furnish shared transport upon request. Milner Aff. ¶ 49.

(6) Unbundled Local Switching. Section 271(c)(2)(B)(vi) of the Act requires BellSouth to make available local switching unbundled from transport, local loops, or other services. The Commission's rules require further unbundling of local and tandem switching capabilities. 47 C.F.R. § 51.319(c)(2). BellSouth's Statement meets these requirements through the switching services described in this application. Statement § VI.A; Varner Aff. ¶ 113-121; Milner Aff. ¶¶ 50-52 & Ex. WKM-9. Where line class codes are available, BellSouth will provide selective (or "customized") routing by this method on a first-come, first-served basis. Varner Aff. ¶¶ 119-121; Milner Aff. ¶ 51; see also Compliance Order at 45 (rejecting AT&T argument that selective routing capabilities are not available).

BellSouth will follow any intervals specified in its SCPSC-approved interconnection agreements and SCPSC orders in converting service from BellSouth to a CLEC, or from one CLEC to another. BellSouth's general policy, however, is that where the CLEC does not specify another due date, conversions requiring a software change will be made on the same day they are requested if requested by 3:00 p.m. If requested later, such conversions will be made on the next business day. See Stacy OSS Aff. Ex. WNS-19.

BellSouth's switch offerings satisfy the pricing requirements of checklist item (ii) and section 252(d)(1). Varner Aff. ¶¶ 117-118; Statement § VI.B & Attach. A at 3. Pending the SCPSC's establishment of rates for activation and use of vertical features after its cost proceeding, BellSouth is not separately charging CLECs for these features but includes vertical features as part of its unbundled local switching. Varner ¶ 118.

The SCPSC found that BellSouth offers "a variety of switching ports and associated usage unbundled from transport, local loop transmission and other services" and makes additional port types available upon request under the Bona Fide Request Process. Compliance Order at 44-45. One CLEC in South Carolina has requested and received an unbundled switch port from BellSouth, and BellSouth has furnished CLECs with 21 unbundled ports region-wide. Milner Aff. ¶ 50; see Compliance Order at 45. The SCPSC also noted the extensive tests BellSouth has completed to ensure that CLECs purchasing selective routing can route 0+, 0-, and 411 calls to an operator other than BellSouth's or route 611 repair calls to a repair center other than BellSouth's. Compliance Order at 45-46; see Milner ¶ 51. The SCPSC thus properly concluded that BellSouth provides local switching in accordance with checklist item (6). Id. ¶ 46.

(7) Nondiscriminatory Access to 911, E911, Directory Assistance, and Operator Call Completion Services. Section 271(c)(2)(B)(vii) of the Act further conditions in-region, interLATA relief on providing nondiscriminatory access to 911 and E911 services, directory assistance services, and operator call completion services. BellSouth fulfills each of these requirements. Statement § VII; see Varner Aff. ¶¶ 122-153; Milner Aff. ¶¶ 53-65.

Whether they are facilities-based competitors or resellers, CLECs have nondiscriminatory access to BellSouth's 911 and Enhanced 911 facilities. See Varner ¶ 124; Statement § VII.A. For 911 calls, facilities-based CLECs translate the 911 call to a 10-digit number (provided by BellSouth) and route the call to BellSouth's tandem or end office, at which point BellSouth will complete the call. Varner Aff. ¶ 126; Statement § VII.A.3. CLECs are responsible for obtaining the trunks needed to reach BellSouth's switch, but the cost of the 911 (or E911) functionality is borne by the municipality purchasing the service. Varner Aff. ¶ 126; Statement §§ VII.A.3-A.5. For E911 calls, the CLEC forwards the 911 call and Automatic Number Identification ("ANI") to the appropriate BellSouth tandem. Id. ¶¶ 127-128; Statement § VII.A.4. If the E911 tandem trunks are not available, the CLEC will route the call (without ANI) over BellSouth's interoffice network using a 7-digit number. Varner Aff. ¶ 128. BellSouth has developed a guide that provides facilities-based CLECs with the information they need to interconnect with BellSouth for 911 and E911 service, which is furnished as part of this application. Milner Aff. ¶ 53.

BellSouth routinely monitors call blockage on E911 trunk groups and, in coordination with the CLEC, takes corrective action using the same trunk serving procedures for E911 trunk

groups from CLEC switches as for E911 trunk groups from BellSouth switches. Milner Aff. ¶ 57.

BellSouth is responsible for updating and maintaining the Automatic Location Identification/Database Management System and will use its service order process to do so on the same daily schedule that BellSouth uses for its own end user customers. Varner Aff. ¶ 125; Milner Aff. ¶ 54. CLECs will provide BellSouth with daily database updates. Varner Aff. ¶ 127; Milner Aff. ¶ 54. Any errors found by BellSouth in the data supplied by CLECs are faxed back to the CLEC along with error codes. Milner Aff. ¶ 54. BellSouth's procedures for maintaining the database and providing nondiscriminatory access to it are fully discussed in Exhibit WKM-4 to the Affidavit of Keith Milner. BellSouth is not aware of any instance in which it caused incorrect end user information regarding a CLEC end user customer to be sent to emergency service personnel. Milner Aff. ¶ 54.

BellSouth has 211 trunks connecting CLECs with BellSouth's E911 arrangements in its nine-state service area, including 4 trunks in South Carolina. Milner Aff. ¶ 59. BellSouth also is receiving mechanized database updates from 15 different CLECs. Id.; see Compliance Order at 46-47.

Through its Statement, BellSouth both offers to perform directory assistance ("DA") and directory assistance call completion ("DACC") services on behalf of CLECs and provides CLECs with direct access to its DA databases. Statement § VII.B; Varner Aff. ¶¶ 129-133; Milner Aff. ¶¶ 60-64. Details of BellSouth's DA and DACC services are set out in a technical service description. Milner Aff. ¶¶ 60, 64 & Ex. WKM-9. Subject to line class code capacity, BellSouth will use selective routing to provide branded directory assistance capabilities for facilities-based

CLECs and resellers. Varner Aff. ¶ 131; Statement § VII.B.3. CLECs' subscriber listings will be included in BellSouth's DA databases at no charge and will be maintained in the same manner and within the same intervals as BellSouth end user listings. Varner Aff. ¶ 132; Statement § VII.B.1.

As of September 1, CLECs were using 492 BellSouth directory assistance trunks. Milner ¶ 60. Although no CLECs had ordered such trunks in South Carolina, id., BellSouth has "for many years provided comparable directory assistance to independent local telephone companies in South Carolina, as well to IXCs." Compliance Order at 47; Milner Aff. ¶ 61. BellSouth currently provides DA service to 15 CLECs and DACC services to 16 CLECs. Milner Aff. ¶ 60. Eleven CLECs in BellSouth's region, including 7 in South Carolina, were using BellSouth's DA database service as of August 1, 1997. One CLEC in BellSouth's region was using BellSouth's direct access to DA service ("DADAS") as of September 1. Id.

The Statement likewise provides operator services in compliance with statutory and regulatory requirements, allowing a CLEC's subscribers to access services such as operator call processing access services, busy line verification, centralized message distribution system hosting, emergency interrupt, intercept, and operator services transport. Statement § VII.C & Attach. E (CMOS); Varner Aff. ¶¶ 134-139; Milner Aff. ¶¶ 63, 65 & Ex. WKM-9. As of September 1, 1997, there were 6 operator services trunks and 2 verification trunks in place in South Carolina, and a total of 222 operator services trunks and 48 verification trunks across BellSouth's nine states. Milner Aff. ¶ 65.

Rates for facilities and services furnished to CLECs under checklist item (vii) have been approved by the SCPSC and are further discussed in the Affidavit of Alphonso Varner.

Compliance Order at 46-47; Varner Aff. ¶¶ 140-146; see Statement Attach. A at 3-4.

(8) White Pages Directory Listings for CLEC Customers. Section 271(c)(2)(B)(viii) requires BellSouth to make available White Pages directory listings for the customers of competing CLECs. BellSouth's Statement satisfies this requirement. Statement § VIII.A; see Varner Aff. ¶¶ 147-153. It makes available White Pages listings for customers of both resellers and facilities-based carriers, as if they were BellSouth customers. Varner Aff. ¶ 148; Statement §§ VIII.A. & F. CLEC subscribers are not separately classified or otherwise identified, and their listings are accorded the same level of confidentiality as the listings of BellSouth customers. Varner Aff. ¶¶ 149-150. The SCPSC found that "CLEC subscribers receive no less favorable rates, terms and conditions for directory listings than are provided to [BellSouth's] subscribers" and that BellSouth "is providing White Pages listings to CLECs and their subscribers, with thousands in place today." Compliance Order at 47-48; see Milner Aff. ¶ 66. Although it is not required to do so under the checklist or any other provision of the Act, BellSouth also includes CLECs' business subscribers' listings in the appropriate Yellow Pages or classified directory. Varner Aff. ¶ 150.

(9) Nondiscriminatory Access to Telephone Numbers. Pursuant to section 271(c)(2)(B)(ix) of the Act, BellSouth must provide CLECs with nondiscriminatory access to telephone numbers for assignment to their customers until telecommunications numbering

administration guidelines, plans, or rules are established. BellSouth has met this requirement. See Statement § IX; Varner Aff. ¶¶ 154-155; Milner Aff. ¶¶ 69-71.

As the Central Office Code (“NXX”) Administrator for its territory, BellSouth has followed industry-established guidelines published by the Industry Numbering Committee. Milner Aff. ¶ 69 & Ex. WKM-5. Pursuant to its procedures, BellSouth has assigned 72 NPA/NXX codes for CLECs in South Carolina. Milner Aff. ¶ 69. BellSouth has not turned down any requests for NPA/NXX code assignments. Id.

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

BellSouth’s Statement offers the required access. Statement § X; Varner Aff. ¶¶ 156-169; Milner Aff. ¶¶ 72-94. CLECs in South Carolina have access to Signaling Links (dedicated transmission paths carrying signaling messages between switches and signaling networks), Signal Transfer Points (signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases), and Service Control Points (databases containing customer and/or carrier-specific routing, billing, or service instructions). Statement § X.A. Service Control Points to which CLECs have access include (but are not limited to): Line Information Data Base (“LIDB”); toll free number database; Automatic Location Identification/Data Management System; Advanced Intelligent Network (“AIN”); and selective

routing. Varner Aff. ¶¶ 157-167; Statement § X.A.3 & Attach. F (LIBD). BellSouth provides access to its databases on a nondiscriminatory basis and in a manner that complies with the requirements of section 222 of the Communications Act. See Milner Aff. ¶¶ 72-94; see also Milner Aff. Ex. WKM-9 (technical service descriptions). Statement § X & Attach. C.

The SCPSC found that the databases and signaling networks offered in the Statement are each available to CLECs. Compliance Order at 49. Indeed, in the first 7 months of 1997 alone, CLECs made approximately 22 million queries to BellSouth's toll free database. Milner Aff. ¶ 92. BellSouth's LIDB processed more than 244 million queries from outside BellSouth during the same period. Id. BellSouth's AIN Toolkit 1.0 and AIN SMS Access 1.0 — which CLECs will use in connection with AIN access — have been tested and the accuracy of billing for these offerings has been confirmed. Id. ¶ 93; Compliance Order at 49. BellSouth's signaling services are also available to CLECs in practice, as demonstrated by actual CLEC interconnection. Compliance Order at 49; Milner Aff. ¶ 94.

(11) Interim Number Portability. Section 271(c)(2)(B)(xi) of the Act requires BellSouth to provide CLECs with interim number portability (“INP”), either through remote call forwarding (“RCF”), direct inward dialing (“DID”), or other comparable arrangements, until the Commission issues regulations to ensure permanent number portability. See also 47 C.F.R. §§ 42.7(a), 42.9, 42.3(a), (b). BellSouth's Statement meets this requirement as well. It offers RCF or DID, at the CLEC's option, on non-discriminatory rates, terms and conditions. Statement § XI & Attachs. A at 5-6 and G; Varner Aff. ¶¶ 170-177; Milner Aff. ¶¶ 95-103 & Ex. WKM-9 (technical descriptions of RCF and DID). CLECs that choose DID number portability have access to

signaling using the SS7 protocol. Milner Aff. ¶ 95. Additional methods such as Route Index - Portability Hub, Direct Number Route Index, and Local Exchange Routing Guide are available through the Bona Fide Request Process. Varner Aff. ¶ 172. BellSouth's interim rates for number portability are consistent with the requirements of the Act and were approved by the SCPSC subject to a capped true-up after that Commission's cost proceeding. Varner Aff. ¶ 176; see Statement Attach. A at 5-6.

The SCPSC found that BellSouth had "tested its methods and procedures" for providing RCF and DID, "demonstrated its ability to place these facilities in service and generate a timely and accurate bill for them," and "demonstrated its operational readiness" by porting thousands of actual end user telephone numbers in its region. Compliance Order at 50; see Milner Aff. ¶ 97 (BellSouth has ported over 13,000 business numbers and 29 residence numbers).

As explained in the Affidavit of Keith Milner, BellSouth will implement a permanent approach to number portability consistent with the standards set by the SCPSC, this Commission, and industry fora. Milner Aff. ¶ 102 & Exs. WKM-6 & WKM-7; Statement § XI.F; see also Varner Aff. ¶ 178.

(12) Local Dialing Parity. Section 271(c)(2)(B)(xii) of the 1996 Act requires BellSouth to provide CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity in accordance with section 251(b)(3). See also 47 C.F.R. § 51.207 (equal number of digits). Consistent with this requirement, BellSouth's Statement guarantees that "CLEC customers will not have to dial any greater number of digits than BellSouth customers to complete the same call" and that "CLEC local service customers will experience at least the same

quality as BellSouth local service customers regarding post-dial delay, call completion rate and transmission quality.” Statement § XII.A; see Varner Aff. ¶¶ 179-182; Milner Aff. ¶ 105. The SCPSC found that BellSouth offers local dialing parity in accordance with the checklist requirement. Compliance Order at 51.

(13) Reciprocal Compensation for the Exchange of Local Traffic. Section 271(c)(2)(B)(xiii) requires BellSouth to agree, under section 251(d)(2), to just and reasonable terms and conditions that provide for mutual and reciprocal recovery by BellSouth and the CLEC of the costs associated with transporting and terminating calls that originate on the other carrier’s network. As the SCPSC explained in its order approving the Statement, BellSouth’s rates were approved by the SCPSC in the AT&T Arbitration, fall within the Commission’s now-defunct proxy rates, and “are in full compliance with this checklist item.” Compliance Order at 52; see Statement Attach. A at 1; Varner Aff. ¶¶ 183-187. As discussed above, the SCPSC’s conclusions on these matters are definitive. BellSouth does not pay or bill local interconnection charges for traffic termination to enhanced service providers because this traffic is jurisdictionally interstate. Varner Aff. ¶¶ 186-187.

(14) Resale. Section 271(c)(2)(B)(xiv) requires BellSouth to make its telecommunication services available for resale in accordance with the provisions of sections 251(c)(4) and 252(d)(3) of the Communications Act. These provisions, in turn, require BellSouth to provide its services at wholesale rates, with no unreasonable or discriminatory conditions or limitations. 47 U.S.C. §§ 251(c)(4), 252(d)(3); see also 47 C.F.R. § 51.603(b) (requiring equal quality, subject to the same conditions, and with the same provisioning time intervals).

BellSouth's Statement offers CLECs wholesale rates for any services that BellSouth offers to its retail customers, with the exception of those excluded from resale requirements in accordance with the Commission's rules and the orders of the SCPSC. See Statement § XIV; Varner Aff. ¶¶ 188-198; Milner Aff. ¶¶ 106-109 & Ex. WKM-9 (technical service descriptions). Services to which the wholesale discount does not apply include promotions of 90 days or less (which are available at the promotional price), grandfathered services (which may only be resold to subscribers who are grandfathered), and contract service arrangements (which are available for resale at the same rates, terms, and conditions offered to BellSouth's end user customers). Varner Aff. ¶¶ 191-192. As the SCPSC noted, BellSouth has filled hundreds (now thousands) of resale orders in South Carolina and tens of thousands of orders in its region. Compliance Order at 53; see Milner Aff. ¶ 106 & Ex. WKM-8. Testing confirms the practical availability of resale services that have not yet been purchased by any CLEC. Milner Aff. ¶ 109. All known billing problems associated with resale services have been corrected by BellSouth. Id. ¶¶ 107-108.

The Statement's discount rate of 14.8 percent, see Statement Attach. H, was established by the SCPSC in the AT&T Arbitration. Consistent with this Commission's preferred methodology, see Michigan Order ¶ 295, the SCPSC set its 14.8 percent discount by adjusting upward the rate indicated in an avoidable cost discount study prepared by BellSouth. Cochran Aff. ¶ 31 (App. A at Tab 2). The SCPSC reaffirmed the consistency of this discount with the Act's requirements in its Compliance Order at 52.

### **C. Performance Measurements**

As with OSSs, BellSouth has committed to providing CLECs with performance measurements regarding other checklist items that will allow those CLECs to verify they are receiving network interconnection and access in accordance with the Act. The measurements BellSouth will make available fall into three categories: “initial” measurements that reflect the criteria historically applied to BellSouth’s own retail operations; “AT&T measurements” that have been negotiated with AT&T and incorporated into the BellSouth/AT&T interconnection agreement, see Stacy Performance Aff. Ex. WNS-4; and generally available “permanent” measurements, which go beyond the AT&T measurements and constitute additional evidence of BellSouth’s compliance with the requirements of the Act, see Stacy Performance Aff. ¶¶ 16, 42-43.

BellSouth’s initial measurements show, for resold business and residential services:

- percentage of due dates met in provisioning orders for a service;
- trouble report rate per 100 access lines in service;
- percentage of trouble reports that are resolved in less than 24 hours;
- average interval from receipt of a trouble report until it is cleared;
- percentage of missed appointments for maintenance reports;
- percentage of repeat trouble reports received on the same line within 30 days; and
- percentage of trouble reports received within 30 days of the installation of new service.

Id. ¶ 19. This information is separately available for business and residential services on a state-by-state and region-wide basis for BST and all CLECs as a group. Id. ¶ 18. CLECs also are able to obtain specific data relating to their own interactions with BellSouth.

Initial performance measurements for South Carolina and BellSouth's region are provided as Exhibits WNS-1, WNS-2, and WNS-3 to the Stacy Performance Affidavit. These data demonstrate that in every category, CLECs in South Carolina and throughout BellSouth's region have received service that is substantially similar to, or better than, the service received by BST's own retail customers. See Stacy Performance Aff. ¶¶ 21-22.

For local interconnection trunking, the initial performance measurements are:

- total number of trunks in service;
- number of trunk orders processed during the month;
- number of order dates missed for CLEC/end user and BellSouth reasons;
- percentage of order due dates met on time, excluding trunk installations missed due to customer;
- percentage of new circuit failures within 30 days of installation; and
- average repair interval of troubles.

Id. ¶¶ 23-27 & WNS-3. The same data are available for unbundled loops. Id. ¶¶ 23-27 & Ex. WNS-3. In addition, the unbundled loops report provides the percentage of repeat trouble reports within 30 days. Id. As with resale services, these measures demonstrate that CLECs in South Carolina and throughout BellSouth's region are currently receiving access to trunks and unbundled loops on a nondiscriminatory basis, where direct comparisons to BellSouth's retail operations are possible. Where such direct comparisons are not possible, the measures demonstrate that BellSouth provides a high level of service that will allow CLECs to compete effectively. Id. ¶¶ 25-27.

As noted above in connection with BellSouth's systems for OSS access, BellSouth also negotiated with AT&T to a set of contractual performance measurements that are available to any other CLEC that wishes to enter into similar negotiations. Stacy Performance Aff. ¶ 28. In addition to the initial measurements collected by BellSouth, the AT&T agreement requires BellSouth to include measurements such as "dispatch out" and "non-dispatch" categories for resale services, local interconnection trunking, and UNEs, as well as measures for billing, database access and accuracy, and account maintenance. Id. ¶ 40 & Ex. WNS-8. Also in connection with the AT&T agreement, BellSouth has established a set of target intervals for provisioning of UNEs. Id. ¶ 36. Provisioning targets have been established for loops, sub loops, the NID, open AIN, signaling transport, interoffice transport, DA and operator services, cross-connects, selective routing, and switching functions. Id. Ex. WNS-7A. BellSouth has established target intervals for maintenance of UNEs as well. Id. ¶ 36 & Ex. WNS-7A; see also id. ¶¶ 52-54 & Ex. WNS-10 (discussing service order intervals).

Based upon its experience with the interim and AT&T measurements and its negotiations with other CLECs, BellSouth has established a set of permanent performance measurements for resale services, interconnection trunking, and UNEs. The permanent measurements generally parallel those developed with AT&T, but the permanent measurements split the resold services into more categories (dispatch and non-dispatch), split the UNEs into two categories (loop and non-loop) and add measures for order reject percentages and timeliness of Firm Order Confirmations. Id. ¶ 43. In the case of UNEs, the data will reflect only the CLEC activity, since BellSouth does not provide unbundled elements to itself. In addition, BellSouth collects traffic

measurements on trunk groups interconnected with CLECs as well as on other trunk groups in its network. Id. ¶ 68. Trunk blockage data area available to interested parties every two weeks. Id. BellSouth's trunk blockage measurements are discussed fully in the Stacy Performance Affidavit at ¶¶ 68-74. BellSouth is collecting data for all categories of permanent measurements, and initial data is available for most resale measurements (id. ¶¶ 44-51 & Ex. WNS-9), unbundled loops (id. ¶ 26 & Ex. WNS-3), and local interconnection trunking (id. ¶¶ 25-27 & Ex. WNS-2 and WNS-9, pp. 29-32). These measurements, like the interim measurements discussed above, confirm that resold services, unbundled loops, and local interconnection trunking are available to CLECs on a non-discriminatory basis.

By making these performance measurements available to interested CLECs and regulators, BellSouth gives these parties ample tools to ensure that BellSouth is providing and will in the future provide the nondiscriminatory access called for by the Act. There simply can be no undetected back-sliding from BellSouth's commitments and successful implementation of its checklist obligations.

### **III. BELLSOUTH SATISFIES THE REQUIREMENTS OF SECTION 272**

Section 271(d)(3)(B) authorizes the Commission to ensure that "the requested authorization will be carried out in accordance with the requirements of section 272." Section 272 in turn requires compliance with separate affiliate and non-discrimination safeguards that prevent a Bell company from providing its long distance affiliate with an unfair advantage over competitors. As described below, BellSouth is submitting with this application extensive evidence

that its entry into long distance will satisfy each of the requirements of section 272 and the Commission's implementing regulations.

Separate Affiliate Requirement of Section 272(a). BellSouth Corporation has established an affiliate — BellSouth Long Distance, Inc. — that will provide in-region interLATA services in compliance with the structural separation and operational requirements of section 272. Jarvis Aff. ¶¶ 5-9 (App. A at Tab 7). BellSouth will provide interLATA services through BSLD and not through BST. Id.; Cochran Aff. ¶¶ 6-7.

Structural and Transactional Requirements of Section 272(b). Section 272(b)(1) provides that the required separate affiliate “shall operate independently from the Bell operating company,” and the Commission has issued regulations implementing this statutory requirement. Jarvis Aff. ¶ 10; Cochran Aff. ¶ 8. BSLD and BST have established rules and procedures to ensure that they will operate in a manner that satisfies both the Act and the Commission's implementing regulations. Jarvis Aff. ¶ 11; Cochran Aff. ¶¶ 8-19. BSLD and BST do not and will not jointly own telecommunications transmission or switching facilities, or the land and buildings on which such facilities are located. Jarvis Aff. ¶ 10; Cochran Aff. ¶ 9. In addition, BST and BSLD use separate personnel to operate, install, and maintain facilities, and will continue to do so. Jarvis Aff. ¶ 10; Varner Aff. ¶ 238.

BST and BSLD will also comply with the requirements, set out in sections 272(b)(2) and 272(b)(3), that they maintain separate books and separate officers, directors, and employees. Jarvis Aff. ¶¶ 11-12; Cochran Aff. ¶¶ 11-17. In accordance with section 272(b)(4), BSLD's creditors do not and will not have recourse to BST's assets. Jarvis Aff. ¶ 13; Cochran Aff. ¶ 18.

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

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

Nonetheless, in order to provide the Commission with what it may deem “relevant” information, BellSouth includes with its application a description of all transactions between BST and BSLD to date as well as a description of future services that may be provided pursuant to written agreements. Jarvis Aff. ¶¶ 14(b)-(c). These transactions have been carried out on an arms-length basis and in accordance with the Commission’s affiliate transaction and cost-accounting rules. Cochran Aff. ¶¶ 19-23.

Nondiscrimination Safeguards of Section 272(c). Section 272(c)(1) prohibits BST from discriminating between BSLD and any other entity. In compliance with this provision and Commission regulations, and subject to the joint marketing authority granted by section 272(g), BST will make available to unaffiliated entities any goods, services, facilities and information that BST provides to BSLD at the same rates, terms, and conditions. Varner Aff. ¶ 204. These may include exchange access, interconnection, collocation, UNEs, resold services, access to OSSs, and administrative services. Id. ¶¶ 205-207. To the extent BST develops new services for or with BSLD, it will also cooperate with other entities on a nondiscriminatory basis to develop such services, so long as it is required to do so under section 272. Id. ¶ 207. BST does not and will not, for so long as the requirement applies, discriminate between BSLD and other entities with regard to the dissemination of technical information and interconnection standards related to telephone exchange and exchange access services, or with regard to protection of confidential network or customer information. Id. ¶¶ 208-212; see also infra Part IV.D.1 (describing regulatory and practical protections against technical discrimination); Gunter Aff. ¶¶ 5-44 (same) (App. A at Tab 4). Nor will BST disclose any individually identifiable Customer Proprietary Network Information (“CPNI”) to BSLD except to the extent that such disclosure is consistent with section 272 and Commission rules. Varner Aff. ¶ 213. BST will continue to provide public notice regarding any network change that will affect a competing telecommunications carrier’s performance or ability to provide service, or will affect BST’s interoperability with other telecommunications carriers. Id. ¶ 211.

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

Audit Requirements of Section 272(d). Pursuant to section 272(d)(1), BST will obtain and pay for a joint federal/state audit every two years. This audit will be conducted by an independent auditor to verify compliance with the requirements of section 272 and Commission regulations promulgated thereunder, including separate accounting requirements under section 272(b). Cochran Aff. ¶ 27. In accordance with section 272(d)(2), BST will require the independent auditor to provide this Commission and the SCPSC with access to working papers and supporting materials relating to this audit. Id. ¶ 28. And, as required by section 272(d)(3), BST and its affiliates, including BSLD and BellSouth Corporation, will provide the independent auditor, the Commission, and the SCPSC with access to financial records and accounts necessary to verify compliance with section 272 and the regulations promulgated thereunder, including the separate accounting requirements under section 272(b). Id. ¶ 29.

Fulfillment of Requests Pursuant to Section 272(e). Pursuant to section 272(e)(1), BST will fulfill requests from an unaffiliated entity for installation and maintenance of telephone exchange and exchange access service within a period no longer than the period in which it provides such service to BSLD. Varner Aff. ¶¶ 216-222. In addition, BellSouth will comply with all applicable Commission monitoring and reporting requirements. Id. ¶ 219; see, e.g., Order, Revisions of ARMIS Quarterly Report, 11 FCC Rcd 22508, 22515-16, ¶¶ 20, 22 (1996) (reporting of, inter alia, information about trunk blockage, total switch downtime, and consumer

satisfaction); Revisions of ARMIS Quarterly Report, 11 FCC Rcd at 22515, ¶ 20 (reporting of installation and repair intervals).<sup>20</sup>

BST will comply with section 272(e)(2) by refusing to provide any facilities, services, or information concerning its provision of exchange access to BSLD unless such facilities, services, or information are made available to other providers of interLATA services in that market on the same terms and conditions. Varner Aff. ¶ 223. In accordance with section 272(e)(3), BST will charge BSLD rates for telephone exchange service and exchange access that are no less than the amount BST would charge any unaffiliated interexchange carrier for such service. Id. ¶¶ 224-225. Also, where BST uses access for provision of its own services, BST will impute to itself the same amount it would charge an unaffiliated interexchange carrier. Id. ¶ 225. Finally, to the extent that BST is permitted to provide interLATA or intraLATA facilities or services to BSLD, BST will make such services or facilities available to all carriers at the same rates and on the same terms and conditions, in accordance with section 272(e)(4). Id. ¶ 227.

Joint Marketing Provisions of Section 272(g). Pursuant to 272(g)(1), BSLD will not market or sell BST's telephone exchange service unless BST permits BSLD's competitors to do so as well. Varner Aff. ¶ 228. In compliance with section 272(g)(2), BST has not and will not

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<sup>20</sup> See also First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 21905, 22020, ¶ 242, 22081, ¶ 368 (1996) (reporting of the "service intervals in which the BOCs provide service to themselves or their affiliates") ("Non-Accounting Safeguards Order"), recon. 12 FCC Rcd 2297(1997), further recon. 12 FCC Rcd 8653 (1997), pet'n for review pending sub nom. Bell Atlantic Tel. Cos. v. FCC, No. 97-1432 (D.C. Cir. filed July 11, 1997).

market or sell BSLD's interLATA services in South Carolina until the Commission grants interLATA authority for that State. Varner Aff. ¶ 229.

BellSouth has petitioned the Commission to reconsider the Michigan Order's discussion of Ameritech's proposed "marketing script," which may erroneously be read to prevent a Bell company from mentioning its long distance affiliate before reading a list of all available carriers in random order. See Varner Aff. ¶¶ 230-232. Section 251(g) preserves a BOC's pre-existing obligation to provide equal access. The Act, however, also authorizes the BOCs and their section 272 affiliates to market their services jointly upon receiving interLATA relief under section 271. 47 U.S.C. § 272(g)(2). In the Non-Accounting Safeguards Order the Commission struck a balance between the right of a BOC and its affiliate to market services jointly and the BOC's continuing obligations under section 251(g). The Commission explained that "the continuing obligation to advise new customers of other interLATA options is not incompatible with the BOCs' right to market and sell the services of their section 272 affiliates under section 272(g)." Non-Accounting Safeguards Order, 11 FCC Rcd at 22046, ¶ 292. Rather, a BOC can meet its equal access obligations, while joint marketing, by "inform[ing] new local exchange customers of their right to select the interLATA carrier of their choice and tak[ing] the customer's order for the interLATA carrier the customer selects." Id.

In explaining that the two provisions were compatible, the Commission relied on the ex parte comments of NYNEX, id. & n.764, in which NYNEX set forth a marketing script reflecting the fact that section 251(g) "does not continue the MFJ's prohibition against 'marketing,'" but "only continues the requirement to advise new customers of available carriers if the customer does

not name a long distance carrier.”<sup>21</sup> The NYNEX script that the Commission cited approvingly informed customers that they had a choice of carriers, but did not require NYNEX representatives to list all of the eligible interexchange carriers until after NYNEX had mentioned its own long distance affiliate and asked the customer if he or she had already made a selection.<sup>22</sup>

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

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<sup>21</sup> Letter from Susanne Guyer, Executive Director, Federal Regulatory Policy Issues, NYNEX to William F. Caton, Acting Secretary, Federal Communications Commission at 3 (Oct. 23, 1996) (“Guyer Letter”) (emphasis added).

<sup>22</sup> “[T]he NYNEX customer service representative would inform the customer that a number of companies provide long-distance service, including NYNEX Long Distance Company, and offer to send material regarding NYNEX long distance.” Guyer Letter at 3. “If the customer indicates that he or she wants another long-distance carrier (e.g., MCI, Sprint, etc.), NYNEX would then process the presubscription request . . . . If the customer wanted to hear more about NYNEX Long Distance, the representative would then provide information on NYNEX Long Distance products and services . . . . If the customer indicates that he/she is not sure as to which carrier to choose, the representative would offer to read a randomly-generated list of available carriers including NYNEX Long Distance.” Id.

express joint marketing authorization is to mean anything, a BOC cannot be denied the opportunity to bring its affiliate's services to the customer's attention in a preferential fashion.

See Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 115 S. Ct. 2407, 2426 (1995) ("statutes should be read . . . to give independent effect to all their provisions"); see also Weinberger v. Hynson, Westscott and Dunning, Inc., 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible'").<sup>23</sup>

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

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<sup>23</sup>. The Order's restrictions on joint marketing raise First Amendment concerns as well. The Commission may not restrict a BOC's ability to disclose "truthful, verifiable, and nonmisleading factual information" about its long distance affiliate's offerings absent a "substantial" government interest that reasonably "fit[s]" the Commission's restriction. Rubin v. Coors Brewing Co., 115 S. Ct. 1585, 1590 (1995); Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 416 (1993). Because the Order's approach to presubscription would deprive the BOCs of a statutorily protected right to engage in joint marketing, it fails both prongs of this test. The Commission's suggested approach might, in addition, run afoul of the constitutional prohibition on coercing parties to deliver messages with which they disagree. See Pacific Gas & Elec. Co. v. Public Util. Comm'n, 475 U.S. 1, 10-11 (1986); cf. Glickman v. Wileman Brothers & Elliott, Inc., 117 S. Ct. 2130, 2138 (1997) (contrasting situation in which complainants "agree with the central message of the speech").

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

The final element of the Commission's section 271 analysis is a determination whether interLATA entry "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). The remainder of this brief demonstrates that BellSouth's provision of interLATA services in South Carolina meets this test. As the SCPSC held unanimously below, BellSouth's entry will secure significant benefits for the public, in the form of lower prices and/or higher quality long distance services. Compliance Order at 61-62. The SCPSC's conclusion is consistent with Congress's expectation, in passing the 1996 Act, that "removing all court ordered barriers to competition — including the MFJ interLATA restriction — will benefit consumers by lowering prices and accelerating innovation." 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux). The U.S. Department of Justice agrees that in-region interLATA entry by Bell companies would promote long distance competition.<sup>24</sup> The full Commission also recently affirmed that "BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets."<sup>25</sup>

The damage done by continuing to exclude the Bell companies from in-region, interLATA services is staggering. As the attached affidavit of Professor Jerry Hausman of MIT details, delaying Bell company interLATA entry has cost U.S. residential consumers \$7 billion per year,

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<sup>24</sup> Evaluation of the United States Department of Justice, Application of SBC Communications Inc., CC Docket No. 97-121, at 3-4 (FCC filed May 16, 1997).

<sup>25</sup> Michigan Order ¶ 381; see also Separate Statement of Chairman Reed E. Hundt at 1 (appended to Oklahoma Order) ("the entry into the long distance market by" Bell companies under the Act "would promote competition and benefit consumers").

effectively imposing an annual tax on each long distance customer. Hausman Aff. ¶¶ 5, 21-23, 24 (App. A at Tab 5). This public burden cannot be justified by a desire to promote local competition. The 1996 Act already opens local markets, and any additional benefit from applying some higher standard would be much less than the costs of continuing to curtail interLATA competition. Id. ¶¶ 11, 24-25; see also Michigan Order ¶¶ 387, 390 (suggesting higher standards). As Professor Hausman explains, “[t]he consumer welfare gains from increased competition in long distance will more than outweigh the incremental gain from the last steps to regulatory perfection that the [Michigan Order] demands.” Hausman Aff. ¶ 25.

In South Carolina there is no offsetting benefit at all from delaying long distance competition because BellSouth’s interLATA entry would increase local competition. The SCPSC found that “[t]he entities with the financial and marketing resources to provide effective [local] competition are the same [interexchange carriers] that have a direct financial interest in delaying [BellSouth’s] competing in their long distance market.” Compliance Order at 66. Approving BellSouth’s application, it determined, would end these carriers’ incentives to go slow as local carriers. In the words of the SCPSC, allowing BellSouth into long distance “will create real incentives for the major [interexchange carriers] to enter the local market rapidly in South Carolina, because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities.” Id. at 67.

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

While the public interest inquiry generally may provide the Commission with “broad discretion . . . to consider factors relevant to the achievement of the goals and objectives of” the legislation, Michigan Order ¶ 385, it is limited by Congress’s specific determinations.<sup>26</sup> In the 1996 Act, Congress decided that it would open local markets by enacting a competitive checklist that sets forth concrete obligations in plain terms. The “checklist” was Congress’s test of “what . . . competition would encompass,” 141 Cong. Rec. S7972, S8009 (daily ed. June 8, 1995) (statement of Sen. Hollings), and Congress forbade the Commission from second-guessing its judgment or modifying its checklist “by rule or otherwise.” 47 U.S.C. § 271(d)(4) (emphasis added); see also 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (noting adoption of checklist approach in place of “actual competition” test). As the Chairman of the Senate Commerce Committee reassured Senators, “[t]he FCC’s public-interest review is constrained by the statute” because “the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist.” 141 Cong. Rec. S7942, S7967 (daily ed. June 8, 1995) (statement of Sen. Pressler). Accordingly, the Commission may not use the public interest inquiry to add local competition criteria beyond those that Congress included in the checklist.

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<sup>26</sup> See NAACP v. FPC, 425 U.S. 662, 669 (1976) (“the use of the words ‘public interest’ in a regulatory statute . . . take meaning from the purposes of the regulatory legislation”); New York Central Sec. Corp. v. United States, 287 U.S. 12, 25 (1932) (“the term public interest’ as thus used [in a statute] is not a concept without ascertainable criteria”); Business Roundtable v. SEC, 905 F.2d 406, 413 (D.C. Cir. 1990) (“broad ‘public interest’ mandates must be limited to ‘the purposes Congress had in mind when it enacted [the] legislation’”) (quoting NAACP v. FPC, 425 U.S. at 670).

The Michigan Order nevertheless suggests that public interest approval should be conditioned in every case on exceeding the checklist. The Commission reasoned that because Congress (1) wanted the Bell companies to enter long distance only after local markets are open and (2) included both the competitive checklist and the public interest test in section 271, Congress must have viewed the competitive checklist as an inadequate mechanism to open local markets.<sup>27</sup> But in fact, Congress wanted the Commission to examine an essential element of Bell company interLATA entry not addressed by any other part of section 271: the competitive consequences of that entry, given the checklist and section 272's safeguards.<sup>28</sup> The Commission's equation of the public interest inquiry with its own assessment of local competition is implausible on its face, for it assumes that Congress devoted countless hours to honing the smallest details of the checklist and forbade the Commission from altering them, see 47 U.S.C. § 271(d)(4), and yet wanted the Commission to use a different standard of open local markets as the dispositive test in considering BOC applications.<sup>29</sup>

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<sup>27</sup>. See Michigan Order ¶ 389 (reasoning that if “compliance with the checklist alone is sufficient to open a BOC’s local telecommunications markets to competition,” then “BOC entry into the in-region interLATA services market would always be consistent with the public interest requirement whenever a BOC has implemented the competitive checklist”).

<sup>28</sup>. See Michigan Order ¶ 388 (discussing “congressional determination” that open local markets and regulatory safeguards will protect interLATA competition); see also 141 Cong. Rec. S7972, S8012 (daily ed. June 8, 1995) (statement of Sen. Hollings) (“we have had every particular safeguard that you can imagine, that the lawyers could think of . . . to make sure that it works and works properly for the public interest”).

<sup>29</sup>. See, e.g., 141 Cong. Rec. S8188, S8195 (daily ed. June 12, 1995) (statement of Sen. Pressler) (describing extensive negotiations and work that went into developing the competitive checklist).

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

The Commission may as part of its public interest inquiry evaluate such matters as the current state of long distance competition and the degree to which the checklist, section 272, and other regulatory safeguards constrain anticompetitive conduct in the interLATA market. These inquiries are familiar for the Commission. As long as a decade ago, for example, the Commission addressed the hotly contested issue whether regulatory safeguards and market conditions were then sufficient to preclude the Bell companies from impeding competition in long distance. The Commission concluded that they were and thus agreed with the Department of Justice that the MFJ's line of business restrictions should be lifted, notwithstanding that the Bell companies in 1987 had no obligations to competitors comparable to the checklist.<sup>30</sup>

The Commission also may consider individual circumstances that Congress could not have anticipated — such as the applicant's history of compliance or non-compliance with Commission rules. See Michigan Order ¶ 397. The Commission may not, however, use the public interest inquiry to substitute its own local competition plan for that established by Congress. Over-

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<sup>30</sup> Responsive Comments of the Federal Communications Commission As Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Companies by the Modification of Final Judgment, at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C. filed Apr. 27, 1987).

regulation of local and long distance markets today cannot be defended in the name of ideal competition tomorrow.<sup>31</sup> The Commission also may not use the public interest inquiry to rewrite express provisions of the Act.<sup>32</sup> In particular, the public interest test may not be used as a vehicle for circumventing the specific statutory restrictions of sections 251 and 252 regarding such matters as the pricing of UNEs and resold services. Although this issue is now pending before the Eighth Circuit,<sup>33</sup> that Court just recently confirmed that this Commission does not have “jurisdiction over intrastate telecommunications matters” under the Communications Act unless Congress has drafted provisions that “expressly apply to intrastate telecommunications matters

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<sup>31</sup>. MCI Telecommunications Corp. v. FCC, 627 F.2d 322, 341 (D.C. Cir. 1980) (“The best must not become the enemy of the good.”); see generally 47 U.S.C. § 271(d)(4); Conference Report at 1 (enacting a “de-regulatory national policy framework”); 141 Cong. Rec. S7895 (daily ed. June 7, 1995) (statement of Sen. Hollings) (“We should not attempt to micro-manage the marketplace”); 141 Cong. Rec. H8282 (daily ed. Aug. 2, 1995) (statement of Rep. Bliley) (Congress wanted to promote “competition, and not Government micro-management of markets”); accord Local Interconnection Order, 11 FCC Rcd at 15509, ¶ 12 (“look[ing] to the market, not to regulation” to determine entry strategies); see also Hausman Aff. ¶ 10 (“The Commission is once again failing to recognize that regulation is meant to benefit consumers, not to further other objectives of regulators.”).

<sup>32</sup>. See NAACP v. FPC, 425 U.S. at 669; United Sav. Ass’n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) (when “only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law” statutory provision’s meaning is “clarified by the remainder of the statutory scheme”) (internal quotation marks omitted); National Broadcasting Co. v. United States, 319 U.S. 190, 216 (1943) (the public interest “is to be interpreted by its context”).

<sup>33</sup>. See Petition of the State Commission Parties and the National Association of Regulatory Utility Commissioners for Issuance and Enforcement of the Mandate (filed Sept. 17, 1997) & Petition for Immediate Issuance and Enforcement of the Mandate (filed Sept. 18, 1997), Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir.).

and explicitly direct the FCC to implement the act's intrastate requirements."<sup>34</sup> Because section 252 reserves pricing authority to the States, and the public interest provisions of section 271 do not purport to override that delegation of authority, the FCC is powerless to usurp State jurisdiction over pricing through the section 271 process.

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

The Commission has long held that the benefits of new entry in long distance presumptively outweigh any risk of harm,<sup>35</sup> even where the long distance entrant is an incumbent local exchange carrier.<sup>36</sup> That presumption is especially apt when applied to this application.

The interexchange market is highly concentrated and systematically non-competitive. The Department of Justice, for example, has concluded that competition in the long distance business is "decidedly imperfect" and there is "room for more competition."<sup>37</sup> Legislators who crafted the

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<sup>34</sup>. California v. FCC, 1997 U.S. App. LEXIS 22343, at \*10 (emphasis in original) (citing Louisiana Pub. Serv. Comm'n v. FCC, 473 U.S. 355, 376-77 (1986)).

<sup>35</sup>. See Report and Order, Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. off of the Island of Puerto Rico, 2 FCC Rcd 6600, 6604, ¶ 30 (1987) ("plac[ing] a burden on any entity opposing entry by a new carrier into interstate, interexchange markets to demonstrate by clear and convincing evidence that [additional] competition would not benefit the public") (emphasis added); Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, MTS-WATS Market Structure Inquiry, 81 FCC 2d 177, 201-02, ¶ 103 (1980) (Commission will "refrain from requiring new entrants to demonstrate beneficial effects of competition in the absence of a showing that competition will produce detrimental effects").

<sup>36</sup>. See Inquiry into Policies To Be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Serv. Off of the Island of Puerto Rico, 2 FCC Rcd at 6604, ¶ 30 (Commission's "open entry policy," "clearly contemplate[s] competitive entry by independent local exchange companies") (citing MTS-WATS Market Structure Inquiry, 81 F.C.C. 2d at 186).

<sup>37</sup>. Memorandum of the United States in Response to the Motion of the Bell Companies' Motion for Generic Wireless Waiver at 22, United States v. Western Elec. Co., No. 82-0192 (D.D.C.

1996 Act agreed that the long distance industry is “oligopolistic.” 141 Cong. Rec. S7881, S7889 (daily ed. June 7, 1995) (statement of Sen. Pressler). Although it has found that AT&T no longer retains unilateral market power, the Commission also has acknowledged that AT&T, MCI, and Sprint may jointly be engaged in non-competitive, cooperative pricing. Order, Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3313-15, ¶¶ 80-84 (1995). In the Michigan Order, the Commission repeated its “concern[s] that not all segments of this market appear to be subject to vigorous competition,” and “about the relative lack of competition among carriers to serve low volume long distance customers.” Michigan Order ¶ 16.

In a competitive market, entry by new firms and competition by incumbent firms drives prices toward cost. See Schmalensee Aff ¶ 9 (App. A at Tab 11); Paul W. MacAvoy, The Failure of Antitrust and Regulation to Establish Competition in Long-Distance Telephone Services 173-74 (1996) (“MacAvoy Study”). Yet long distance carriers have failed to pass on cost savings to their customers. AT&T, MCI and Sprint have benefitted from the Commission’s reductions in access charges, which constitute nearly half of interexchange carriers’ total costs. Hausman Aff. ¶ 30. From January 1990 to July 1996 access charges declined by 27 percent, yielding at least a 13 percent reduction in interexchange carriers’ total costs during that period. Id. Yet carriers have raised their prices despite these declines in access charges. See Schmalensee Aff. ¶ 9 (9% drop in access charges between 1993 and 1996, while AT&T raises rates 22%); Hausman ¶¶ 28-32. Indeed, they have raised prices despite additional savings, over and above access charge

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filed July 25, 1994); The Antitrust Reform Act: Hearings on H.R. 3626 Before the Subcomm. on Economic and Commercial Law of the House Comm. on the Judiciary, 103d Cong., 2d Sess. (1994) (statement of Assistant Attorney General Anne K. Bingaman).

declines, due to new transmission technologies and lower equipment prices. Id.; see Schmalensee Aff. ¶ 9; MacAvoy Study at 96; WEFA Study at p. 11 (App. C at Tab 62) (failure to pass through cost reductions of 6 to 7 percent per year).

In addition, the major carriers have raised their discounted rates along with the basic rates off of which discounts are taken. Hausman Aff. ¶ 31; see Schmalensee Aff. ¶¶ 11, 16-17 (discounted rates yield “supracompetitive profits”). Recent flat-rate promotions, moreover, do not mark a substantial departure from the longstanding pattern of lock-step price increases. Schmalensee Aff. ¶¶ 12-14; Hausman Aff. ¶ 32. AT&T’s flat rate of 15 cents per minute — higher than its standard evening rate — does not benefit typical residential callers who place most calls during off-peak hours. Schmalensee Aff. ¶ 13. MCI’s flat rate of 14.5 cents and Sprint’s two-tiered plan of a 25 cent peak rate and 10 cent off-peak rate also provide at most modest relief.<sup>38</sup> The monthly consumer price index for interstate toll calls rose steadily during 1995 and 1996, with only minor declines in early 1997. See WEFA Study at p. 10. As Professor Schmalensee points out, “the only reason that many consumers find the One Rate plan attractive today is that AT&T has substantially raised its basic rates over the last several years.” Schmalensee Aff. ¶ 14.

To the extent that there have been price reductions, they consist simply of passing only a portion of the interchange carriers’ savings from recent access charge reductions, and were effected only because the Commission required AT&T to share some of its windfall with residential consumers who pay undiscounted basic rates. See Hausman Aff. ¶ 32 (noting that

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<sup>38</sup>. See AT&T Calls MCI Flat Pricing More Than a Coincidence, Newsbytes, Sept. 30, 1996.

none of the access charge savings was passed on to discount customers). In a competitive industry, regulators do not need to strong-arm competitors into passing on cost-savings to consumers. See Schmalensee Aff. ¶ 9.

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

**C. Market Evidence Confirms that BellSouth's Entry into the InterLATA Market in South Carolina Will Benefit Consumers**

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

beneficial provision of vertically related services makes clear that the unanimous conclusion of all these other nations is correct.<sup>39</sup>

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

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

Long distance customers in Connecticut have benefitted from SNET’s price competition since it entered the interstate market in 1994.<sup>40</sup> On average, SNET’s residential long distance rates have been 17-18 percent lower than AT&T’s. Hausman Aff. ¶¶ 16-19. These savings have especially benefitted low-volume callers who, prior to SNET’s entrance, had disproportionately stayed with AT&T because they were ignored by other carriers. See Schmalensee Aff. ¶¶ 25-28.

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<sup>39</sup> In addition to the evidence regarding U.S. markets discussed below, evidence from these foreign markets confirms that American consumers are suffering from extension of the MFJ prohibition. In Canada, where carriers use essentially the same equipment as in the United States to serve less densely populated areas, long distance rates are actually lower than in this country. Hausman Aff. ¶ 26; see Gilbert Aff. ¶ 44 & n.70. And in the United Kingdom, competition has developed to the vertically integrated incumbent notwithstanding that local markets are significantly less open than in the United States. Gilbert Aff. ¶ 44.

<sup>40</sup> Consumers of intrastate services also have benefitted, as AT&T responded to SNET’s long distance offerings with competitive intrastate offerings. See Gilbert Aff. ¶¶ 37-38.

SNET has shown both a willingness and ability to compete for this segment of the market:

whereas its share of revenues is 20 percent, its share of customers is half-again as high.<sup>41</sup>

In order better to compete with SNET, AT&T petitioned the Commission for authority to reduce its long distance rates specifically in Connecticut.<sup>42</sup> AT&T's stated reason for the petition was "the rapidly emerging competition from SNET in Connecticut."<sup>43</sup> AT&T thus effectively admitted that it faces more intense competition in Connecticut than elsewhere because the incumbent LEC has been allowed to enter the long distance market.<sup>44</sup>

The two geographic corridors running from New York City and Philadelphia to New Jersey offer another example in which incumbent local exchange carriers — in this case Bell Atlantic and NYNEX — have competed in in-region, interLATA services by setting prices below those of the major carriers. AT&T concedes that Bell Atlantic's corridor rates are as much as one-third lower than AT&T's,<sup>45</sup> and credits Bell Atlantic's widespread marketing of "sav[ings]

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<sup>41</sup>. See Susan Jackson, A Telecom Yankee Defends its Turf, Business Week, Oct. 28, 1996, at 167.

<sup>42</sup>. See AT&T Comments, Market Definition, Separations, Rate Averaging and Rate Integration, at 29, Policy and Rules Concerning the Interstate, Interexchange Marketplace & Implementation of Section 254(g), CC Docket No. 96-61 (FCC Apr. 19, 1996) ("AT&T Rate Averaging Comments"); AT&T Corp.'s Petition for Reconsideration, Policy and Rules Concerning the Interstate, Interexchange Marketplace at 2-5 (FCC Sept. 16, 1996); see also supra at 3-4 (discussing nationwide rate increases).

<sup>43</sup>. AT&T Petition for Reconsideration at 2.

<sup>44</sup>. See id. at 2-5; AT&T Rate Averaging Comments at 29.

<sup>45</sup>. AT&T Corp.'s Petition for Waiver and Request for Expedited Consideration, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 Attachment A (FCC filed Oct. 23, 1996) ("AT&T Waiver Petition").

over AT&T's basic rates" for Bell Atlantic's 20 percent market share of interstate corridor calls.<sup>46</sup>

See Taylor Aff. at p. 18 (App. C at Tab 62). AT&T and MCI sought permission to reduce their rates in these corridors precisely because they face more intense competition there than elsewhere.<sup>47</sup> Neither questions that consumers in these corridors are better off because of price competition from the incumbent Bell company.<sup>48</sup>

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

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

BellSouth has an affirmative incentive to lower long distance prices in South Carolina, because increased interLATA usage will increase usage of BellSouth's access services as well. See Hausman Aff. ¶¶ 12-14. Indeed, the SCPSC noted that BellSouth already had prepared a proposed intrastate, interLATA tariff with initial basic rates that are "at least 5% lower than the corresponding rates of the largest interexchange carrier." Compliance Order at 6; see App. D at Tab 8 (proposed tariff).

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<sup>46</sup> Id. at 3.

<sup>47</sup> See id. at 1, 5; MCI Comments at 1, AT&T Petition for Waiver of Section 64.1701 of the Commission's Rules, CC Docket No. 96-26 (FCC filed Nov. 18, 1996) ("MCI Comments") (petitioning the Commission "so that [MCI] likewise will be in a position to benefit consumers by being able to compete effectively against Bell Atlantic and AT&T").

<sup>48</sup> See AT&T Waiver Petition at 5 (consumers in the corridors, unlike other areas, "benefit from the highest degree of competition possible"); MCI Comments at 3 ("fully support[ing]" AT&T's "arguments").

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

Above all, however, BellSouth's brand name will make it a strong competitor to the three major incumbents. The BellSouth brand is recognized by approximately 70 percent of consumers in region — less than AT&T and MCI, but high in relation to other potential entrants into long distance. Gilbert Aff. ¶ 17. BellSouth's reputation is on par with that of the major incumbent interexchange carriers: better than three out of four customers rated BellSouth as "very good" in the categories of customer service and service reliability/product quality. Schmalensee Aff. ¶ 32. These factors will give BellSouth lower marketing costs in-region than other potential new entrants and position BellSouth as a serious competitor to AT&T, MCI, and Sprint.<sup>49</sup>

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<sup>49</sup>. See Schmalensee Aff. ¶ 37; Gilbert Aff. ¶ 28; see also Applications of Craig O. McCaw, 9 FCC Rcd at 5871-72, ¶ 57 (finding that AT&T acquisition of McCaw would serve public interest due to AT&T's brand name, financial strength, marketing experience, and technological know-how).

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

Likewise, BellSouth will be able to offer bundled service offerings and "one stop shopping." See Compliance Order at 6-7. Bundled service packages can "have clear advantages for the public," such as greater convenience and the ability to secure volume discounts by aggregating purchases of different services.<sup>50</sup> The Commission thus has supported developments that promise to speed the introduction of bundled services at the retail level. This was one reason why the Commission approved AT&T's buyout of McCaw Cellular Communications, saying it

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<sup>50</sup> Applications of Craig O. McCaw, 9 FCC Rcd at 5878-80, ¶¶ 73-75; see 141 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statements of Sen. Harkin) (1996 Act will allow "low cost integrated service with the convenience of having only one vendor and one bill to deal with"); S. Rep. No. 104-23, at 43 (1995) (joint offerings constitute a "significant competitive marketing tool"); see also Gilbert Aff. ¶ 16 ("Consumers will benefit from the integration of service offerings and the marketing of bundled products through convenience and through the increased number and variety of telecommunications options available in the marketplace."); Hausman Aff. ¶ 7.

“would deny users the current and prospective benefits of bundling only if presented with a compelling public interest justification” for doing so. 9 FCC Rcd at 5880; see Gilbert Aff. ¶ 19.

BellSouth will not be the only, or even the first, carrier to market bundled offerings, and will have no unfair advantage in providing bundled packages. See Gilbert Aff. ¶¶ 7-16. Indeed, the SCPSC found that BellSouth’s “entry into the interLATA market will give [its] customers the same opportunity as customers of other South Carolina telephone companies (i.e., GTE in Myrtle Beach and Sumter; Sprint-United in Beaufort and Greenwood; Rock Hill Telephone Co. in Rock Hill and York) to choose one provider for all their telecommunications needs.” Compliance Order at 6-7.

Moreover, bundled offerings are the cornerstone of interexchange carriers’ plans for entering the local exchange. AT&T, for example, has announced that it plans to “take a basic \$25-a-month long distance customer and convert him or her into a \$100-a-month customer for a broader bundle of services.” AT&T Challenges the Bell Companies,” Wall St. J., June 12, 1996, at A3; see Gilbert Aff. ¶¶ 7-19 (describing AT&T’s plans). MCI is offering long distance, cellular service, Internet access, and MCImetro local service on the same bill in some States. Gilbert Aff. ¶ 10. Sprint is bundling its long distance offerings with local wireline service, cable television, and PCS offerings. Id. ¶¶ 11-14. Following MFS Communications’ merger with the Internet access provider UUNet and the long distance carrier WorldCom, the merged entity’s President explained: “We are creating the first company since the breakup of AT&T to bundle together local and long distance service carried over an international end-to-end fiber network owned or

controlled by a single company.” Communications Firms to Join in \$12 Billion Deal, Los Angeles Times, August 27, 1996, at A-1 (see also Gilbert Aff. ¶ 15).

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

Approval of BellSouth’s petition also will lift remaining prohibitions on BellSouth’s participation in telecommunications equipment manufacturing and allow BellSouth to pursue all opportunities in this area, subject to statutory and regulatory safeguards. See id. § 273(a); S. Rep. No. 104-23, at 67 (allowing Bell Companies to engage in manufacturing will “foste[r] competition . . . and creat[e] jobs along the way”). Finally, approval of this application would trigger “1+” intraLATA competition in South Carolina, intensifying competition in the intraLATA toll market as well. See Compliance Order at 6; 47 U.S.C. § 271(e)(2). BellSouth is submitting along with this application a detailed implementation plan for intraLATA dialing parity. Varner

Aff. ¶¶ 199-201 & Ex. AJV-8. The rivalry between SNET and AT&T and Connecticut — which quickly spilled over from interstate services to intrastate toll — indicates how, in a world of bundled service offerings, greater competition in interLATA services will benefit South Carolinians across a range of telecommunications services including local and intraLATA toll. See Gilbert Aff. ¶¶ 34-38; Hausman Aff. ¶¶ 10 n.13, 22.

While it is difficult to quantify such benefits with precision, estimates are available. An analysis conducted by the WEFA Group predicts that long-distance rates will drop by 25 percent as a result of Bell company in-region, interLATA entry. WEFA Study at p. 11; Raimondi Aff. at p. 38 (App. C at Tab 62). The study estimates an additional 13,000 new jobs will be created in South Carolina as a result and that the total benefit of new long distance competition for South Carolinians will rise to \$1.2 billion after five years. WEFA Study at pp. 1-2, 21. Independent economists have confirmed that the WEFA model was based on reliable assumptions and would produce reliable results in South Carolina. Hefner Aff. ¶ 88 (App. C at Tab 62). The SCPSC in fact noted that these studies were “unrefuted” by BellSouth’s opponents. Compliance Order at 62.

The estimates presented to the SCPSC are consistent with the work of other prominent economists. Dr. Paul MacAvoy of Yale projects that, nationwide, the total gains to consumers from unrestricted Bell company entry into the long-distance market would be as high as \$306 billion, even if AT&T, MCI, and Sprint “maintain their tacitly collusive pricing strategies.” MacAvoy Study at p. 185. During debates on the 1996 Act, Congress relied upon estimated savings of \$333 billion from greater long distance competition. 141 Cong. Rec. S704 (Feb. 1,

1996) (statement of Sen. Ford). Relying upon actual market experience with local telephone company entry into long distance as well as incumbent LECs' economic incentive to lower prices upon vertical integration,<sup>51</sup> Professor Hausman anticipates that prices would fall by about 17-18 percent as a result of in-region entry by the Bell companies, and that residential customers alone stand to benefit by about \$7 billion per year. Hausman Aff. ¶¶ 5, 20-23.

Aware of these potential benefits, South Carolinians have rallied around BellSouth's application. Attached as Tabs 1A-1H of Appendix D are more than 450 letters supporting BellSouth's entry into long distance in the South Carolina. These letters come from people in every walk of life: the Governor and Attorney General of South Carolina and other State and local officials, community and educational organizations, businesses, community leaders, and everyday consumers. This Commission should give the views of these hundreds of supporters — representing the interests of thousands and thousands more in the State — at least as much weight in ascertaining the public interest as the self-serving protestations of BellSouth's competitors.

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

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

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<sup>51</sup> Professor Hausman explains that where a single entity earns margins on both access services and retail long distance, it has an incentive to lower price to expand its market share. Hausman Aff. ¶¶ 10-12.

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

In light of the federal and state safeguards that prevent Bell companies from engaging in anticompetitive conduct upon entering long distance, the Commission recently held that the Bell companies should be regulated as non-dominant when they provide in-region, interLATA services.<sup>52</sup> It found that Bell companies could not drive other interexchange carriers from the market through cost misallocation, that federal and state price caps reduce incentives to misallocate costs, and that existing safeguards “will constrain a BOC’s ability to allocate costs improperly and make it easier to detect any improper allocation of costs that may occur.” *Id.* ¶ 105. The Commission likewise dismissed fears of predation against the established long distance incumbents, *id.* ¶ 108; found that the numerous protections against discrimination will prevent Bell companies from gaining market power upon entry through such tactics, *id.* ¶¶ 111-119; and concluded that any risk of price squeezes can be addressed through FCC procedures and the antitrust laws, *id.* ¶¶ 128-129. Finally, the Commission recognized “that the entry of the BOC interLATA affiliates into the provision of in-region, interLATA services has the potential to increase price competition and lead to innovative new services and market efficiencies.” *Id.* ¶ 134.

Each of these conclusions is buttressed by the success that federal and state regulators have had in regulating Bell companies over the years, as well as by the new, additional safeguards

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<sup>52</sup>. Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, FCC 97-142 (rel. Apr. 18, 1997) (“BOC Non-Dominance Order”).

imposed by the 1996 Act and the Commission's implementing regulations. As a former Deputy Assistant Attorney General for Economics in the current Administration's Antitrust Division explains, existing safeguards "expressly and comprehensively" address potential harms. Gilbert Aff. ¶ 43.

a. Cost Misallocation. Theories that BellSouth might shift costs incurred in providing interLATA services to local ratepayers, thereby giving itself a competitive edge as an interLATA carrier, depend upon the assumption that BellSouth "is regulated under rate-of-return regulation." Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, 11 FCC Rcd 18877, 18882-83, ¶ 7 (1996) ("Non-Accounting Safeguards NPRM.")<sup>53</sup>

To cure this problem, the Commission has totally overhauled its approach to rate regulation, see Hausman Aff. ¶ 34, as has the SCPSC, see Woroch Aff. ¶¶ 53, 67. The Commission adopted a price cap regime that sets maximum rates almost entirely without regard to costs, thereby giving LECs "a powerful profit incentive" to cut the costs of their regulated services. National Rural Telecom Ass'n v. FCC, 988 F.2d 174, 178 (D.C. Cir. 1993). There is no "reward for shifting costs from unregulated activities into regulated ones, for the higher costs will not produce higher legal ceiling prices." Id.; see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136 (Commission's price cap policies "reduc[e] the potential that the

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<sup>53</sup> The Department of Justice contended in supporting approval of the MFJ that the Bell System's alleged practice of subsidizing its competitive offerings at ratepayers' expense "stem[med] . . . directly from AT&T's status as a rate-of-return regulated firm . . ." Competitive Impact Statement at 13, United States v. AT&T, No. 74-1698 (D.D.C. Feb. 10, 1982).

BOCs would improperly allocate the costs of their affiliates' interLATA services"); Hausman

¶ 34. Indeed, the Commission has described price caps regulation as providing strong “efficiency incentives” to keep down costs allocated to regulated services. Report and Order, Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17605-06, ¶ 145 (“Accounting Safeguards Order”); see also Illinois Public Telecommunications Ass’n v. FCC, 117 F.3d 555, 570 (D.C. Cir. July 1, 1997) (under price caps “risk of loss” is borne by “investors rather than ratepayers”), clarified, Case No. 96-1394, slip op. (D.C. Cir. Sept. 16, 1997); Hausman Aff. ¶¶ 35-36.<sup>54</sup>

Congress nevertheless took steps to address supposed worries about possible cost misallocation. In section 272 of the 1996 Act, Congress sharply reduced opportunities for cost-shifting by requiring that a Bell company provide long distance through an affiliate that has separate facilities, employees, and record-keeping from the local telephone company. 47 U.S.C. § 272. Moreover, Congress reinforced structural separation with demanding accounting requirements. See id. § 272(d), Hausman Aff. ¶ 37. Legislators concluded, after hearing arguments on all sides, that these statutory safeguards and the Commission’s implementing rules would be sufficient to deal with concerns about Bell company cost misallocation. See, e.g., 47 U.S.C. § 254(k) (requiring Commission to implement regulations as necessary “to ensure that”

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<sup>54</sup>. To the extent that sharing may formerly have been a concern, see Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18942-43, ¶ 136, that concern is addressed by the Commission’s recent decision to eliminate sharing entirely. Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, Price Cap Performance Review for Local Exchange Carriers and Access Reform Charge, FCC 97-159, ¶¶ 147-155 (rel. May 21, 1997); see Hausman ¶ 34.

revenues from regulated services are not used to subsidize competitively provided services). The Commission has likewise expressed confidence in the efficacy of structural separation in various contexts.<sup>55</sup>

The Commission's post-Act rulemakings to implement section 272's safeguards, together with its pre-existing regulations, guarantee that the statutory protections will amply suffice to protect against cost-misallocation. Indeed, the Commission has explained that its preexisting "cost allocation and affiliate transactions rules, in combination with audits, tariff review, and the complaint process, have proven successful at protecting regulated ratepayers from bearing the risks and costs of incumbent local exchange carriers' competitive ventures." Accounting Safeguards Order, 11 FCC Rcd at 17550-51, ¶ 25. It reasoned that these rules together "will effectively prevent predatory behavior that might result from cross-subsidization," and that because they "have proven generally effective" there was "no reason to require a change to a different system." Id. ¶¶ 28, 108.

South Carolina regulators have implemented a parallel regulatory regime that contains many of these same protections. In endorsing BellSouth's application for interLATA entry, the SCSPSC rejected interexchange carriers' predictions of anticompetitive conduct, explaining that "just as [BellSouth's] provision of long distance services will not diminish its obligations under

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<sup>55</sup>. Report and Order, Inquiry into the Use of the Bands 825-845 MHZ and 870-890 for Cellular Communications Sys., 86 FCC 2d 469, 494, ¶ 50 (1981) (cellular); Amendment of Section 64.702 of the Comm'n's Rules and Regulations (Second Computer Inquiry); Final Decision, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384, 453 ¶ 177 (Bell System), aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC, 693 F.2d 198, 211 (D.C. Cir. 1982).

the checklist, it also will not diminish its obligations under Sections 251 and 252 of the Act, South Carolina law, FCC and [SCPSC] regulations and its binding agreements.” Compliance Order at 65. Like the Commission, the SCPSC has abandoned rate-of-return regulation in favor of price-cap regulation.<sup>56</sup> The SCPSC also adheres to this Commission’s accounting requirements, imposing similar record-keeping and reporting requirements and carrying out periodic audits. Woroch Aff. ¶¶ 53, 67; Compliance Order at 65. Moreover, the South Carolina Attorney General has committed his office’s resources “to pursue fully any allegation of anti-competitive acts ” in connection with BellSouth’s interLATA entry. Letter from Charles Molony Condon, South Carolina Attorney General, to Federal Communications Commission at 2 (Sept. 5, 1997) (App. D at Tab 1A).

b. Other Pricing Strategies. Just as cost misallocation would be impossible to accomplish, BellSouth would not and could not raise the cost of its access services in an effort to effectuate a “price squeeze” on other interexchange carriers.<sup>57</sup> The Commission has cited a host of factors that “constrain the ability of a [Bell company or its] interLATA affiliate to engage in a predatory price squeeze,” and concluded that Bell companies “will not be able to engage in a price squeeze to such an extent that the [Bell company] interLATA affiliates will have the ability, upon entry or soon thereafter, to raise price by restricting their own output.” BOC Non-Dominance

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<sup>56</sup>. See Order Granting Alternative Regulation and Approving Plan as Modified, Application of BellSouth for Alternative Regulation (Price Protection Plan), No. 96-19, Docket No. 95-720-C, 1 (SCPSC Jan. 30, 1996) (approving plan “to cap the rates for certain categories of services, including basic exchange services”).

<sup>57</sup>. See generally Town of Concord v. Boston Edison Co., 915 F.2d 17, 18 (1<sup>st</sup> Cir. 1990) (per Breyer, J.) (discussing theory of price squeezes), cert. denied, 499 U.S. 931 (1991).

Order ¶ 129. The Commission likewise concluded that a strategy of providing long distance services below cost to drive out competitors could not be profitable for Bell companies because losses incurred in predation could not later be recovered through supra-competitive pricing. Id. ¶ 108; see also Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18943, ¶ 137; Hausman Aff. ¶ 38.

Wholly aside from regulatory safeguards, “predatory pricing schemes are rarely tried, and even more rarely successful.”<sup>58</sup> See Roberts Aff. ¶ 54 (App. A at Tab 10). In an industry with standardized technologies and sophisticated incumbents, it is “especially unlikely” that BellSouth could employ the classic predatory strategy of lowering prices below cost to affect competitors’ assessments of future competition. Id. ¶¶ 24, 46-48; see also Gilbert Aff. ¶¶ 43-46. Realistically, moreover, any attempt to drive out large and well-financed incumbent carriers who have made mammoth sunk investments would be doomed. Roberts Aff. ¶¶ 46-47.

c. Price Discrimination. Perhaps the weakest of all theories advanced by those with a vested interest in delaying interLATA competition is that Bell companies might discriminate in the pricing of their exchange access services. The Commission has for years “require[d] any exchange carrier offering interexchange service to impute to itself the same costs that it uses to develop the access rates that it charges its interexchange customers.” Order on Reconsideration, Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd 2637, 2714 (1991). Consistent with that regulatory requirement, Congress specifically provided that the

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<sup>58</sup> Brooke Group v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 226 (1993) (citations omitted); see id.

Bell company must charge its affiliate, or impute to itself, “an amount for access to its telephone exchange service and exchange access that is no less than the amount charged to any unaffiliated interexchange carriers for such service.” 47 U.S.C. § 272(e)(3). The Commission thus rightly has concluded that “the statutory and regulatory safeguards . . . will prevent a [Bell company] from discriminating to such an extent that its interLATA affiliate would have the ability, upon entry or shortly thereafter, to raise the price of in-region, interstate, domestic, interLATA services.” BOC Non-Dominance Order ¶ 119.

d. Technical Discrimination. Theories that BellSouth might impede competition by engaging in technical discrimination are equally unfounded. AT&T, British Telecom/MCI, and Sprint/Centel/Deutsche Telekom/France Telecom are sophisticated, vertically integrated goliaths with revenues much greater than BellSouth’s and the expertise and resources to detect and challenge systematic discrimination. See Gilbert Aff. ¶¶ 46-47, 49. Indeed, to state how discrimination against them would have to occur is virtually to prove its impossibility: In order to gain an anticompetitive edge, BellSouth would have to provide inferior access services to its major competitors, without disrupting its own local or long distance services, in a fashion that is invisible to other interexchange carriers and regulators, yet so apparent to customers that it drives them to switch to BellSouth’s long distance service, but not the service of some other competitor. See Hausman Aff. ¶ 40; see also Gilbert Aff. ¶¶ 46-47 (no harm to competition unless discrimination raises consumer prices). When one considers these realities, it is not surprising that incumbent interexchange carriers never have produced specifics (much less hard evidence) as to the precise form hypothetical future discrimination would take, how it is feasible,

what effect it would have on consumer decision-making, what costs it would impose on interexchange carriers, or how it would reduce competition and increase prices.

To accomplish discrimination, BellSouth would have to circumvent the mechanization of its technical and operations systems, including assignment and provisioning processes. It would have to bypass the SONET capabilities used by many interexchange carriers to reconfigure immediately their networks should a malfunction or service degradation occur. Gunter Aff. ¶¶ 40-42. If technically possible at all, this would require substantial and visible investments, participation by large numbers of employees, and the cooperation of hardware and software vendors who have no interest in favoring BellSouth's interLATA services operations, all of which make such a strategy unthinkable. *Id.* ¶ 40. Of course, there also would be no guarantee that customers who are unhappy with their existing long distance carrier would switch to BellSouth; targeted discrimination against, say, Sprint, would send many customers to AT&T and MCI, giving BellSouth no benefit. *Cf. United States v. Western Elec. Co.*, 993 F.2d 1572, 1579 (D.C. Cir. 1993) (noting that discrimination is unlikely where "customers could readily shift to the BOC's larger competitors").

Furthermore, BellSouth has been providing exchange access services to the long distance industry for over a dozen years. Interexchange carriers can and do directly monitor BellSouth's performance, making it "likely that an IXC would detect any degradation in BellSouth's access service long before any customer could notice that degradation and attribute it to the IXC." Gilbert Aff. ¶¶ 46-47. BellSouth's interconnection arrangements with all the major interexchange carriers establish specific criteria for service quality and procedures for the interexchange carrier

to monitor BellSouth's performance. Gunter Aff. ¶¶ 28-32. In addition, BellSouth is required to file various reports, of proven effectiveness, with the Commission. See Varner Aff. ¶ 219; Gilbert Aff. ¶ 48; supra pp. 61-62 (listing some required reports); see also Second Report and Order, Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6827, ¶ 335 (1990) (“expand[ing] significantly our monitoring of service quality and infrastructure development”).

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

Suggestions that a Bell company might seek to slow-roll interexchange carriers in developing and implementing new access arrangements are equally unfounded. The 1996 Act provides that a Bell telephone operating company “may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards,” 47 U.S.C. § 272(c)(1); must fulfill “any requests from an unaffiliated entity for telephone exchange services, and exchange access within a

period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates,” id. § 272(e)(1); and may not provide facilities, services, or information concerning exchange access to its long distance affiliate unless they are made available to other providers of interLATA service on the same terms and conditions, id. § 272(e)(2), (4). See Gilbert Aff. ¶¶ 42-43; Woroch Aff. ¶ 60.

Regulators should have no trouble enforcing these requirements. The Commission has explained that existing rules relating to enhanced services and customer premises equipment currently protect against analogous discrimination. Non-Accounting Safeguards NPRM, 11 FCC Rcd at 18915-16, ¶ 75. Moreover, access revenues account for one-quarter of BellSouth Telecommunications’ total operating revenues, 1996 Annual Report at 20. BellSouth thus has an affirmative incentive to provide higher-quality or lower-cost access to interexchange carriers, so as to increase demand for its exchange access services and avoid the loss of access revenues that would result if interexchange carriers provided their own access services or obtained access services from a facilities-based competitor to BellSouth. See Schmalensee Aff. ¶ 45; Woroch Aff. ¶ 74 (discussing access competition in South Carolina). All that will be required in the context of new exchange access arrangements is an evolution of existing, routinized, and mutually advantageous arrangements between interexchange carriers and BellSouth, which leave no room or reason for misconduct.

e. Misuse of Confidential Information. Section 272(c)(1) prohibits a Bell company from discriminating “in the provision or procurement of goods, services, facilities, or information.” The Commission has interpreted “information” in section 272(c)(1) so that it

“includes, but is not limited to, CPNI and network disclosure information.” Non-Accounting Safeguards Order, 11 FCC Rcd at 22010, ¶ 222. Accordingly, a Bell company must make such information available to other interexchange carriers on the same terms and conditions as its own long distance affiliate. Id.; see Woroch Aff. ¶ 69 (citing statement and agreement provisions governing confidentiality).

The Commission has explained that its “current network disclosure rules are sufficient to meet the requirement of section 272(e)(2) that BOCs disclose any ‘information concerning . . . exchange access’ on a nondiscriminatory basis.” Non-Accounting Safeguards Order, 11 FCC Rcd at 22025, ¶ 253. Commission regulations also have long governed, and will continue to regulate, access to competitively useful information concerning particular customers. See id. at 22010, ¶ 222 (noting separate CPNI proceeding). Under the Commission’s rules, for example, Bell companies must disclose CPNI to unaffiliated enhanced service providers and CPE suppliers; bar their own enhanced service sales personnel from accessing certain CPNI without customer authorization; and notify multi-line business customers of their CPNI rights each year.<sup>59</sup>

f. Penalties. In light of its inability to engage in cost misallocation or any form of discrimination, there simply would be no reason for BellSouth to risk the substantial penalties likely to follow such a fruitless endeavor. If BellSouth were to violate any provision of the Communications Act of 1934 it would be required to pay civil fines, 47 U.S.C. § 202(c), and

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<sup>59</sup> See Report and Order, Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 153 ¶ 66 (1987), on reconsideration, 3 FCC Rcd 22 (1987), petn. for review denied, Illinois Bell Telephone Co. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); Computer III Remand Proceedings: Bell Operating Company Safeguards, 6 FCC Rcd 7571, 7602-14, ¶¶ 68-95 (1991).

would be liable to injured parties for the amount of their injuries plus attorneys' fees. 47 U.S.C. §§ 206-207. In addition, section 220(e) of the Communications Act imposes criminal penalties for false entries in the books of a common carrier — a strong deterrent against purposeful violations of the accounting requirements described above. Sections 501 through 504 provide additional penalties — including imprisonment, fines, and forfeiture — for knowing violations of any statutory or regulatory provision. Moreover, if the Commission determines that BellSouth “has ceased to meet any of the conditions required for” interLATA entry, it may revoke interLATA authority under section 271(d)(6).<sup>60</sup>

All of the Act's and the Commission's specific statutory and regulatory protections are backed up by federal and state antitrust laws. The weighty corporate and personal penalties (including imprisonment) that may be levied against violators of the antitrust laws, combined with the near impossibility of keeping systematic discrimination or cost-shifting secret, make it most unlikely that Bell company managers would order unlawful practices.<sup>61</sup>

Given its own decisions noting the strength of these protections, the Commission could hardly find them inadequate to the task in this case. Moreover, the Commission just recently determined, in approving British Telecom's acquisition of MCI, that regulations in the United

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<sup>60</sup> The Commission has ruled that once a complainant makes a prima facie showing that a Bell company has “ceased to meet the conditions of entry,” the burden shifts to the Bell company to produce evidence of its compliance. Non-Accounting Safeguards Order, 11 FCC Rcd at 22072, ¶ 345.

<sup>61</sup> See, e.g., 15 U.S.C. §§ 1, 2 (Sherman Act); Antitrust Amendments Act of 1990, 15 U.S.C. § 1 (1997) (raising maximum antitrust fine for corporations from \$1 million to \$10 million and for individuals from \$100,000 to \$350,000); United States Sentencing Comm'n, Guidelines Manual § 2R1.1 (requiring prison sentences for a number of antitrust violations).

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

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

BellSouth’s inability to raise prices or restrict output as an interexchange carrier in South Carolina is confirmed by over a decade of experience with LEC entry into markets adjacent to the local exchange, including, in some instances, long distance service. As noted earlier, local exchange carriers have competed fairly and effectively where they have been permitted to offer long distance. See supra at 76-78.<sup>62</sup> One would not have expected such competitive benefits

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<sup>62</sup> The same is true of BOC participation in the information services and CPE markets. See Hausman Aff. ¶¶ 33, 40. In that regard, the interexchange carriers have tried in various proceedings to cast BellSouth’s introduction of its MemoryCall voice-messaging service as an example of discriminatory conduct. That only shows how bare the record is of any actual wrongdoing. In 1991, the Georgia PSC did find that BellSouth had used improper marketing practices and had discriminated against competing enhanced service providers and ordered a

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

The New Jersey Corridors. When NYNEX and Bell Atlantic sought permission to operate as interexchange carriers in limited geographic corridors during the early 1980s, the district court credited suggestions that allowing such service would give “the Operating Companies the same incentive to discriminate against new entrants that they had while part of the integrated Bell [s]ystem,” and that it “may be tantamount to giving to the Operating Companies a

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temporary halt to MemoryCall sales. Yet MCI and Sprint, among others, supported BellSouth’s successful position before the FCC that the PSC lacked jurisdiction to find a violation where BellSouth had acted in accordance with FCC rules. Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd 1619 (1992). This Commission later stated that it found the Georgia PSC’s finding of improper practices unpersuasive on the merits. Brief for Respondents, California v. FCC, No. 92-70083, at 59-61 (9th Cir. filed July 14, 1993).

Equally meritless are recent claims before this Commission that BellSouth Public Communications (“BSPC”), a wholly-owned subsidiary of BellSouth Telecommunications, Inc., requires its payphone customers to presubscribe to a specific interexchange carrier. Section 276 of the Communications Act and this Commission’s payphone orders authorize BSPC to negotiate, select, and contract with interexchange carriers on behalf of its payphone customers. BSPC has mailed letters to its payphone customers advising them of this fact. Nowhere do these materials suggest that location providers must reevaluate, let alone change, their choice of interexchange carrier. To the contrary, BSPC expressly requires that existing carrier contracts be allowed to run their terms unaffected. Nor is there any truth to the assertions that BSPC discriminates against payphone subscribers who do not authorize BSPC to negotiate with interexchange carriers on their behalf. BSPC does impose a \$15 fee on a small minority of its payphones that generate insufficient traffic to recover costs. BSPC anticipates that, when authorized to do so, it will be able to make up the shortfall on these payphones by negotiating with an interexchange carrier to carry the traffic from the Business Payphones. But where the location provider chooses to select an interexchange carrier itself, BSPC is unable to cover the costs of the payphone. BSPC thus decided to offer its Business Payphone Service on a two-tier basis and to charge a monthly fee of \$15 to location providers who elect not to appoint, or are precluded by contract from appointing, BSPC as their agent. This two-tier system is entirely consistent with the letter and the spirit of section 276 and with this Commission’s payphone orders.

monopoly over certain interstate traffic.” United States v. Western Elec. Co., 569 F. Supp. 990, 1018 n.142, 1023 (D.D.C. 1983). Yet these (now merged) Bell companies do not dominate corridor traffic. By AT&T’s own count, Bell Atlantic has less than 20 percent of the corridor business. AT&T Waiver Petition at 3. AT&T and MCI have sought authority to lower their long distance rates in the corridors while they raise them elsewhere, not because of any leveraging of local “bottlenecks,” but rather because their prices are being undercut. See AT&T Waiver Petition at 5; MCI Comments at 3. Disproving the predictions of potential competitors, Bell Atlantic and NYNEX have benefitted consumers by lowering prices.

SNET in Connecticut. Similarly, all the evidence suggests that SNET’s competitive success in Connecticut is due to its low prices — currently 17-18 percent lower than AT&T’s — not to any anticompetitive behavior. See Hausman Aff. ¶¶ 16, 22, 41. AT&T does not allege that SNET has gained market share through anticompetitive conduct, but rather attributes SNET’s success to lower prices. Id.; see also Gilbert ¶ 53 (no complaints against SNET or Frontier Communications). Moreover, competition between SNET and AT&T is vigorous, leading AT&T to ask for permission to reduce prices along with SNET in order to preserve its market share. See supra pp. 76-77.

GTE/Sprint. GTE’s ownership of Sprint proves the same point on a larger scale. See Gilbert Aff. ¶¶ 51-52. As the fourth largest local exchange carrier and the incumbent carrier across large geographic areas, GTE had the same theoretical incentives to impede interexchange competition as would a Bell company entering the long distance market today. See United States v. Western Elec. Co., 993 F.2d at 1579 (explaining relevance of GTE experience). Indeed, when

seeking to place conditions on GTE's purchase of Sprint in 1984, the Department of Justice argued that because GTE "provide[d] in the same market both local monopoly telecommunications services and competitive long distance services, it" necessarily would have "the incentive and ability to foreclose or to impede competition in the competitive (or potentially competitive) market by discriminating in favor of its own long distance carrier." United States v. GTE Corp., 603 F. Supp. 730, 732 (D.D.C. 1984).

Yet after the acquisition went through, Sprint never was able to accumulate disproportionate market share in areas served by a GTE telephone company. The Department of Justice found no pattern of discrimination by GTE in favor of Sprint, Gilbert Aff. ¶ 52, and even AT&T and MCI have had to concede that GTE's monopoly power in the local exchange never enabled it to "achieve market power" in its in-region interLATA market.<sup>63</sup> As further evidence of its inability to earn monopoly profits in the long distance business, GTE sold Sprint in three installments between 1986 and 1992. Gilbert ¶ 51. GTE recently entered long distance as a new entrant — in the same way that BellSouth will enter — and has competed effectively with AT&T not through any anticompetitive conduct but rather through residential prices that are 17.2 percent lower. Hausman Aff. ¶ 23.

Cellular Services. Experience with LEC participation in cellular services provides another good example. See Hausman Aff. ¶¶ 33, 40. Given that cellular carriers and interexchange

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<sup>63</sup>. MCI's Initial Comments to the Department of Justice Concerning the Motion to Vacate the Judgment and NYNEX's Request to Provide Interexchange Service in New York State at 58, United States v. Western Electric Co., No. 82-0192 (D.D.C., Dec. 9, 1994); see AT&T's Opposition to the Four RBOCs' Motion to Vacate the Decree, United States v. Western Electric Co., No. 82-0192, at 159 (D.D.C. Dec. 7, 1994).

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

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

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

more for PCS licenses, investments that would not make sense if the incumbent LEC had a clear edge.

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

Even if the Commission follows the policy suggested in its Michigan Order and focuses primarily on local competition, it should find that approving BellSouth's application is in the public interest. The expert agency on local telecommunications in South Carolina found that allowing BellSouth into long distance "will create real incentives for the major [interexchange carriers] to enter the local market rapidly in South Carolina, because they will no longer be able to pursue other opportunities secure in the knowledge that [BellSouth] cannot invade their market until they build substantial local facilities." Compliance Order at 67. The SCPSC's thoroughly researched conclusion is consistent with common sense, economic theory,<sup>64</sup> and the findings of other State commissions. For example, the Oklahoma Corporation Commission has informed this Commission that "once full long distance competition is opened up in Oklahoma, the major competitive providers of local exchange service will take notice and adjust their respective business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers."<sup>65</sup>

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<sup>64</sup>. See Woroch Aff. ¶¶ 17-19, 81-88 (noting incentives of CLECs, absent BellSouth interLATA entry, to "go slow" in South Carolina and to pursue markets that offer greater profit margins); Hausman Aff. ¶ 9 (noting that, following BellSouth interLATA entry, interexchange carriers "and other competitors will be required by competition to respond with competitive offerings").

<sup>65</sup>. Comments of the Oklahoma Corporation Commission at 11, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC filed May 1, 1997).

Approving BellSouth's application, moreover, would provide the Big Three long distance carriers with the ability to compete more effectively as CLECs. These carriers are temporarily prohibited from bundling any wholesale services they obtain from BellSouth in South Carolina with interLATA services. BellSouth's entry will have the beneficial effect of "releas[ing] the interexchange carriers from the current prohibition under the Act against the joint packaging of local and long distance service." Compliance Order at 6; 47 U.S.C. § 271(e)(1). The result will be the one Congress envisioned: enhanced competition in both local and long distance markets in South Carolina. Conference Report at 1 (Act intended to "ope[n] all telecommunications markets to competition"); see Gilbert Aff. ¶¶ 18-23 (noting benefits to competition and consumers of bundled offerings); Hausman Aff. ¶ 7 (same).

The Act's prohibition on bundling by the major carriers pending BellSouth's interLATA entry is in fact the only barrier remaining to full local competition in South Carolina. "[A]ll procompetitive entry strategies are available to new entrants" in the State<sup>66</sup> and the SCPSC has confirmed that the current absence of facilities-based local competition is due solely to the business decisions of competitors. Compliance Order at 20. BellSouth has executed agreements with 83 telecommunications carriers in South Carolina. Wright Aff. Attach. WPE-A. The Affidavit of Gary Wright describes the varied backgrounds and business plans of these CLECs and the opportunities available to them. Thirteen CLECs have already ordered services from BellSouth for resale in South Carolina. Wright Aff. ¶ 24. See also Attach. WCE-E. While the orders of some of these companies may well be "test orders," have begun serving customers in

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<sup>66</sup>. Michigan Order ¶ 387.

substantial numbers. Wright Aff. ¶ 24. See also Ex. WCE-D. As of September 11, 1997, CLECs had captured 1,785 business lines and 573 residential lines from BellSouth in South Carolina. Wright Aff. ¶ 24.

Although their efforts to date have been minimal, and they have not taken “reasonable steps” toward becoming facilities-based providers of residential and business service, CAPS such as ACSI and ITC DeltaCom and cable television companies such as Time Warner already have facilities that could easily be utilized to offer facilities-based telephone exchange service. ACSI, for example, has networks in Columbia, Greenville, Spartanburg and Charleston, while ITC DeltaCom’s networks could be used to provide facilities-based telephone exchange service in Beaufort, Charleston, Columbia, Florence, Greenville, Hilton Head, Myrtle Beach, Orangeburg, Spartanburg, and Sumter. Wright Aff. ¶¶ 9-21. See also Attach. WCE-A, WCE-B. A proximity analysis of the networks of ACSI, ITC DeltaCom and Time Warner reveals that if these three competitors chose to compete over their own networks, they would have access to a substantial percentage of BellSouth’s South Carolina revenues without having to extend their networks or resort to resale. Wright Aff. ¶ 27. See also Attach. WCE-D (providing confidential figures).

Moreover, because almost one-third of BellSouth’s South Carolina business revenues are generated by business customers served by only 5 of the 115 wire centers in the State — in areas covered by the networks of potential facilities-based carriers — the threat of competition from these potential competitors imposes a significant competitive constraint on BellSouth’s conduct. Wright Aff. ¶ 26. Indeed, this geographic concentration of revenues means that BellSouth is

likely to face facilities-based competition for a large portion of its local business revenues in South Carolina as soon as any one of these potential competitors takes steps toward competing.

The potential competitors who have facilities in place for other businesses, and even those who have none, need not construct any new facilities to compete as facilities-based providers, but rather could order what they need from BellSouth. See supra Part II. BellSouth's interconnection agreements ensure that CLECs will have nondiscriminatory access to all fourteen checklist items not only today, but also in the future. Stacy Performance Aff. ¶¶ 4-17 (performance monitoring provisions); Woroch Aff. ¶¶ 32-33 (adoption of industry standards). Moreover, if CLECs themselves do not keep track of BellSouth's offerings, state regulators and law enforcement officials certainly will.<sup>67</sup>

As the SCPSC found, therefore, the only thing preventing CLECs from competing fiercely with BellSouth is their incentive to protect long distance profits and pursue more profitable markets.

## CONCLUSION

South Carolina consumers have been denied the benefits of competitive interLATA and local markets long enough. The Commission should end that situation, as recommended by the SCPSC, by granting BellSouth relief under section 271. Because BellSouth has satisfied all

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<sup>67</sup>. See Compliance Order at 65 (approval of BellSouth's application "will not diminish its obligations under sections 251 and 252 of the Act, South Carolina law, FCC and [SCPSC] regulations and its binding interconnection agreements"); Letter from Charles Molony Condon, South Carolina Attorney General, to Federal Communications Commission at 2 (Sept. 5, 1997) (committing resources "to pursue fully any allegation of anti-competitive acts") (App. D at Tab 1A); Woroch Aff. ¶¶ 51-53 (describing SCPSC's procompetitive initiatives).

specific statutory prerequisites to provide interexchange services in South Carolina and such service would be consistent with the public interest, convenience, and necessity, the application should be granted.

BellSouth, September 30, 1997, South Carolina

Respectfully submitted,

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September 30, 1997

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The Affidavits appended as Appendix A to this Brief were provided to the Commission in electronic form. Attachments to the Affidavits and other supporting materials are on file with the Commission.

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

In the Matter of )  
 )  
Application by BellSouth Corporation, ) CC Docket No. \_\_\_\_\_  
BellSouth Telecommunications, Inc., )  
and BellSouth Long Distance, Inc., for )  
Provision of In-Region, InterLATA )  
Services in South Carolina )

AFFIDAVIT OF WILLIAM N. STACY

William N. Stacy, being duly sworn, deposes and says:

I. PROFESSIONAL EXPERIENCE

1. My name is William N. Stacy. I am employed by BellSouth Telecommunications, Inc. ("BellSouth"). My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am the Assistant Vice President - Services for the Interconnection Operations department of BellSouth Telecommunications, Inc. (BST). In this position, I am responsible for development of the procedures used by BST personnel to process Competitive Local Exchange Carrier (CLEC) service requests, and for assisting the service centers in Interconnection Operations in implementing CLEC contracts in a manner consistent with State Commission and Federal Communications Commission ("FCC") rules and regulations governing local exchange competition. I have held numerous positions with BST in Network Engineering, Operator Services, Network Planning, and Network Operations.

## II. PURPOSE OF AFFIDAVIT

2. This declaration will address how BellSouth has adopted and committed to performance measures with which to compare BellSouth's retail and wholesale in providing and maintaining services that are provided to both retail and wholesale customers; and to measure performance as a necessary prerequisite to demonstrating compliance with the Commission's "nondiscrimination" and "meaningful opportunity to compete standards."

3. BellSouth believes that its existing performance measurement obligations are more than adequate to allow the commission to verify that BellSouth is providing CLECs with facilities and services in accordance with the "non-discrimination" and "meaningful opportunity to compete" requirements, and will continue to do so. I will address BellSouth's proactive efforts to develop wholesale and retail comparative measurements, and BST's contractual commitment to performance measures through individual CLEC agreements. By way of introduction, I will describe the overall organizational structure and processes BellSouth has put in place to provide services to all CLECs.

## III. BELLSOUTH CLEC SUPPORT STRUCTURE

4. In order to meet its statutory and regulatory obligations, BST began development work in May, 1995 to create a process for handling the provisioning, maintenance and repair of all interconnection facilities, resold services, and unbundled network elements (UNEs) provided to the CLEC's. Since that time, BST has created an entire new officer level organization, Interconnection Operations, which is responsible for all

operational aspects of provisioning and maintaining services for CLECs. For resale and unbundled network element ordering, two Local Carrier Service Centers (LCSCs), located in Birmingham and Atlanta, serve as contact points for CLECs ordering services for resale or UNEs for facility based service offerings, and offer 24 hours per day, 7 days per week service. The following customers are supported by the Atlanta Center: AT&T, MCI, OPC, Intermedia, Nextlink and Georgia Comm South. All other CLECs are supported by the Birmingham Center. A Customer Support Manager is assigned to each CLEC in the centers to provide a single liaison point if the CLEC customers have operational issues that are not satisfactorily resolved by the normal center processes.

5. The Birmingham and Atlanta LCSCs are functionally equivalent. This arrangement provides a redundant (back-up) capability to maximize efficiency and minimize volume surge impacts. The centers have the technology and systems support to share work. Each has the same systems access and the ability to handle the various service requests. The training path for Service Representatives is the same for each center. Depending upon the employee's previous background and experience within BellSouth, training time for a Service Representative to handle resale orders could be less than 6 weeks. If the Service Representatives will be processing UNE orders, additional complex training is required.

6. The centers have also developed contingency plans to handle spikes in ordering volumes. The plan primarily addresses the use of overtime, sharing work between centers and utilizing other internal resources trained to process CLEC orders. Any difference in capacity or capability between the Birmingham and Atlanta centers is due

to Atlanta currently handling primarily resale orders. Birmingham receives more unbundled network element (UNE) orders from the CLEC group it supports, and UNE orders require more time to handle. More detail regarding LCSC capacity and capability is discussed in my OSS affidavit.

7. Additionally, due to the complexity of managing services provided to CLEC's large business customers, BST established a group of project management specialists as a separate part of each LCSC to provide project coordination for this type of activity. Finally, for day-to-day provisioning activities for unbundled network elements, BST established UNE Centers staffed with highly trained technicians to coordinate the provisioning activities required to install the various UNE products. These groups and centers were staffed with a total of 422 people as of September, 1997, and staffing will increase as market needs dictate.

8. For provisioning of end user services, CLECs can place orders directly through one of the several electronic interfaces which BST has made available, or manually with the LCSC. These are discussed in detail in my OSS affidavit.

9. Provisioning and maintenance of local interconnection trunking is provided by BST's Access Customer Service Centers (ACSCs), which are also part of the Interconnection Operations division. The ACSCs have provided similar services to the Interexchange Carriers (IXCs) for several years. BST technicians in the ACSC directly interface with the CLECs to perform turn-up, testing, and repair of interconnection facilities. These technicians must pass a complex technical test to fill these positions. In addition, BST has a customized training curriculum which qualifies technicians to support facility-based CLECs. The CLEC - specific training period for

these employees is approximately 29 days, in addition to many months of basic equipment and service training.

10. In the case of maintenance and repair, CLECs can submit trouble reports for resold services, interconnection facilities, and unbundled network elements directly through one of the electronic interfaces or manually to the appropriate repair center.

11. BST is committed to provide all of these operations centers with sufficient resources to meet the demands of the CLECs. Additional managers and support personnel have been added to the existing centers and will continue to be added as needed to support increased CLEC activity. BST has forecasts of expected transaction/order volumes gathered directly from our CLEC customers by the BST account team responsible for each individual CLEC account. This information allows us to project ordering volumes, provisioning volumes, and trouble reporting volumes from the CLECs based upon BST's own experience. Staffing initiatives, internal and external hiring, and training have been deployed to enable BST to effectively respond to CLEC provisioning and maintenance expectations. More detailed descriptions of the roles, responsibilities, and capacities of each of these centers are included in the my OSS affidavit and in the DOJ Operational Readiness Report, Exhibit WNS-51 of my OSS affidavit.

#### IV. INTRODUCTION AND USE OF MEASUREMENTS

12. BellSouth realized in early 1996 that the Communications Act would have a tremendous impact on the way it provides service to its customers. The opening of the market to wholesale customers creates many challenges in the area of measurements

which reflect whether CLECs receive the same quality of service as BST's retail customers.

13. To enable effective ongoing production of measurements which monitor parity and provide meaningful data on a readily available basis, BellSouth has implemented a Data Warehouse. BellSouth's existing Operations Support Systems (OSS) run on main frame computers, and computers are aligned by state/states in most instances and have multiple processors. An example of this is the Work Force Administration (WFA) system. WFA, which is used for provisioning and maintenance of designed services, has 7 processors. The query systems on the main frame computers are not flexible and cannot be easily manipulated to produce the measurements required to monitor parity between retail and wholesale customers. The Data Warehouse was developed as a system to meet this need.

14. Data in the newly designed system is loaded from mainframes and combined into regional databases. Every order processed by BellSouth for both its retail units and its CLEC customers is captured for analysis. Standard Query Language (SQL) queries are written against the databases to produce the measurements. These SQL queries provide the ability to re-create measurements that are currently in place on the mainframe systems and easily separate the retail and wholesale services results for reporting purposes.

15. BellSouth plans to provide CLECs with access to the Data Warehouse where CLECs specific results can be obtained. All measurements described in this affidavit will be available in the Data Warehouse.

16. BellSouth has utilized this data to produce reports in three different formats as

our negotiations have progressed. These formats are described in this Affidavit and the Exhibits as:

Initial measurements - Those measurements historically used by BST and applied to both BST and CLECs.

AT&T measurements - Those measurements contractually agreed to with AT&T.

Permanent measurements - A set of generally available measures based on the AT&T measurement set with some additions and offered as additional support to demonstrate BellSouth's commitment to performance measures.

17. BellSouth took an aggressive approach to creating a baseline set of parity measurements to enable the monitoring of levels of service provided to CLECs while the development of a full scope of parity measurements proceeded. Initial measurements became available in March of this year using February performance data. By measuring and monitoring these parity measurements, BST had the ability to identify, analyze, and address any perceived instances of disparity. BST has also produced and utilized the reports in various Public Service Commission (PSC) activities and hearings.

#### V. SOUTH CAROLINA INITIAL PERFORMANCE MEASUREMENT REPORTS

18. A complete set of these reports for CLEC and BST operations in South Carolina is shown in Exhibits WNS-1, WNS-2, and WNS-3 for the first 8 months of 1997. Examination of this data reveals that BST is providing services to the CLECs at parity with those provided to its retail operations in South Carolina and in the other BST states. While these reports are non-CLEC specific, individual based CLEC reports will be provided in accordance with the terms and conditions of individual CLEC Contracts.

NATURE OF DATA - RESALE PARITY REPORT (EXHIBIT WNS-1)

19. The data for these reports is grouped into categories that BST has historically used to manage its own performance for Residence services and Business services.

The percent of due dates met in provisioning orders for service

The trouble report rate per 100 access lines in service

The percent trouble reports which are resolved in less than 24 hours

The average duration in hours of the interval from receipt of a trouble until it is cleared

The percent of missed appointments for maintenance reports

The percent of repeat trouble reports received on the same line received within 30 days

The percent trouble reports within thirty days of installation of new service.

20 . For each of these categories, I have shown the performance for CLECs in South Carolina, for all CLECs in BST's nine-state region, and comparable total data for all of BST's retail customers. In addition, beginning in the month of June, the two resale categories were further disaggregated into two sub-categories, Non Dispatch and Dispatch Out. These new sub-categories were added as we began to move from the initial set of measures to an arbitrated and negotiated measurement set that I will discuss in detail later in this affidavit. Finally, beginning with the month of July, I have shown data for BST in South Carolina.

## PERFORMANCE DATA CONCLUSIONS-RESALE PARITY REPORT

21. In every category, it is clear that the CLECs have received service which is comparable to, and which is in most cases better than, the service received by BST's retail customers.

22. While performance for CLECs in South Carolina is generally consistent with the overall performance to CLECs in the nine-state region, comparing overall performance to CLECs in the nine-state region with performance to BellSouth's retail customers provides a more statistically stable view. I have highlighted the "best" performance in each regional category by showing that value in bolded, underlined text. These values confirm that CLECs' customers are indeed receiving service at least in parity with or better than is provided to BellSouth retail customers

## NATURE OF DATA - LOCAL INTERCONNECTION TRUNKING/UNBUNDLED LOOPS (EXHIBITS WNS-2 AND WNS-3)

23. The Local Interconnection Trunking Report (Exhibit WNS-2) shows the following:

1. Total number of trunks in service as of the end of that month.
2. Number of trunk orders processed that month.
3. The number of order due dates missed (either due to the CLEC, or the CLEC's end user, or for BellSouth reasons).
4. The percent order due dates met on time excluding customer misses.
5. The percentage of new circuit failures (Any failure in a trunk group within 30 days of installation).
6. The total number of troubles in that month.

7. The average repair interval of troubles in hours.

24. The Unbundled Loops Report (Exhibit WNS-3) shows the same data as the Local Interconnection Trunking Report but has one additional measure: Repeated Trouble Reports Within 30 Days.

#### PERFORMANCE DATA CONCLUSIONS - LOCAL INTERCONNECTION TRUNKING/ UNBUNDLED LOOPS

25. In 7 of 8 months, CLEC interconnection trunks were installed on time or at a significantly better percentage than for trunks BellSouth installed for its retail customers. Specifically, January CLEC results were better than BellSouth's (99.9% to 86.7%), worse in February (77.3% to 86.0%), but better in all the following months: March (97.8% to 88.5%), April (100.0% to 83.6%), May (98.9% to 91.2%), June (97.9% to 89.9%), July (99.4% to 89.9%) and August (100.0% to 94.9%).

26. Although no direct comparison to BST services is possible, unbundled loops were installed on time at a rate no lower than 86.8% (April) and as high as 100% in January with 6 of 8 months above the 90% level..

27. The New Circuit Failure Rate on local interconnection trunks was better for CLECs than BellSouth retail customers for 6 of 8 months. Specifically, CLEC results were better in January (0.0% to 0.7%), February (0.0% to 0.5%), better in March (0.1% to 0.2%) and April (0.0% to 0.5%), worse in May (0.6% to 0.5%), better in June (0.0% to 0.5%), worse in July (1.1% to 0.3%) but better in August (0.0% to 0.4%).

VI. BELLSOUTH'S CONTRACTUAL COMMITMENT TO PERFORMANCE MEASUREMENTS

28. During the period that the previous reports were being produced, BellSouth continued to negotiate and arbitrate specific performance measurements with various CLECs. As a result of these negotiations, BST and AT&T, on May 9, 1997, reached agreement on performance measurements and filed those measurements with the Georgia Public Service Commission. Those measurements included both the parity measures and non-discriminatory access to systems and services measures. This specific agreement was signed in Georgia, but both parties agreed to extend its provisions to all nine states where BST provides services as an ILEC. This agreement was incorporated into the interconnection agreement between BST and AT&T filed with the South Carolina Public Service Commission and approved as effective on June 2, 1997. (Reference: Attachment 12, Paragraph 1.4 of the BellSouth AT&T Agreement, Exhibit WNS-4.) BellSouth delivered to AT&T the August results on September 14, 1997, for the initial set of agreed to measurements. BST is willing, and in fact, continues to negotiate performance measurement obligations with other CLECs. A similar agreement was reached with Time Warner on September 5, 1997, which is also included as Exhibit WNS-5.

29. In the BST and AT&T agreement, percentage target performance levels were not provided for some measurements, such as provisioning intervals for UNEs. BST and AT&T agreed to meet to discuss establishment of such targets quarterly, starting no later than ninety (90) days after actual performance occurs.

VII. ESTABLISHMENT OF COMPARATIVE MEASUREMENTS FOR EXISTING RESALE SERVICES

30. For the AT&T measurements, BST proposed the use of statistical process control measures to determine whether those services are being provided at parity, and this approach was approved by the South Carolina PSC. BST performance data historically have variations from month to month due to many factors, such as severe weather, damage to our facilities, or other events that could not be anticipated. It is therefore important to study performance results over several months to determine what the acceptable upper and lower limits for various performance measures should be. This is done by plotting the monthly results on a graph or control chart. This creates a picture of the performance. Once data has been collected for a number of months, generally at least six, upper and lower levels of performance can be established.

31. The proposed reporting format uses the historical and current performance of BST as the standard to establish statistical process control parameters, using the process control chart format. After BST's performance is used to establish the basic parameters (average, upper control limit, lower control limit) of the control chart, the services BST performs for all CLECs would be superimposed on this same chart. Once control limits are established, a comparison can easily be made between the BST data and the CLEC data. This type of comparison will be made for each agreed to group of services where BST provides similar retail services to its retail customers.

32. When reviewing comparative data (BST compared to CLECs) on a control chart,

as long as the monthly performance is within the established upper and lower limits there generally would not be any concern unless one of the entities, i.e., a CLEC, for three consecutive months was higher or lower than the other entity, or a single monthly measure was outside a control limit. This would merit an investigation or a study, referred to as “root cause analysis”, to determine the reason for the consistent variation. Once this has been accomplished, a plan for corrective action would be initiated. This method of analyzing data avoids overreacting to insignificant variations and focuses on processes to insure consistent performance.

33. BST’s retail operations track service performance results on a company-wide, and state-wide basis, for groups of customer services. In general, the groups are separated in two ways; first, by the type of customer, i.e. consumer, small business, or large business; and second, by the type of service provided, i.e., POTS (also referred to as non-designed), and designed or special services. BST’s proposed and negotiated measures for services provided to both CLECs and to BST retail units generally follow this pattern.

34. For the provisioning and maintenance measures, the groups of service to be measured and the specific measures to be applied to each group are listed in the table in Exhibit WNS-6. Where the table entry SPC (Statistical Process Control) is shown, BST believes that sufficient historical data exist to establish statistical process control measures by September, 1997. Where IP (In Process) is shown, historical BST data do not exist, and the CLEC results will be produced without direct comparison to BST.

#### VIII. ESTABLISHMENT OF MEASUREMENTS FOR UNBUNDLED NETWORK

## ELEMENTS THAT BST PROVIDES ONLY TO ITS CLEC CUSTOMERS

35. BST recognizes that insufficient historical data exists to establish process control measures for unbundled network elements it provides only to CLECs. BST has agreed to begin measurement of that data, and to continue to discuss targets as indicated earlier. As suggested in various regulatory activities, BellSouth pursued the availability of win-back data to assist in comparing UNE performance results between BST and the CLECs. However, no data is currently available from the retail units for such an analysis.

36. BST has published a set of target intervals for provisioning UNEs (Exhibit WNS-7) and recently finalized a similar set of target intervals for maintenance of UNEs. (Exhibit WNS-7A) These intervals will be used to establish the provisioning and maintenance due dates for the UNE categories, and will allow us to begin to generate the data for future SPC measurements. Until sufficient data are collected for each service category, BST proposes using negotiated measures to set estimated values for the average, the upper control limit, and the lower control limit, and to adjust these as additional data becomes available. The time period to accumulate statistically valid data for each category is a function of the CLECs ordering volume in each state and in each service category, and cannot be accurately predicted at this time.

## IX. ESTABLISHMENT OF COMPARATIVE MEASUREMENTS FOR LOCAL INTERCONNECTION TRUNKING SERVICES BELL SOUTH PROVIDES TO ITS CLEC CUSTOMERS

37. In addition to the measurements for resold services and unbundled network

elements, BellSouth provides three groups of measurements related to local interconnection trunking.

38. The measurements for provisioning and maintaining local interconnection trunks parallel the resold service measurements in the sense that direct comparisons can be made between services provided to CLECs and those provided for the BST retail units. These measurements (provisioning and maintenance) are identical to the initial measurement set and are provided in Exhibit WNS-2.

39. In addition to these measurements, BellSouth has received questions from various regulatory agencies regarding blocking of the trunking network interconnecting the facility-based CLEC network to BellSouth's network. The complexity of the interconnected networks makes this a somewhat difficult concept to explain. I will discuss the basis for this measurement in detail after I discuss the other measures agreed to in the AT&T Agreement which provides the platform for BST's permanent measurements.

#### X. MEASUREMENTS IN THE AT&T AGREEMENT

40. The AT&T agreement added several items to the set of initial measures by regrouping the service categories (Resale, UNE and Local Interconnection Trunking) into Dispatch Out and Non-Dispatch categories. Additionally, measures for billing, database access and accuracy, and account maintenance were developed specifically for AT&T.

41. As I indicated earlier, these measurements are defined in the BST - AT&T agreement, (Exhibit WNS-4) and are further explained in Exhibit WNS-8.

## XI. DEVELOPMENT OF PERMANENT MEASUREMENTS

42. Based on knowledge and experience gained through CLEC negotiations, PSC activities, and other regulatory proceedings, the current measurements were developed. February through August measurement results for the BellSouth region (where available) are shown in Exhibit WNS-9. State level data is being collected, but is not yet available .

43. Below is a summary description of these measurements.

### All Services (Measured against individual total CLEC orders)

Provisioning Order Reject/Error Notice (not available at this time)  
Provisioning Firm Order Confirmation (not available at this time)

### Resale Service Measurements

% Provisioning Appointments Met  
% Troubles Within 30 days of New Service order being completed  
% Maintenance Appointments Met  
Maintenance Average Duration Receipt to Clear  
% Repeat Troubles Within 30 Days  
% Out of Service < 24 Hours  
% Trouble Report Rate  
Answer Time

### Resale Service Measurements Categories:

CLEC Total by State  
BST Total by State  
CLEC Total Region  
BST Total  
Dispatched Out / Non Dispatched

### Local Interconnection Trunking

% Due Dates On Time  
% New Circuit Failure Rate Within 30 Days of New Service Order being completed  
Average Duration of Trouble (Responsible Duration)

% Trouble Report Rate  
Answer Time

Local Interconnection Trunking measurement categories:

CLEC Total by State  
BST Total by State  
CLEC Total Region  
BST Total

Unbundled Network Elements - Loop (UNE)

% Due Dates On Time  
% New Circuit Failure Rate Within 30 Days of New Service Order being completed(Currently Available)  
Average Duration of Trouble (Responsible Duration)  
• % Repeat Troubles Within 30 Days  
% Trouble Report Rate  
Answer Time

UNE (Loop) Measurement categories:

CLEC Total by State  
CLEC Total Region

Unbundled Network Elements - (Non-Loop, Number Portability)

% Provisioning Appointments Met  
% Troubles Within 30 Days of New Service Order Being Completed  
% Maintenance Appointments Met  
Maintenance Average Duration Receipt to Clear  
% Repeat Troubles Within 30 Days  
% Out of Service < 24 Hours  
% Trouble Report Rate  
Answer Time

UNE (non-loop) Measurement categories

CLEC Total by State  
CLEC Total Region

## XII. RESALE SERVICE MEASUREMENTS CONCLUSION

44. Of the 28 Resale Service Measurements, 6 were within the upper and lower limits established, 7 were below the lower control limits (which actually indicates better performance results for the CLECs), and 1 was above the upper control limit (which also indicates better performance results for the CLECs).

45. Of the remaining measurements, only one measurement (% Provisioning Business Non-Dispatch) was out of range three consecutive months; however, the average year to date results for the CLECs is only .08 percentage points below BST year to date results.

### 46. Measurements Within Control Range:

- % Provisioning Appointments Met - Business Dispatch Out
- % Maintenance Appointments Met - Residential Dispatch Out
- % Maintenance Average Duration - Residential Non Dispatch
- % Trouble Report - Residential Dispatch Out
- % Provisioning Troubles - Residential Non Dispatch
- % Out of Service - Residential Dispatch Out

### 47.. Measurements Above Control Range ( Indicates Better Service to CLECs):

- % Provisioning Appointments Met - Residential Non Dispatch

### 48.. Measurements Below Control Range Which Indicates Better Service to CLECs:

- Maintenance Average Duration - Residential Dispatch Out
- Maintenance Average Duration - Business Non Dispatch
- % Maintenance Repeat Troubles - Residential Non Dispatch
- % Trouble Report Rate - Residential Non Dispatch
- % Trouble Report Rate - Business Non Dispatch Out
- % Provisioning Troubles - Residential Dispatch Out
- % Provisioning Troubles - Business Dispatch Out

49. Measurements With Combinations (Both above and below range, with overall results indicating better service to CLECs):

Maintenance Average Duration - Business Dispatch Out  
% Maintenance Repeat Troubles - Business Dispatch Out  
% Maintenance Repeat Troubles - Business Non Dispatch  
% Trouble Report - Business Non Dispatch  
% Provisioning Troubles - Business Non Dispatch  
% Out of Service - Business Non Dispatch  
% Out of Service - Business Dispatch Out

50. Measurements Below/Above Range (Indicates CLEC Results Lower Than BST Results):

% Provisioning Appointments Met - Residential Non Dispatch (CLEC results 0.33 percentage points lower than BST)

% Provisioning Appointments Met - Business Non Dispatch (CLEC results 0.08 below the LCL)

% Maintenance Appointments Met - Residential Non Dispatch (CLEC results 0.53 percentage points below LCL)

% Maintenance Appointments Met - Business Dispatch Out (Only one month out of control range - year to date regional CLEC results within range)

% Maintenance Repeat Troubles - Residential Non Dispatch (CLEC year to date results 3.74 percentage points higher than BST)

51. Our initial analysis on these five measurements indicates these results are not significantly different except for % Provisioning Appointments Met - Residential Non Dispatch. In that case, the results are impacted by the number of CLEC caused errors. These errors, which are detected in the provisioning process, create manual intervention and delays.

XIII. SERVICE ORDER INTERVAL MEASUREMENTS

52. During our discussions of this and future filings with the Department of Justice, they indicated that it would be useful for their evaluation of these measurements if BST were to produce data on the actual intervals for provisioning various services. BST has produced this data, and the measurement is defined and results produced in Exhibit WNS-10. However, BST has not agreed to incorporate this data in the results regularly produced for the CLECs or state commissions, since the set of % Provisioning Appointments Met data already indicates BST's performance in this area.

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#### PERFORMANCE DATA CONCLUSIONS - SERVICE ORDER INTERVALS

53. CLEC interval performance for dispatched orders (for residence and business) is better than overall BST performance. The Residence Non-Dispatch results indicate better service order interval results for BST. However, in assessing this, one should take into account the volume of CLEC caused errors which create manual handling and clarification by BST before the order can be corrected and released. The length of time it takes for a CLEC to respond to clarifications, on errors detected after the order is issued, has a direct impact on service order intervals. CLEC data on volume and response time for clarifications are discussed in my OSS affidavit and shown on the LCSC Weekly Operations Report referenced in the OSS affidavit. Following is a summary which indicates whether BST or the CLEC had better performance in a given month by order type. Details are shown in Exhibit WNS-10. The "----" below indicates substantially equal levels of performance for both BST and the CLECs.

SERVICE ORDER INTERVALS COMPARISON

"C" ORDERS	RESIDENCE		BUSINESS	
	NON-DISPATCH	DISPATCH	NON-DISPATCH	DISPATCH
April	CLEC	CLEC	BST	CLEC
May	-----	CLEC	-----	CLEC
June	BST	BST	BST	CLEC
July	BST	-----	BST	BST
August	BST	-----	BST	BST

"N" ORDERS	RESIDENCE		BUSINESS	
	NON-DISPATCH	DISPATCH	NON-DISPATCH	DISPATCH
April	BST	CLEC	CLEC	CLEC
May	-----	CLEC	CLEC	CLEC
June	-----	CLEC	-----	CLEC
July	-----	CLEC	-----	CLEC
August	BST	CLEC	CLEC	CLEC

"T" ORDERS	RESIDENCE		BUSINESS	
	NON-DISPATCH	DISPATCH	NON-DISPATCH	DISPATCH
April	CLEC	CLEC	BST	BST
May	CLEC	CLEC	-----	-----
June	CLEC	CLEC	BST	BST
July	CLEC	CLEC	BST	-----
August	CLEC	CLEC	BST	BST

54. Additionally, Exhibit WNS-10B and WNS-10C provide average service order interval results for BST and the CLEC's. Again, overall performance results reflect non-discriminatory performance.

#### XIV. BST/CLEC TRUNK INTERCONNECTION/BLOCKAGE MEASUREMENTS

55. BellSouth has compiled an extensive set of measurements to demonstrate that calls through the BST network to CLEC customers are provided with non-discriminatory access that is subject to the same design and implementation as the access provided to BellSouth's retail end users. Since the trunking network is a complex set of interconnected inter-office paths, some background is essential to help understand

these measures.

## PRE-CLEC TRUNKING ARCHITECTURE

56. In the pre-CLEC trunking architecture, BST had a two-tier trunk network. One tier was for interLATA and intraLATA toll traffic. The other tier was for local service traffic. The two tiers did not interconnect with each other. The first set of trunk groups interconnect the end offices, access tandems, and other network nodes, such as IXC (Interexchange Carrier) POP (Point-of-Presence) that are used for interLATA/intraLATA toll traffic. The second set interconnect the end offices and local tandems that are used for local traffic. An interLATA or an intraLATA toll call could not use a trunk group in the local service tier, nor could a local service call use a trunk group in the interLATA/intraLATA toll tier. This was true even in locations where the access tandem used for the interLATA/intraLATA toll network is the same one used for the local tandem network.

57. There are two types of trunk groups; high-usage and final. A high-usage trunk group is usually between two end offices and is sized to overflow its excess traffic to a final trunk group interconnected with a tandem. A final trunk group does not overflow its excess traffic load to another trunk group. Instead, it provides an “All Circuits Are Busy” announcement for the excess calls. A final trunk group should have a DBO (Design Blocking Objective) which is an expression of the probability of blocking for calls offered it. The exception to this is a trunk group used to connect operator answering positions with a switch. Although the latter is a final trunk group, it is sized according to the number of positions, rather than the probability of blocking.

58. All of the final trunk groups in BellSouth use a DBO of 1.0% (10 calls out of 1000) during the TCBH (Time-Consistent Busy Hour) of the trunk group. The only exception to this is on trunk groups carrying first-route interLATA calls through an access tandem. The DBO for these trunk groups is 0.5% (5 calls out of 1000) blocking during the TCBH of the trunk group. Thus, a final trunk group carrying first-route interLATA traffic between the access tandem and an end office or IXC POP has a DBO of 0.5%. All other final trunk groups (between end office and local tandem, or end office to end office) have a DBO of 1.0%.

59. The reason why trunk groups carrying first-routed interLATA traffic have a lower blocking objective is to meet BST's equal access obligations as outlined at the time of the AT&T Divestiture. Equal access included the following:

- a. Equality in number of digits dialed by the end user.
- b. Equality in Probability of Blocking for traffic between the BST end office and an IXC.
- c. Equality in transmission quality.

60. At Divestiture, the AT&T trunk groups had a DBO of 1%. In most locations, the toll switch went to AT&T. BST had to establish access tandems to concentrate and distribute traffic since it was not economically justifiable for every IXC to establish a trunk group to every end office in the LATA. Thus, blocking equality was defined as 1% blocking for first-route between the end office and an IXC POP. With the interjection of the access tandem, 0.5% became the DBO for the trunk group between the end office and the access tandem, and also for the trunk group between the access tandem and the IXC POP. The two halves of one percent added back up to 1% blocking between

the end office and IXC POP.

### Post-CLEC Trunking Architecture

61. In the interest of establishing service with the CLECs as quickly as feasible, BST made a decision to interconnect with the CLECs at the interLATA/intraLATA tier of the trunk network rather than the local tier even though almost all of the calls are local.

The interLATA/intraLATA tier was initially chosen for the following reasons:

a. Much of the information that a CLEC needs for interconnection are the similar to the ones for used by the interexchange carrier industry. This information has been maintained in mechanized databases since Divestiture in order to facilitate interconnection between BST and the interexchange carriers. For example, vital data elements associated with the proper routing of a call on a trunk group are available for the interLATA/intraLATA toll tier of the network, but not for the local service tier. This routing information is in a mechanized system supported by Bellcore Traffic Routing Administration organization. One standard output product is the LERG (Local Exchange Routing Guide) which is used by the IXCs to determine where to route the NPA-NXXs for the calls IXC's hand-off to BST. Bellcore enhanced their software capabilities in order for BST to load some data elements on the local service tier of the network into the LERG.

b. Better ability to properly record the call for billing purposes. The access tandems and end offices associated with the interLATA/intraLATA tier of the

network were equipped to properly make a record of the calls for billing purposes. Similar capabilities were not provided for the local service tier. Proper recording reduces both the number of artificial factors that must be developed, and billing disputes that must be resolved.

c. Better ability to provide 64CCC (Clear Channel Capability), which is required to process ISDN calls. Almost all of the tandems in the interLATA/intraLATA tier of the network are newer and of the digital type which can provide 64CCC. Many of the local tandems are older and of the analog type, which cannot provide 64CCC.

d. Better trunking blocking objectives in most instances since the traffic is generally routed on the interLATA/intraLATA tier of the network in BST. As indicated in paragraph 24, the DBO is 0.5% instead of 1.0% for the local service tier.

62. The basic trunk network interconnecting BST with a CLEC consists of the following trunk groups:

a. A one-way trunk group from a BST end office switch or access tandem to the CLEC end office switch. This trunk group is for local & intraLATA toll traffic from BST end users to CLEC end users. From the inception of local service interconnection with CLECs, BST has allowed a trunk group to be directly

connected between a BST end office and a CLEC end office switch. Usually the direct end office trunk is a high-usage trunk group overflowing to a final group interconnected with the tandem. BST is primarily responsible for sizing this trunk group which it orders from a CLEC. It is also responsible for the transport facilities to get the calls to the CLEC. The CLEC charges BST a MOU (Minutes of Use) fee for the traffic terminating to it on this trunk group.

- b. A one-way trunk group from a CLEC end office switch to a BST end office switch or access tandem. This trunk group is for local & intraLATA toll traffic from CLEC end users to BST end users. From the inception of local service interconnection with the CLECs, BST has allowed a trunk group to be directly connected between a CLEC end office switch and a BST end office switch. Usually the direct end office trunk is a high-usage trunk group overflowing to a final group interconnected with the tandem. The CLEC is primarily responsible for sizing this trunk group which it orders from BST. It is also responsible for the transport facilities to get the calls to BST. BST charges the CLEC a MOU fee for the traffic terminating to it on this trunk group.
- c. A two-way trunk group between a CLEC end office switch and the BST access tandem. This trunk group is for “transient” traffic between CLEC end users and non-BST end users in that local calling area. The CLEC is primarily responsible for sizing this trunk group which it orders from BST. It is also responsible for the transport facilities to get the calls to or from BST. BST

charges the CLEC a MOU fee for the traffic (originating or terminating to the CLEC) traversing this trunk group. The value added by BST on this trunk group is in switching the call with other carriers (Non-Bell, other CLECs, Interexchange Carriers, etc.) The two-way charge is primarily for the use of the access tandem in switching the call. The CLEC could interconnect directly with another party and thus bypass the tandem switching charge.

- d. There are other trunk groups interconnecting BST with the CLECs. These are primarily for E911, and other services requested by the CLEC, such as, operator services, directory assistance, intercept, etc.

63. BST has some trunk groups in the network that are associated with the trunk groups listed above, but are not ordered by CLECs. These are the CTTGs (Common Transport Trunk Groups) which interconnect the end office with the access tandem. Although these trunk groups primarily handle interLATA and intraLATA toll traffic, most of the CTTGs began handling local traffic as CLECs interconnected with BST at the access tandem. As mentioned in paragraph 24 and earlier in this paragraph, the DBO for the CTTGs is 0.5%.

64. Associated with the DBO is the MBT (Measured Blocking Threshold) which is the upper limit of blocking for a trunk group using that DBO. Since the trunking tables used in sizing final trunk groups are probability tables, there are statistical variances around the DBO. Measured blocking above the MBT is considered to be above the statistical tolerance limits of the algorithms used in trunk sizing. Listed below are the

two DBOs used in BST and their associated MBTs:

Design Blocking Objective	Measured Blocking Threshold
1.0%	3.0%
0.5%	2.0%

65. Thus, any measured blocking of 3% or less in the time-consistent busy hour is considered to be within the tolerance limits for a trunk group with a DBO of 1%.

66. The following DBOs are used for the trunk groups listed in above.

- a. One-way trunk group from a BST end office switch or access tandem to the CLEC end office switch: 1.0%.
- b. One-way trunk group from a CLEC end office switch to a BST end office switch or access tandem: 1.0%.
- c. Two-way trunk group between a CLEC end office switch and the BST access tandem: 0.5%, since it carries first-route interLATA traffic through an access tandem.

Generally, the company with trunk sizing responsibility determines the DBO.

67. Since the first CLEC interconnection almost two years ago, the BST network architecture has evolved to where the CLEC can choose one or more of the following options in addition to the original ones listed in Paragraph 25

- a. The one-way trunk groups can now be ordered as a two-way trunk group. The other two-way trunk group in Paragraph 25 remains a separate two-way trunk group. The other trunk group remains as is.

- b. All three trunk groups in Paragraph 62 can now be ordered as a single two-way trunk group. The other trunk groups remain as is.
  
- c. A CLEC can have trunk groups to only one access tandem instead of all of the access tandems in the LATA. A CLEC choosing this arrangement could decrease its call completion rate due to additional trunk groups involved in completing the call.
  
- d. A CLEC can have its trunk groups carrying local traffic interconnect at the local tandem. This is identical to the two-tier network used by BST for interLATA/intraLATA toll and local service as mentioned in Paragraph 25.

#### Trunk Service Performance Measurements

68. BST collects traffic measurements on the trunk groups interconnected with the CLECs as well as all other trunk groups in the network. The measurements are processed weekly through a mechanized system which calculates the percent blocking during the time-consistent busy hour.

69. On any one-way trunk group from the CLEC to BST, the blocking calculated by the mechanized system in BST will not be as accurate as those that are two-way or one-way from BST to the CLEC. This is due to technical constraints since BST cannot mechanically collect Peg Count and Overflow measurements, which are required to

more accurately determine blocking. Peg Count and Overflow measurements are collected only at the originating end of the trunk group, which, for BST, would be a two-way or a one-way trunk group from BST to the CLEC. On a one-way trunk group from the CLEC to BST, all BST can collect is usage, which the system then uses to determine a theoretical blocking. This latter blocking is called theoretic since it was not calculated from Peg Count & Overflow measurements. It was derived by using only usage measurements and going “backwards’ through the trunk capacity algorithms to determine the level of blocking. Also, due to the distortions caused by using only usage measurements on very small size trunk groups of two trunks or less, these groups are not included in service performance results.

70. The following categories are used in evaluating trunk group service performance on final trunk groups. (There are no trunk group service performance results for high-usage trunk groups since a high-usage trunk group overflows its excess traffic load to a final.):

- a. CLEC Local Service Trunk Group Interconnection - This category contains the service performance results of final trunk groups between the CLEC switch and a BST tandem or end office. It is subdivided into two components, one for trunk groups ordered and administered by BST, and the other for trunk groups ordered and administered by CLECs.

Starting with the June 1997 service period, BST began compiling trunk group service performance results for this category. Exhibit WNS-11

contains a summary of the monthly results from June, 1997 to August, 1997. Exhibit WNS-11A contains details on the four trunk groups ordered and administered by BST that are shown on the August, 1997 summary report.

b. BST Local Service Trunk Group - This category contains the service performance results of final trunk groups in the BST local service tier of the network. It includes trunk groups between the end office and the local tandem as well as final trunk groups between end offices. These trunk groups carry local service traffic for the BST retail customers.

Starting with the June, 1997 service period, BST began compiling trunk group service performance results for this category. Exhibit WNS-12 contains a summary of the monthly results from June, 1997 to August, 1997. Exhibits WNS-12a -12c contain the details for each of those months. The results for Georgia may be inaccurate due to database errors. Many of their trunk groups were converted from finals to high-usage for the Olympics. Due to the massive changes, the records may not properly reflect that change and be shown as a final even though it's high-usage overflowing to another final.

c. CTTG (Common Transport Trunk Group) - This category contains the service performance results of final trunks between the BST end office and BST tandem. As previously mentioned in paragraphs 24 and 25, these trunk groups primarily handle interLATA and intraLATA toll traffic. As mentioned in

paragraph 25, the CTTGs began carrying local traffic between the access tandem and BST end offices with the advent of CLEC interconnection.

71. Each month, two reports showing the CTTG trunk service performance results are sent to all interested parties. This report has been distributed since the mid-1980s. Most of the recipients, both then and now, are IXCs since these trunk groups are used predominantly to transport calls between IXCs and end offices homing on the access tandems. Interested CLECs can receive a copy of these two reports which shows the following:

- i. One-page Statistical Summary for BST and for Non-Bell Entities. This report contains the following:

Total number of CTTGs

Total number of CTTGs with measurements and processed mechanically

Percent of CTTGs with data

Total number of CTTGs with blocking exceeding the MBT

- ii. A floppy disk datafile containing all of the CTTGs. The file is formatted in accordance with industry standard interface requirements as specified in Bellcore Special Report SR STS-000317. Listed below are some of the information for each CTTG that are contained in the datafile:

Name of the Trunk Group  
Trunks In-Service  
Percent Blocking  
Busy Hour  
Number of Days of Data Used to Calculate the Blocking  
DBO (Design Blocking Objective) & MBT (Measured Blocking  
Threshold)  
Number of Consecutive Reports the CTTG Was Reported with  
Blocking  
Date of the Data Period  
Remarks Explaining the Blocking

72. A summary of the CTTG monthly trunk service performance results is sent to the FCC annually. This was sent quarterly until it was changed recently to an annual reporting. The data to the FCC is contained in Lines 180-190 of the FCC Report 43-05 ARMIS Service Quality Table 3.

73. Exhibit WNS-13 contains the BST CTTG results for the period from January, 1997 through August, 1997. 1996 and prior years are available either from BST or the FCC. Exhibit WNS-13a contains the details for the August, 1997 report month. Details for other months are available.

74. In most locations, traffic from a BST end office to the CLEC end office or from the CLEC end office to a BST end office, will go on a direct trunk group if there is one,

or switch through the access tandem. If the call is switched through the access tandem, it would traverse the CTTG between the access tandem and end office. Thus, service performance results from the “CLEC Local Service Trunk Group Interconnection” (Exhibit WNS-11) and “CTTG” (Exhibit WNS-13) categories will provide a good assessment on the quality of the service provided on trunk groups carrying traffic to CLECs. This could then be compared to the service performance results for “BST Local Service Trunk Group” (Exhibit WNS-12).

## Analysis of Trunk Service Performance

75. For the last 13 months from July, 1996 to July ,997 the BST CTTG service performance results have been less than 1% of the trunk groups exceeding the MBT of 2.0% for each trunk group. (Several years ago, the industry established an objective of 2% or less, to be met on a company-wide basis by the Local Exchange Carriers. No objective for individual state subdivision was established due to the smaller universe. BST is far-exceeding the industry objectives.)

76. Looking at the most recent data (August, 1997) from Exhibit WNS-11, BST had four trunk groups with blocking in excess of the MBT of 3%. All four groups incurred blocking due to one or more of the following reasons:

- a. the CLECs not telling BST in sufficient time to add trunks to the network
- b. the CLECs not ready to add the trunks as ordered by BST
- c. the CLECs had a very long lead time of several weeks before being able to turn up trunks.

77. As mentioned previously, Exhibit WNS-11a contains additional information regarding these four trunk groups. For all four trunk groups, the traffic load increased dramatically in a short period of time. When a BST end user dials a local call, they do not know if the distant end is a BST, CLEC, or non-Bell LEC end office. All the end user wants is for BST to complete the calls without any undue blocking. If not, they would perceive BST and not the CLEC or non-Bell carrier as providing inadequate service. Anytime there is a trunk blockage, it becomes a critical matter for BST to

alleviate. The same attention, if not more, is made for trunk groups carrying traffic to a CLEC switch as for other trunk groups in the BST network.

78. Exhibit WNS-11a suggests, for the four trunk groups, that if better communication of anticipated volumes was provided to BST, and/or if quicker turn-up of trunks to BST by the CLECs occurred, the blocking problems would be quickly alleviated. We realize that there will be tremendous growth in the CLEC interconnection market. BST has met almost all of the CLEC trunk requirements in the time frames requested by the CLECs. Often, that is not the case with the CLECs. For example, in one state, BST submitted orders with a due date of April, 1997 for the establishment of 408 trunks in seven trunk groups. As of September 15, 1997, none of the trunks had been established.

79. For the four trunk groups referenced above, the trunks being added were in the hundreds per trunk group. This type of growth is very unusual in the existing BST network; nevertheless, as in this instance, BST strives to add the trunks as quickly as possible. In some locations, trunks cannot be added due to shortage of facilities and/or equipment. Thus, there is a great need for the CLECs to provide BST with their plans on network expansion. BST will continue to work with the CLECs on this endeavor.

80. Exhibit WNS-12 shows that on a company-wide basis, the BST local trunk service performance for its retail customers indicates between 1.7% to 2.7% of the trunk groups experience blocking above the MBT of 3%. Those numbers (1.7% to 2.7%) could double (3.4% to 5.4%) if the BST retail customer's call had to go through a local tandem. If the non-Georgia numbers were used, the range would be 1.1% to 3.0% instead of 1.7% to 2.7%.

81. BST has provided detail trunk group blocking information regarding its network for the CLECs as well as for its retail customers. Information provided includes percent blocking, size of trunk groups, and, busy hour. From the data, one can determine the magnitude of the trunk blockage. When comparing data for traffic switching through a tandem, one cannot simply add the trunk blocking for one trunk group to the trunk blocking for another group unless the two trunk groups had the busy hour in the same time period. For example, one trunk group on one side of the tandem had a busy hour of 10 a.m. during the month with blocking of 2.5%. The trunk group on the other side of the tandem had a 10 p.m. busy hour during the same time period with 1.5% blocking. For a call traversing those two trunk groups, the blocking is not 4.0% (2.5% + 1.5%). It is less than that, and possibly none at all, if the call is placed during one of the other hours.

82. Comparing the trunk service performance results from the “CLEC Local Service Trunk Group Interconnection” (Exhibit WNS-11) and “CTTG” (Exhibit WNS-13) categories with the “BST Local Service Trunk Group” (Exhibit WNS-12), BST believes that the trunk blocking on interconnection provided to the CLECs is at least equal in quality to that provided to itself or any other party. In many instances the trunk blocking quality is superior to the one BST provides to itself due to the network architecture for serving the CLECs calls, either originating or terminating.

83. Using the latest data (August, 1997), and assuming that all of the trunk groups had the same busy hour in the same time period, the trunk blocking for CLECs is 2.9% (2.5% between the tandem and the CLEC switch, plus, 0.4% between the tandem and a BST end office). Compare that to 4.4% for BST (2.2% for each group to the tandem).

Thus, the service quality provided to the CLECs is consistent with the service levels BST provides for its retail customers. If the four trunk groups, with service results affected by conditions beyond BST's control, were discounted, the service quality level for CLEC interconnection trunk groups is much higher than those provided to BST retail customers (1.4%% for CLECs as compared to 4.4% for BST retail customers).

### TRUNK FORECASTS AND PLANNING MEETINGS

84. BST continues to work with its CLEC customers on trunk forecast and planning meetings. BST has participated in numerous meetings with the CLECS to gather trunking information as well as further improve the trunk forecasting and information process. Some CLECs do provide trunk forecasts to BST, but the forecasts are more on a just-in-time basis versus a forecast. For example, one CLEC provided BST with a forecast on July 10, 1997, requesting approximately 10,000 trunks in one city, 6600 to be ordered by BST and 3400 by the CLEC. The trunks were to be installed starting August 1, 1997 through December 1, 1997. This was too short a time frame for provisioning that many trunks. BST does not have 10,000 terminations available for "instant" ordering or use. If a vendor has to add equipment, it could require up to 26 weeks to provide it. BST has requested vendors shorten their intervals, and they have, where feasible; but this type of abrupt, unplanned demand increases the opportunity for blocking.

85. Some CLECs do not provide a forecast at all. Rather, BellSouth receives the request for larger numbers of trunks after the CLEC has committed to the end user. In

these instances, trunk group blocking can be a concern. BST had a recent experience like this where the blocking was in excess of 60%. While technically true that the calls were blocked in the BST network, more pre-planning by the CLEC would have alleviated much, if not all, of the blockage.

#### XV. SUMMARY

86. BellSouth established a policy early in 1997 that it would not only provide services to its CLEC customers in a non-discriminatory fashion, but also that it would collect all necessary data to demonstrate this fact. In addition to collecting this data and reporting the results of these measurements, BellSouth has established contractual obligations with two major CLECs for specific performance measures. Finally, BellSouth has submitted proposed measures based on these contracts to the South Carolina PSC which approved these measures as part of BellSouth SGAT.

87. BellSouth believes that these measures are fully sufficient to demonstrate that we are providing non-discriminatory access to services in South Carolina and throughout the BellSouth region.

88. I hereby swear that the foregoing is true and correct to the best of my information and belief.

---

William N. Stacy  
Assistant Vice President  
Interconnection Services  
BellSouth Telecommunications, Inc.

Subscribed and sworn to before me this 26th  
day of September, 1997.

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Notary Public

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

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In the Matter of )  
 )  
Application by BellSouth Corporation, ) CC Docket No. \_\_\_\_\_  
BellSouth Telecommunications, Inc., )  
and BellSouth Long Distance, Inc., for )  
Provision of In-Region, InterLATA )  
Services in South Carolina )

**Affidavit of Alphonso J. Varner  
on Behalf of BellSouth**

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Before the  
FEDERAL COMMUNICATIONS COMMISSION

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In the Matter of )  
  
Application by BellSouth Corporation, )  
BellSouth Telecommunications, Inc., )  
 )  
Provision of In-Region, InterLATA )  
Services in South Carolina )

ON BEHALF OF BELLSOUTH

STATE OF Georgia

I, Alphonso Varner, being first duly sworn upon oath, do hereby depose and state as follows:

1. My name is Alphonso J. Varner. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375. I am employed by BellSouth  
  
BellSouth region.

I. \_\_\_\_\_

2. I graduated from Florida State University in 1972 with a Bachelor of Engineering  
  
in the division of revenues organization with the responsibility for preparation of

all Florida investment separations studies for division of revenues and for reviewing interstate settlements. Subsequently, I accepted an assignment in the rates and tariffs organization with responsibilities for administering selected rates and tariffs including preparation of tariff filings. In January 1994, I was appointed Senior Director of Pricing for the nine state region. I was named Senior Director for Regulatory Policy and Planning in August 1994, and I accepted my current position as Senior Director of Regulatory in April 1997.

## II. PURPOSE OF AFFIDAVIT

3. The purpose of this affidavit is to discuss the means by which BellSouth has met the requirements of Section 252 (f) of the Telecommunications Act of 1996 (“the Act”). Specifically, I address each of the items contained in the 14-point competitive checklist found in Section 271(c)(2)(B) of the Act. For each item I provide: 1) an explanation of the checklist item; 2) the specific offering being made available through BellSouth’s Statement of Generally Available Terms and Conditions (“Statement”), with specific reference to the South Carolina AT&T arbitration decision; 3) references where applicable to negotiated agreements; 4) an explanation of the derivation of the rates for applicable checklist items and the cost basis for each rate; and 5) a discussion of how competing local exchange carriers (“CLECs”) are provided these capabilities. Additionally, I provide information demonstrating BellSouth’s compliance with the non-discrimination requirements of section 272 of the Act.

### III. SOUTH CAROLINA PUBLIC SERVICE COMMISSION PROCEEDINGS

On March 10, 1997, the South Carolina Public Service Commission (“SCPSC”) issued Order No. 97-536 in the BellSouth/AT&T arbitration case, Docket No. 96-

BellSouth incorporated the decisions of the SCPSC’s March 10, 1997 Arbitration Order into its Statement.

The SCPSC approved BellSouth’s Statement, with modifications, on July 31, 1997 in Order No. 97-640 for Docket No. 97-101-C. The SCPSC concluded that

271(c)(2)(B)” (SCPSC Order No. 97-640, p. 69), and that the entry by BellSouth Long Distance (“BSLD”) into the interLATA long distance market in South

the SCPSC were:

- 1) Incorporate the following language: “The Statement shall be legislative, regulatory or judicial orders or rules that affect the rights and obligations created by the Statement.”

Provide “...that any local interconnection established or UNE placed in service prior to the rate true-up shall be capped at the interim only be adjusted downward as a result of the true-up process. Any downward adjustment for an interconnection arrangement or UNE in such UNE was placed in service or the date such interconnection arrangement was established.”

6. BellSouth filed the modified final Statement on August 4, 1997 based upon the SCPSC Order No. 97-640 of July 31, 1997. Additionally, in its Order No. 97-684 in Docket No. 97-101-C, the SCPSC directed parties to file comments with regard to changes to the Statement filed by BellSouth that might be required as a result of the July 18, 1997 decision of the United States Court of Appeals for the Eighth Circuit (hereinafter referred to as the “Eighth Circuit”) in the case of *Iowa Utilities Board v. Federal Communications Commission* 1997 W.L. 403 401. The SCPSC issued this Order in response to a Motion for Clarification filed by AT&T. In its Motion, AT&T specifically addressed changes with regard to the parts of the decision discussing Sections 251(c)(3) and 252(d)(1) of the Act. With regard to aspects of the decisions impacting on these sections of the Act, BellSouth filed comments and proposed additional changes to its Statement on August 25, 1997.

These revisions are described below:

7. Revision (1) *Removed all references to “technically feasible” as the standard for which network elements must be made available.* In its decision at Subsection G.1.c., the Eighth Circuit found that the Federal Communications Commission (“FCC”) had incorrectly concluded that Section 251(c)(3) of the Act required that incumbent local exchange carriers (“ILECs”) must provide unbundled access to all network elements for which it is technically feasible. The Eighth Circuit found that the plain language of the Act limited the use of the “technically feasible” language to a determination of “where unbundled access may occur, not which elements must be unbundled.” The Eighth Circuit found that Subsection 251(d)(2) was the part of the 1996 Act which established the standards to determine which elements must be unbundled and that Subsection 251(d)(2) made no reference to technical

feasibility.

Revision (2) *Removed language in Section II.D. “Rates” concerning the*

*elements.* In Subsection G.1.g. in its opinion “Obtaining Finished Services through

CLECs to combine unbundled network elements (“UNEs”) to provide a finished service. The Eighth Circuit found that “under Subsection 251(c)(3), a requesting

when  
combined by \_\_\_ requesting carrier, are sufficient to enable the requesting carrier to provide telecommunications services.” [emphasis added]

9. Revision (3) *Reworded language on combinations of UNEs in Section II.F.* The Eighth Circuit decision upheld the ability of CLECs to use combinations of UNEs to provide telecommunications services. However, at Subsection G.1.f. of the decision “Combination of Network Elements,” the Eighth Circuit clarified that ILECs may not be required to provide rebundled UNEs to CLECs. BellSouth therefore proposed to change Section II.F. to clarify that CLECs may combine BellSouth network elements in any manner they choose to provide telecommunications services. BellSouth will physically deliver UNEs where reasonably possible, e.g., unbundled loops to CLEC collocation spaces, as part of the network element offering at no additional charge. Additional services desired by CLECs to assist in their combining or operating BellSouth UNEs are available as negotiated. Additional clarifying language regarding software modifications for ordering of CLEC-combined UNEs was also proposed.

10. *Removed language in VI.A. and B. concerning vertical features not being included in the price for the local switching UNE.*

decision found that vertical features such as Caller ID, Call Waiting and Call Forwarding qualify as network elements. (Opinion at Subsection G.1.a.)

initially these features will be provided as part of the local switching UNE at the SCPSC-approved interim price. Forward-looking cost studies for the individual

local switching including vertical features will be established in a subsequent proceeding.

BellSouth also filed a revised rate list (Attachment A to the Statement) with the SCPSC on September 5, 1997. The only proposed change to the rate list was a

make it consistent with the narrative portion of the Statement.

12.

August 25, 1997 with one modification. The SCPSC rejected BellSouth's proposal to remove all references to "technically feasible" as the standard for

which is in compliance with the SCPSC's September 9, 1997 action is attached as Exhibit AJV-1.

#### IV. BELLSOUTH'S STATEMENT

##### A. Overview

13. BellSouth's Statement provides a vehicle for carriers to enter the local market, if they so desire, without having to negotiate the terms of a carrier specific agreement. The Statement was developed in a manner that is as straightforward and simple as possible, while at the same time meeting the requirements of the Act. It includes the capabilities required under the Act for a new entrant to compete with BellSouth. BellSouth believes that its Statement will ease the entry for some new entrants, in particular smaller CLECs who do not wish to negotiate separate agreements. For those CLECs who do wish to negotiate, the Statement provides a simplified "model" agreement for their use to begin the negotiation process.
14. As an alternative to the Statement, parties may choose to negotiate specific terms and conditions for certain functions or opt to utilize another CLEC's SCPSC-approved agreement. BellSouth's Statement does not provide the option for CLECs to "pick and choose" specific components from various other CLEC agreements. With regard to this issue, the Eighth Circuit noted in its July 17 decision, "We conclude that the FCC's interpretation conflicts with the Act's design to promote negotiated agreements. Thus, we find the FCC's "pick and choose" rule to be an unreasonable construction of the Act and vacate it for the foregoing reasons."
15. Even though the Statement does not provide an option for CLECs to "pick and choose", CLEC agreements, which include a pick and choose type option,

negotiated and approved prior to the Eighth Circuit's July 17 decision will be honored by BellSouth.

Following the Eighth Circuit's decision, any new contracts BellSouth has entered into with CLECs do not include pick and choose options. BellSouth will

appeals of the Eighth Circuit's Order are resolved.

B. \_\_\_\_\_

17. BellSouth developed the Statement in order to provide all of the capabilities on a general

Statement provides all required capabilities, to the extent a competitor desires additional capabilities not contained within the Statement, the Bona Fide Request process, discussed

BellSouth for that particular function.

18.

business by any and all carriers. Although experience has shown that, at least initially, the larger carriers have preferred to negotiate their own agreements, smaller carriers may wish

market.

C. \_\_\_\_\_

19. To the extent a competitor desires additional capabilities beyond those contained within

Statement). BellSouth developed the Bona Fide Request process jointly with AT&T as a means to address and respond to CLEC requests for different or additional services, features, capabilities or functionalities. The Bona Fide Request process addresses procedures and timeframes for requests such that each party fully understands the progress of each request. For example, the process requires BellSouth to acknowledge in writing, within two business days, its receipt of the Bona Fide Request, and further requires BellSouth to identify a single point of contact for that request. In most cases BellSouth will provide a preliminary analysis of the request within 30 days of its receipt. As soon as feasible, but not more than 90 days after it is authorized by the CLEC to proceed with development of the Network element Bona Fide Request quote, BellSouth will provide the requesting CLEC a quote which will include at least a description of the Network Element, the availability, the applicable rates and the installation intervals. The requesting party then has 30 days to notify BellSouth of its acceptance or rejection of the proposal. Unless a CLEC agrees otherwise, all proposed prices shall be cost-based.

D. Format of Statement and Resources for Operational and Procedural Matters

20. The Act does not provide for a particular format for its terms and conditions submission under Section 252(f). BellSouth has elected to develop an Statement format that is similar to its negotiated and arbitrated contracts. BellSouth believes this will facilitate review by the FCC and by the CLECs who may wish to operate under these terms and conditions.
21. BellSouth has included many of the operational and procedural matters in separate documents in order to facilitate a new entrant's understanding of the capabilities being offered. These are attached to the affidavits of Mr. Milner and Mr. Stacy. BellSouth will continue to monitor technology and marketplace developments to keep these resources

up-to-date and to provide new entrants with the best road map into BellSouth's access

22. Exhibit AJV-2, titled Typical Applications, illustrates how each of the checklist items checklist item with the Statement reference, this affidavit, and the SCPSC Order No. 97-640 dated July 31, 1997. These will hopefully help in the review process in assuring the Act.

V. \_\_\_\_\_

23. BellSouth used a number of sources to determine the actual facilities and services that are describe the checklist requirements. Second, the FCC's August 8, 1996 First Report and Order in CC Docket No. 96-98 ("FCC Order") dealt with many aspects of the facilities 1997 Arbitration Order were incorporated. Fourth, items contained in voluntarily negotiated agreements were also considered. Finally, BellSouth provided comments and decision.

24. aspects of the competitive checklist and has included some items that are beyond the

checklist requirements. For example, in some instances, if the experience in the negotiations process indicated a general need for a particular capability, BellSouth has included this functionality even though it was beyond what may be needed to comply with the checklist requirements. The SCPSC in its arbitration proceeding only addressed the elements that AT&T had requested. Based on negotiations with other CLECs, BellSouth has included additional functions in the Statement. In some instances, where applicable, BellSouth relied on Commission decisions in other state jurisdictions to fill out the terms of its Statement.

VI. BELLSOUTH'S PRICING POLICIES FOR INTERCONNECTION, UNES,  
AND TRANSPORT AND TERMINATION

A. General Requirements for Pricing

25. It is BellSouth's policy to adhere to the pricing rules set forth in the Act. Section 252(d)(1) of the Act states that "interconnection and network element charges. . . shall be based on cost (determined without reference to a rate of return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable) and [be] nondiscriminatory, and may include a reasonable profit." For all checklist items, BellSouth provides rates that are cost-based.
26. BellSouth believes that the determination of rates for interconnection, unbundled network elements and the wholesale discount is exclusively within the jurisdiction of the SCPSC. In its July 18, 1997 decision, the Eighth Circuit clearly granted this authority to the states. Rules promulgated by the FCC to impose pricing standards on the state commissions with

respect to such rates were vacated. The Eighth Circuit stated “[a]fter carefully reading the language of the Act and fully considering and reviewing all of the arguments, we conclude that the FCC exceeded its jurisdiction in promulgating the pricing rules.” § II(A).

27. The SCPSC found that “The rates contained in the Statement for interconnection and unbundled network elements comply with section 252(d)” of the Act (SCPSC Order No. 97-640, Page 53). The rates in the Statement are interim and most are subject to a true-up process. These interim rates will be adjusted as necessary based on the cost studies made available to the SCPSC on June 9, 1997 (SCPSC Order No. 97-640, Page 55).
28. The SCPSC established Docket No. 97-374-C to review BellSouth’s cost studies for interconnection and UNEs and establish rates to replace the interim rates in agreements and the Statement. A Notice of Filing and Hearing was issued by the SCPSC on September 11, 1997, providing a comment and hearing schedule for review of the cost studies filed by BellSouth. Hearings are scheduled to begin on December 1, 1997 with a decision by the SCPSC on replacement rates in January 1998.
29. At the time of filing cost studies, the FCC’s pricing rules were stayed, but the Eighth Circuit had not ruled. The cost studies filed by BellSouth were based on TELRIC principles. BellSouth believed it prudent to develop its cost methodology based on economic cost, i.e., Total Element Long Run Incremental Cost (“TELRIC”) methodology plus common costs as described in the FCC’s Order in the event the FCC’s pricing rules were upheld. However, it is important to note that although BellSouth developed costs based on TELRIC, it does not believe that prices should necessarily be set equal to any particular cost standard, including TELRIC. Also, the TELRIC methodology should not

be adopted as a price floor for rates at this time.

30. These cost studies are based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers. Such an approach reflects a hypothetical network that does not recognize the actual costs which BellSouth, or any other company for that matter, will incur in providing unbundled network elements to CLECs.

B. True-Up Process as Further Assurance of Cost-Based Rates

31. The rates subject to true-up are identified by an asterisk in the Price List included in the Statement. Certain UNE offerings are identical to existing tariff services. In these cases, the rates for the identical tariffed services were approved as the interim rates for the UNE. These rates were cost justified when they were established. In many cases, rates for these elements are not subject to true-up. However, all rates in the Statement will be replaced by rates based on the newly filed cost studies.
32. The true-up process in BellSouth's Statement is consistent with the orders of the SCPSC. The Statement specifies the rates that will apply when a CLEC elects to compete with BellSouth under the terms of the Statement. When the Statement rates are trued-up, the rates for any local interconnection or UNE placed in service at a rate subject to true-up before the SCPSC establishes replacement rates will be capped at the rate in the approved Statement for the term of the Statement, or in an agreement entered into pursuant to the Statement. Retroactive true-up payments for those rates that are higher than the replacement rates will be provided for CLECs who had ordered those specific items or

the true-up is capped at the interim rates, no backbilling to the CLECs will occur based on establishing replacement rates.

In Docket 97-374-C, if any replacement rates determined by the SCPSC are higher than the interim rates in the approved Statement, the higher replacement rates will not apply to replacement rates. In these cases, the CLEC would retain these particular items at the interim rate levels, until the term of the Statement expires. Once the replacement rates are the effective date of the new rates. "New purchases" refers to items the CLEC had not previously ordered. BellSouth will not raise rates retroactively on items that a CLEC had

34. In its July 31, 1997 Order No. 97-640 approving BellSouth's Statement, the SCPSC be based on cost information, this Commission concludes that the interim rates in the Statement are cost-based within the requirements of the 1996 Act." (SCPSC Order No. which are identical to tariffed services are not subject to true-up. These rates are cost justified upon approval of the tariff rates. The true-up mechanism recognizes that further standards are met. Regardless of the cost methodology used to determine final rates, the interim rates will be adjusted retroactively if necessary, absolutely ensuring that the rates

35. The SCPSC also rejected MCI and AT&T's argument that rates which are subject to adjustment and not derived using a specific costing methodology do not comply with the checklist requirements. In its July 31, 1997 Order, the SCPSC also stated "[t]he Commission finds that the fact that the Statement includes rates that are subject to adjustment does not render the Statement non-compliant with the Act." (SCPSC Order No. 97-640 for Docket No. 97-101-C, page 54).
36. Interim rates are not a barrier to entry into the local market. BellSouth has entered into numerous voluntarily negotiated agreements with carriers that have gone into business in the BellSouth region, such as ACSI. Several of these carriers voluntarily agreed to interim rates subject to true-up and have implemented their business plans based on this arrangement. In fact, voluntary agreement to this true-up arrangement preceded any Commission ordering such arrangements in an arbitration proceeding.

C. \_\_\_\_\_

37. In Paragraph 292 of its August 18, 1997 Michigan Order, the FCC stated “[i]n order for principles for interconnection and unbundled network elements must also be geographically deaveraged to account for different costs of building and maintaining offer deaveraged rates for unbundled network elements. The Act does not require that rates for unbundled elements be deaveraged; therefore the SCPSC has the authority to offer such rates. Geographical deaveraging was not addressed or ordered by the SCPSC in the AT&T Arbitration or Section 271 proceedings, therefore, it is not required. In the deaveraging, BellSouth will provide cost studies for geographically deaveraged loops for consideration by the SCPSC.

BellSouth is not categorically opposed to deaveraging local loop prices. However, unbundled loop rates should not be deaveraged until such time as the state commission establishing a universal service fund and rebalancing end user local service rates.

Historically, state regulators have employed pricing practices which served both regulatory and political purposes and incorporated subsidies to ensure affordable basic

Carolina incorporates long standing policies of purposefully pricing some services markedly above costs in order to price other services at or below cost such that all South

Carolina customers would have access to reasonable and affordable basic local exchange service. Further, basic local exchange rates are inversely related to the number of lines in a particular exchange's local calling area – the greater the number of lines in an exchange's local calling area, the higher the price. Deaveraging will create loop prices that vary in the opposite direction from the prices for retail services. This is important because the unbundled loop will be used by CLECs to compete for these retail customers.

Deaveraging loop prices means that in urban areas where retail prices are highest, the retail prices will be higher relative to unbundled loops than they would be if loop prices were not deaveraged. In rural areas, the reverse would be true. In rural areas, however, high unbundled loop prices would be irrelevant since the CLEC could simply resell the low priced retail service to rural customers. As a result, deaveraging, without concomitant rate rebalancing, simply creates another opportunity for CLECs to engage in arbitrage of the pricing schedule. This arbitrage will ultimately lead to higher prices for rural customers as CLECs usurp the contribution to prices in urban areas that make lower rural prices possible.

40. It is very important to recognize that unbundled loops will be used to compete with residence and business local exchange services. As such, the pricing implications of deaveraging the loop cannot be divorced from the price of local exchange services.

## VII. OVERVIEW OF THE FOURTEEN-POINT COMPETITIVE CHECKLIST

Section 271(d)(4) of the Act states that the FCC may not limit or expand the terms set forth in the competitive checklist. The 14-point checklist is the mechanism by which

will have opened their local market to competitors. The 14 points are as follows:

(1)

(2) Nondiscriminatory Access to Network Elements

Nondiscriminatory access to Poles, Ducts, Conduits and Rights of Way

(4)

(5) Unbundled Local Transport

Unbundled Local Switching

(7)

a.

b.

c.

(8) White Page Directory Listings

Nondiscriminatory Access to Telephone Numbers

(10)

(11) Number Portability

Local Dialing Parity

(13)

(14) Resale

42. Exhibit AJV-3 provides a cross-reference for each checklist item for this affidavit, the Statement and the SCPSC's Order No. 97-640 approving the Statement. The remainder of this affidavit details the service offerings and demonstrates that BellSouth's Statement, as approved by the SCPSC, meets the pricing requirements of the competitive checklist. Details and analysis regarding the ordering, provisioning and billing of checklist items are included in the affidavits of Mr. William Stacy, Mr. Keith Milner and Mr. David Hollett.

VIII. CHECKLIST ITEM NO. 1: INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(c)(2) AND 252(d)(1)

A. Requirements for Interconnection

43. *Requirements of the Act*

Section 251(c)(2) of the Act outlines the additional obligations of ILECs regarding interconnection. Specifically, an ILEC, such as BellSouth, has the duty to provide interconnection of requesting telecommunications carriers' facilities and equipment with its network for the purposes of transmission and routing of telephone exchange service and exchange access. This interconnection must be provided at any technically feasible point that is at least equal in quality to that provided by the ILEC to any other party including any subsidiary or affiliate of the ILEC. Section 252(d)(1) of the Act specifies the pricing standards of such interconnection. In essence, rates are to be considered just and reasonable when they are based on the cost of providing the interconnection, are nondiscriminatory and may include a reasonable profit.

44. *Requirements of the FCC's First Report and Order in CC Docket No. 96-98*

Rule 51.305 requires that an ILEC, such as BellSouth, must provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the ILEC's and exchange access at any technically feasible point within the ILEC's network. The points of interconnection within the ILEC's network will include, at a minimum, the line-a tandem switch, central office cross-connect points, out-of-band signaling transfer points and access to call-related databases, and the points of access to unbundled network equal to that which the ILEC provides itself, a subsidiary, an affiliate or any other party on terms and conditions that are nondiscriminatory in accordance with agreements,

B. Methods of Interconnection

Interconnection allows for the exchange of local traffic between BellSouth and a CLEC over trunks terminated at specified interconnection points. Such interconnection typically of networks: 1) trunk termination points; 2) trunk directionality; 3) trunk termination method; and, 4) interconnection billing.

Section I of BellSouth's Statement provides for interconnection of networks that satisfies the components identified above. BellSouth's Statement offers reasonable and and with decisions of the SCPSC. To the extent CLECs want another form of interconnection not specified in the Statement, e.g., at a BellSouth tandem switch, the

Bona Fide Request process is available.

47. For trunk termination, BellSouth's Statement offers CLECs interconnection at BellSouth tandems and/or end offices for the reciprocal exchange of local traffic. For trunk directionality, BellSouth offers routing of local and intraLATA traffic over a single one-way trunk group. Access traffic, as well as all other traffic utilizing BellSouth's intermediary tandem switching function, can be routed via a separate trunk group which is typically a two-way trunk group.
48. Reciprocal compensation applies only to local traffic. When traffic other than local is routed on the same facilities as local traffic, the Percentage Local Usage ("PLU") will determine the amount of local minutes to be billed to the other company. The PLU is calculated in a manner similar to that used in determining interstate usage (the percent interstate usage, or "PIU").
49. For trunk termination, BellSouth offers interconnection of facilities and equipment through: 1) virtual collocation; 2) physical collocation; and 3) interconnection via purchase of facilities from either company by the other company.
50. BellSouth has recognized that a CLEC might need to interconnect with another carrier besides BellSouth through a BellSouth tandem. Although this functionality is not required by the checklist, BellSouth is offering intermediary service which provides for local tandem switching and transport services for CLEC connection of its end user to a local end user of another CLEC or an ILEC other than BellSouth. This functionality is also available in the Statement for two parties that are connected through the same BellSouth

tandem (Statement § I.A.5).

51.

on a meet-point basis when BellSouth and a CLEC both provide an access service connection to an IXC. In such cases, each company will bill its own access services rates

assure that the IXC is billed the appropriate rate elements by the two LECs providing the service in a manner similar to the way incumbent LECs perform these functions.

Once again, BellSouth's Statement offers a reasonable means of interconnection for any company electing to operate under the terms, conditions and prices of the Statement.

companies may prefer a mid-span meet for interconnection in addition to or in lieu of tandem and/or end office interconnection. The details of such an arrangement can be

may avail itself of the Bona Fide Request process, which is Attachment B of BellSouth's Statement.

#### Prices for Interconnection Services

53.

for interconnection. (page 15.) The FCC Order, at paragraph 787, addresses the use of states' "default proxies in setting and reviewing rates." Further, the FCC Order also states study."

54. In compliance with the SCPSC's Order, the rate in BellSouth's Statement for local switching, is the mid-point of the proxy range, i.e., \$0.003 per minute.
55. For dedicated transport from the CLEC location to the BellSouth network, the existing tariffed charges for dedicated transport were approved. These prices are within the range of the FCC's proxy. Many CLECs are already paying these existing rates if they are interexchange carriers. Further, to the extent interconnection facilities are used for both local interconnection and access traffic, it is logical that the same rates should be applied.
56. BellSouth has made the required calculations for common transport in the following manner. The SCPSC adopted the FCC's proxy for shared transport which is also referred to as common transport. In accordance with the FCC's Order, BellSouth began with its dedicated transport rates of \$90.00 per facility termination and \$23.50 per mile for a DS1 facility. Because a DS1 is generally considered to be equivalent to 24 (twenty-four) voice grade channels, these rates were divided by 24 to obtain a per circuit or per path rate. These rates were then divided by 9000 (minutes), which, according to the FCC, was considered to be the average use for each circuit. These calculations resulted in the rates of \$0.00042 per minute and \$0.00011 per minute per mile.
57. For tandem switching, the SCPSC adopted the proxy rate from the FCC Order of \$0.0015 per minute. The FCC Order (at Paragraph 824) stated that the proxy rate should not exceed this level. It is important to recognize that the FCC's proxy rates are also applicable to specific unbundled elements which are discussed later. The local interconnection proxy is also the proxy for unbundled local switching, which is included in Checklist Item No. 6. Similarly, the dedicated and common transport proxies are

applicable to the unbundled transport elements in Checklist Item No. 5. Therefore, the rates, as summarized below, will also appear in other appropriate sections. All of the interconnection rates are subject to the true-up process ordered by the SCPSC.

<b>Interconnection Component</b>	<b>Rate Per Minute</b>
Interconnection at an end office	\$0.003
Interconnection at a tandem (in addition to end office rate)	
- Tandem Switching	\$0.0015
- Common Transport	
- Facility Termination	\$0.00042
- Per Mile Per Minute	\$0.00011
Intermediary service (in addition to tandem switching and transport)	\$0.002

58. The charge for intermediary service is an exception to the use of FCC proxies. No such function was included in the FCC's Order. The BellSouth proposed rate of \$0.002 per minute is included in interconnection agreements in South Carolina, and is included in the Statement as an additional option for CLECs. The intermediary transport function is not a checklist requirement. The intermediary transport function is being offered by BellSouth to facilitate

CLECs' interconnection to other CLECs. However, since it is not required by the Act, this function is not subject to the Section 252(d) pricing standards.

59. In addition to the Statement, many of BellSouth's negotiated interconnection agreements with CLECs in South Carolina contain prices, terms and conditions for local interconnection. Examples of such agreements include Intermedia Communications, Inc. (ICI) and ACSI, DeltaCom and KMC Telecom.

D. Physical and Virtual Collocation

60. While not specifically mentioned as a checklist item, Section 251(c)(6) of the Act charges BellSouth with the duty to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at rates, terms and conditions that are just and reasonable. BellSouth will provide for virtual collocation when physical collocation is not practical for technical reasons or because of space limitations.
61. BellSouth offers both virtual and physical collocation to new entrants. (Section II (B)(6) of Statement). The rates, terms and conditions for virtual collocation

are set forth in Section 20 of BellSouth's Interstate Access Service Tariff, FCC No. 1. The rates, terms and conditions for physical collocation are from BellSouth's interconnection agreements with ACSI and ICI and were subsequently ordered by the SCPSC in the AT&T arbitration. The rates for virtual collocation are not subject to true-up (as they are existing tariffed rates), but the rates for physical collocation are subject to true-up. The rates for physical collocation are as follows:

<b>Physical Collocation</b>	<b>Monthly</b>	<b>Nonrecurring</b>
Application Fee		\$3,850.00
Space Preparation Fee		ICB*
Space Construction Fee		\$4,500.00
Cable Installation - per entrance cable		\$2,750.00
Floor Space Zone A, per square foot	\$7.50	
Floor Space Zone B, per square foot	\$6.75	
Power, Per AMP	\$5.14	
Cable Support Structure, per entrance cable	\$13.35	
POT Bay (Optional Point of Termination Bay)		
2-Wire	\$.40	
4-Wire	\$1.20	
DS1	\$1.20	
DS3	\$5.00	

Continued

	Monthly	Nonrecurring
2-Wire Analog	\$.30	
4-Wire Analog	\$8.00	\$8.00 Ea. \$155.00 1st
DS3	\$72.48	\$155.00 1st \$27.00 Add'l
Basic - 1st half hour/additional		\$41.00/25.00
Overtime - 1st half hour/additional		\$48.00/30.00

*\*ICB - Individual Case Basis*

62.

conditions of collocation. For example, the negotiated agreement with ICI provides for virtual collocation via the FCC Tariff No. 1, and physical collocation via BellSouth's

63.

emergency situations.

E.

(“ACTL”)

Moves

ACSI filed a complaint with the FCC on February 15, 1996, and the complaint asserts that the ACTL Moves are anticompetitive. ACSI alleges that BellSouth waived

Waiver (“NOW”) tariff for its (BellSouth's) customers and did not waive those charges

for ACSI. This issue arises because the NOW project did not apply to ACTL Moves. An RNRC is always applicable for ACTL Moves, whether the activity involves a BellSouth customer or an ACSI customer. ACSI is, in fact, BellSouth's customer in this case.

65. As an example, there is no RNRC applicable for a single non-channelized special access DS3 (because of the LightGate Link architecture). However, because the switched access DS3s are not under the LightGate architecture, RNRCs do apply. These charges apply equally to a BellSouth customer or an ACSI customer. A special access DS3 may or may not be channelized; a switched access DS3 is always channelized to the DS0 level. The charges applicable for each type of service are indeed different, but these charges are applied equally without regard to the type of customer.

66. BellSouth responded to two sets of interrogatories dated June 3, 1996 and July 29, 1996, and two Motions to Compel, both dated August 28, 1996, in ACSI's complaint proceeding before the FCC on this matter in File No. E96-20. In its responses to the interrogatories, BellSouth outlined in detail how the charges are applied and described the functions to support the costs incurred for the work performed. The responses to the interrogatories are a matter of public record and BellSouth asks the FCC to take administrative notice of the responses. Additionally, this matter has been fully briefed by both sides (ACSI and BellSouth filed their Reply Briefs on May 27, 1997), and the parties are now awaiting a decision by the FCC.

IX. CHECKLIST ITEM NO. 2: NONDISCRIMINATORY ACCESS TO NETWORK  
ELEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS  
251(c)(3) AND 252(d)(1)

A. Requirements for Nondiscriminatory Access to Network Elements

67. *Requirements of the Act*

Section 251(c)(3) charges BellSouth with the duty to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms and conditions that are just and reasonable. Further, requesting carriers are allowed to combine elements in order to provide telecommunications services. Section 252(d)(1) of the Act specifies the pricing standard for unbundled network elements. In essence, rates for network elements are considered just and reasonable when they are based on the cost of providing the element, are nondiscriminatory and may include a reasonable profit.

68. Section 251(c)(2)(C) requires incumbent LECs to provide interconnection “that is at least equal in quality to that provided by the local exchange carrier to itself....”.

69. *Requirements of the FCC’s First Report and Order in CC Docket No. 96-98, Taking Into Consideration the Eighth Circuit Court’s July 18, 1997 Decision*

Rule 51.311 in the FCC’s First Order states that the quality of an unbundled access element, as well as the quality of access to the unbundled element, must be the same for all telecommunications carriers and at least equal, and to the extent that it is technically feasible, superior to the quality an ILEC provides itself. In its July 18, 1997 decision, the Eighth Circuit struck down the requirement for “superior” quality interconnection, stating that this particular rule “is not supported by the Act’s language.”

70. Requesting CLECs are entitled to exclusive use of UNEs and to the use of features,

functions and capabilities for a set period of time. (47 C.F.R. § 51.309(C)) However, BellSouth retains ownership of the UNEs and is obligated to maintain, repair or replace them.

B. Methods for Providing Nondiscriminatory Access to Network Elements

71. Many of the unbundled network elements BellSouth offers fall under specific items in the 14-point checklist and are discussed with the applicable checklist item. This section addresses two components of nondiscriminatory access to network elements that are not covered elsewhere; specifically, the provision of operations support systems (“OSS”) and dark fiber. Remaining elements that do not fall under specific checklist items include the Bona Fide Request process and collocation. Paragraph 19 of this affidavit addresses Bona Fide Requests, while collocation is covered in paragraphs 60-63.

72. *Provision of Operations Support Systems as Unbundled Elements*

Though not specifically addressed in the Act, the FCC addressed the provision of OSSs (for example, systems that CLECs will use for pre-ordering, ordering, testing, etc.) in its August 8, 1996 Order. The FCC’s Order at paragraph 516 establishes OSSs as network elements that must be unbundled upon request of a telecommunications carrier, and interprets that such systems are subject to the nondiscriminatory access duty imposed by sections 251(c)(3) (unbundled access) and 252(c)(4) (resale) of the Act. BellSouth’s OSS are addressed in the affidavit of Mr. William Stacy. There is no charge until permanent prices are established for OSSs.

73. *Pricing of Dark Fiber as an Unbundled Network Element*

In Section II(B)(7) of its Statement, BellSouth offers unused transmission media (dark

fiber at prices that are contained in its interstate tariff as provided below. These rates are not subject to true-up because they are based on existing interstate tariffs (no intrastate requirement).

	<b>Monthly</b>	<b>Nonrecurring</b>
		\$1,808.19 1st \$922.95 Add'l
fraction thereof	\$159.00	

C. \_\_\_\_\_

74. In accordance with the Act and the SCPSC, BellSouth's Statement allows

telecommunications services. BellSouth will physically deliver unbundled network elements where reasonably possible, for example, unbundled loops to

additional charge. Therefore, CLECs are not restricted in any manner from obtaining the UNEs they require to provide telecommunications services for

functioning of CLEC-combined BellSouth unbundled network elements (for example switch translations) are provided as part of the network element

CLECs for new features or services currently not available and additional

services desired by CLECs to assist in their combining or operating BellSouth unbundled network elements may be obtained through the Bona Fide Request process.

75. If CLECs desire a “switch as is” service from BellSouth, this request constitutes the migration of an existing retail service from BellSouth to the CLEC and is, therefore, resale of a BellSouth retail service. In such instances the service is priced at the existing retail service price minus the applicable wholesale discount, and BellSouth continues to collect access charges as for any other resold service.
  
76. AT&T and MCI have attempted to circumvent the resale provisions of the Act by demanding BellSouth sell existing retail services, i.e., basic exchange service, at UNE prices. Attached as Exhibit AJV-5 is a chart using a sample business customer to show the financial impact to BellSouth, and ultimately to South Carolina consumers, of AT&T and MCI’s demands. This chart clearly demonstrates that, if BellSouth were required to sell retail business local exchange service at UNE prices, the CLEC would be able to obtain such service at an effective discount of 52.2% off the retail rate. This represents a significantly higher discount than that allowed for the same service provided through resale. If the South Carolina Commission had adopted AT&T’s and MCI’s proposal, it would have effectively nullified the resale provisions of the Act. No CLEC would ever opt for resale, if they could get retail services at UNE rates, avoid paying switched access charges and bypass the joint marketing restriction in the Act.

77. AT&T and MCI claim that BellSouth does not provide unbundled local switching as required, i.e., through the network “platform” approach favored by AT&T. However, the platform approach is synonymous with the recombination of UNEs by BellSouth. BellSouth is not required to recombine UNEs for CLECs. AT&T also claims that BellSouth will not cooperate with AT&T on UNE testing in Florida and Kentucky. These claims are inaccurate. BellSouth will honor its commitments to test UNEs with AT&T in Florida and Kentucky, as stated in numerous letters from BellSouth to AT&T.
78. Some carriers have complained that when UNEs are combined, BellSouth’s non-recurring charges may include duplicate charges and that “unreasonably high” non-recurring charges are a barrier to their competing in certain states. BellSouth’s non-recurring charges for unbundled network elements are based on costs, as required by the Act. While the Statement does not include optional payment plans for non-recurring charges, a CLEC’s request for such optional payment plans can be addressed through negotiations with BellSouth.
79. The FCC rules requiring that ILECs recombine unbundled network elements for the CLECs were vacated by the Eighth Circuit. BellSouth’s Statement reflects the Eighth Circuit’s decision and the SCPSC’s March 10, 1997 Arbitration Order, which do not require ILECs to combine the unbundled elements for requesting carriers, but do permit CLECs to recombine unbundled network elements in any manner they choose (Statement § II.F.).

D. BellSouth's Response to Unbundled Loop Issues Raised by CLECs

80. Some CLECs maintain that they cannot provide service to the residential market because BellSouth's retail price for residential local exchange service is lower than the price for unbundled loops and associated facilities. In making this comparison, the CLECs are ignoring the impact of the revenues they will receive from long distance, access and vertical services if they provide services using UNEs.

X. CHECKLIST ITEM NO. 3: NONDISCRIMINATORY ACCESS TO THE POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY OWNED OR CONTROLLED BY THE BELL OPERATING COMPANY AT JUST AND REASONABLE RATES IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 224.

A. Requirements for Access to Poles, Ducts, Conduits and Rights-of-Way

81. *Requirements of the Act*

Section 224 of the Act outlines the jurisdiction over regulation of access to poles, ducts, conduits and rights-of-way and describes the standard for just and reasonable rates for such access.

82. *Requirements of the FCC's First Order in CC Docket No. 96-98*

Under rule 1.1403, a utility shall provide any carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way where there is

engineering purposes.

B. \_\_\_\_\_

83. In Section III of its Statement, BellSouth offers access to poles, ducts, conduits

agreement (Attachment D of the Statement) is pursuant to Section 224, as amended by the Act. The pole attachment rate, from standard negotiated

occupancy rate is \$0.56 per foot, per year.

84.

access to poles, ducts, conduits and rights-of-way via a License Agreement.

The Standard License Agreement attached to the Statement conforms to the

currently in effect in numerous license agreements and interconnection

agreements, it would seem counterproductive at this time to change existing

formula this year. BellSouth instead will recommend that the SCPSC delay

implementing any rate changes to pole attachments until the FCC has completed

SCPSC decline to use the maximum rates eventually established by the FCC, it is

within the SCPSC's power to take jurisdiction and set the appropriate rates for

rates contained in the Statement are subject to true-up.

XI. CHECKLIST ITEM NO. 4: LOCAL LOOP TRANSMISSION FROM THE CENTRAL OFFICE TO THE CUSTOMER'S PREMISES, UNBUNDLED FROM LOCAL SWITCHING AND OTHER SERVICES

A. Requirements and Definition of the Local Loop as Referenced in Checklist Item No. 4

85. FCC Rule 51.319 requires an ILEC to provide nondiscriminatory access to the following network elements on an unbundled basis: local loop, interoffice facilities and switching capability. The local loop network element is defined as a transmission facility between the distribution frame in an ILEC central office and an end user premises (for example, a cable pair from the customer's premises to the main distribution frame of the serving central office). There are several loop types that CLECs may request under the Statement in order to meet the needs of their customers. These include 2-wire and 4-wire voice grade analog lines, 2-wire ISDN, 2-wire Asymmetrical Digital Subscriber Line (ADSL), 2-wire and 4-wire High-bit-rate Digital Subscriber Line (HDSL) and 4-wire DS1 digital grade line.

B. Provision and Pricing of Local Loops

86. In Section IV of its Statement, BellSouth offers all of the loop types identified above to any requesting CLEC. Should a CLEC request loops not covered in the Statement, or any type of sub-loop unbundling that is technically feasible, the CLEC may employ the Bona Fide Request process to pursue such additional loop types or sub-loop components. Following are the monthly and nonrecurring rates approved by the SCPSC. These rates are subject to true-up except for the 4-Wire DS1 Digital Grade Loop, which is equal to existing tariff rates.

<b>Unbundled Elements</b>	<b>Monthly</b>	<b>Nonrecurring</b>
2-Wire Analog Loop	\$18.00	\$51.20
4-Wire Analog Loop	\$28.80	\$51.20
2-Wire ISDN Loop	\$28.80	\$51.20
2-Wire ADSL Loop	\$18.00	\$51.20
2-Wire HDSL Loop	\$18.00	\$51.20
4-Wire HDSL Loop	\$28.80	\$51.20
4-Wire DS1 Digital Grade Loop	\$124.00	\$675.00 1st/ \$910.00 Add'l

C. Additional Components of Local Loop Transmission  
 87. In addition to the unbundled loop, CLECs may request loop distribution, loop

cross connects, loop concentration, and use of the NID as described below.

*Loop distribution or distribution media* is that part of the loop sometimes connecting the customer's NID to a terminating device, typically in a feeder distribution interface (sometimes referred to as the remote terminal). In such a own switch. Loop distribution or distribution media will be made available through the Bona Fide Request process.

*Loop cross connects* allow the end to end local loop to be transported from the space. In addition to the 2-wire and 4-wire cross connect, we have also included DS1 and DS3 cross connects in the event that the CLEC orders loops this affidavit.)

90. involves concentrating a series of local loops onto a single facility, for example, 24 individual loops multiplexed onto a single DS1 facility. office to concentrate CLEC unbundled loops.

91. *NID* provides a single line termination device or that portion of a multiple located on the customer's premises, establishes the official network

demarcation point between a telecommunications company and its end user customer. The NID used in residential applications also provides a protective ground connection as required in Article 800 of the National Electric Code 1996 (copyright 1995 National Fire Protection Association).

92. Following are the rates for loop concentration and the NID, which are subject to true-up. The rates for loop concentration are from BellSouth's agreement with ACSI.

Unbundled Elements	Monthly	Nonrecurring
<b>Loop Concentration (inside C.O.)</b>		
- Loop Channelization System	\$400.00	\$525.00
- Central Office per circuit	\$1.15	\$8.00
Network Interface Device	\$0.53	

D. ~~CLLC Requests for Unbundling of Loops "Behind" Integrated Digital~~

Loop Carrier (IDLC)

93. In some states, AT&T has made an issue of its desire for unbundling of loops "behind" integrated digital loop carrier ("IDLC") equipment. The requested network element is a complete contiguous loop from the BellSouth Central Office to the end-user premises, where that loop is provided via IDLC. IDLC comprises loop facilities that include multiple NIDs, distribution media, remote terminal and feeder. The feeder interfaces directly to the digital switch at the DS1 level without the requirement for a central office terminal or other demultiplexing

equipment.

94. AT&T desires the ability to utilize single unbundled loops that are integrated into IDLC arrangements. This involves a “splintering” of the integrated loop facilities into discrete (individual) loops and conversion of the digital bitstream (multiple loops) back to analog (individual loops). Such an arrangement would add to the cost of provisioning the unbundled loop. Also, from a voice quality viewpoint, multiple extra conversions from digital to analog and back to digital lower overall transmission quality due to the voice sampling and encoding techniques used. BellSouth cannot provide an unbundled loop through integrated digital loop carrier facilities.
95. Several alternatives have been investigated for those loops served by IDLC. The following describes the two alternatives that BellSouth will provide:
96. *Alternative 1: Reassign the loop from an integrated carrier system and use a physical copper pair.* This is a technically feasible alternative in cases where sufficient physical copper pair facilities are available. If sufficient physical copper pairs are available, BellSouth will assign the unbundled loop to a physical copper pair. Available facilities are those that are generally available for use rather than those installed for another specific purpose. Unavailable facilities could include, but are not limited to the following: Unloaded pairs in a loaded area reserved for digital

services or limited physical copper pairs placed in a Carrier Serving Area for services that cannot be integrated.

97. *Alternative 2: In the case of Next Generation Digital Loop Carrier (NGDLC) systems, “groom” the integrated loops to form a virtual Remote Terminal (RT) set- up for universal service.* In this context, “groom” means to assign certain loops (in the input stage of the NGDLC) in such a way that discrete combinations of multiplexed loops may be assigned to transmission facilities (in the output stage of the NGDLC). This is a technically feasible alternative in cases where NGDLC facilities are available. Both of the NGDLC systems currently approved for use in the BellSouth network have “grooming” capabilities. However, the availability of this option is limited. Given that NGDLC is still a relatively new technical capability, currently there is an insufficient amount of NGDLC in the BellSouth network to meet AT&T’s expected demand. Currently only a very small percentage of lines are served via NGDLC. Since some special service circuits cannot be supported through an integrated system, some NGDLC capacity is normally reserved to support those special service circuits through a universal arrangement based on site specific forecasts. This option is available only where fully approved NGDLC systems are operating. As in the case of Alternative 1 described above, available facilities are those that are generally spare and available for use rather than those placed to meet other specific needs.

BellSouth's Proposed Policy Regarding Re-use of Customer Loops for Customers Desiring a Change of Service

98. BellSouth's procedures for reuse of customer loops when an end user service provider ("LEC-B") are described below. These procedures apply irrespective of the local exchange carriers involved (i.e., when and LEC-B is BellSouth or when LECs A and B are CLECs).

99.



processed and guidelines.

The serving facility for the retail or resale service, unbundled loop unbundled port will be reused for the same end user at location.

LEC-A (if not BellSouth) will be notified subsequent to the disconnect being completed.

The conditions for the above procedures are that LEC-B clearly unbundled loop and/or unbundled port) that the end-user is transferring the order is not for a new line or an additional line).

F. BellSouth Response to ACSI Complaints

101. ACSI filed complaints with the Georgia Public Service Commission (“GPSC”) on December 23, 1996 and with the FCC on January 6, 1997 alleging BellSouth has failed “to provision unbundled loops to ACSI on a timely basis.” BellSouth responded to the complaint filed with the GPSC on January 16, 1997. The GPSC ordered that ACSI’s complaint be held in abeyance pending review and recommendation by the GPSC staff. On June 19, 1997 ACSI withdrew this complaint. However, ACSI refiled the complaint on July 9, 1997, and BellSouth answered the complaint on August 8, 1997. BellSouth is awaiting GPSC action.
102. On June 3, 1997, BellSouth filed its Opening Brief with the FCC in File No. E-97-09 in response to ACSI’s FCC Complaint. BellSouth requests that this Commission take administrative notice of the Brief.
103. In BellSouth’s responses to the complaints, BellSouth acknowledged that ACSI has experienced some unintended delays and service interruptions in connection with the initial unbundled loops it ordered from BellSouth. The affidavit of Mr. Keith Milner provides details regarding complaints received from CLECs including those from ACSI.

XII. \_\_\_\_\_  
TRUNK SIDE            OF A WIRELINE LOCAL EXCHANGE CARRIER  
\_\_\_\_\_ FROM SWITCHING OR OTHER SERVICES

A. \_\_\_\_\_

104.

location to a BellSouth location or to connect two BellSouth locations.  
There are two types of local transport; dedicated and common (also

105. Dedicated transport is used exclusively by a single carrier for the

interoffice transmission facilities that connect a CLEC switch directly to  
a BellSouth switch and those that connect a BellSouth end office or  
transport as an access service for years.

106.

between UNEs. Common transport is used to carry the traffic of more  
than a single company through the public switched network. The FCC's

Proposed Rulemaking defined shared transport under section 251(c)(3)  
as "interoffice transmission facilities, shared between the incumbent

office switches, end office switches and tandem switches, or tandem

switches, in the incumbent LEC's network. We exclude from this definition interoffice transmission facilities that connect an incumbent LEC's switch and a requesting carrier's switch, and those connecting an incumbent LEC's end office switch, or tandem switch, and a serving wire center. This definition of shared transport assumes the interconnection point between the two carriers' networks, pursuant to section 251(c)(2), is at the incumbent LEC's switch. . . ." (FCC's August 18, 1997 Third Order on Reconsideration, Paragraph 40.)

107. BellSouth offers common transport which complies with the FCC's Third Order on Reconsideration in CC Docket Nos. 96-98 and 95-185. CLEC traffic follows the identical transmission paths as BellSouth's traffic, in accordance with the routing tables in the BellSouth central office switches. CLEC traffic will flow according to BellSouth's routing tables and will be based on standard routing utilizing interoffice transmission facilities to connect end-office to end-office switches, end-office to tandem switches, and tandem to tandem switches, as appropriate, for the given call. BellSouth's common transport does not distinguish between CLEC traffic and BellSouth traffic.

108. When a tandem switch is utilized, a charge for tandem switching would apply in addition to the transport rates. This is similar to the application of a tandem switching charge for interconnection at a tandem switch (paragraph 57). CLECs choosing common transport are entitled to collect the associated interstate access charges.

B. Provision of Unbundled Local Transport

109. BellSouth offers unbundled local transport in Section V of its Statement with optional channelization for such local transport from the trunk side of its switch. BellSouth offers both dedicated and common transport for use by CLECs. With regard to dedicated transport, voice grade or DS0 channels might typically be used to transport an unbundled loop to a CLEC's switch. A DS1 could also be used for this purpose and would typically be used in conjunction with central office multiplexing or concentration (discussed under Checklist Item No. 4). DS1 transport can also be used if a CLEC wishes to purchase transport facilities from BellSouth rather than providing its own facilities when interconnecting its switch with BellSouth. Other forms of transport, requiring greater levels of capacity, are also available from BellSouth through the Bona Fide Request process.

110. In some state 271 proceedings, AT&T has asserted that in Georgia, BellSouth refused to provide AT&T the ability to use existing transport facilities to provide local service to Digital Link customers. As BellSouth understands this configuration, an AT&T end user has a dedicated facility (for example, a DS1) from the end user premises to an AT&T toll switch (i.e., the AT&T point of presence ("POP")). The service in question does not go through a BellSouth switch. When that end user makes or receives calls, the AT&T POP does the switching. If the end user initiates a call, the AT&T switch is in control of the call. If

AT&T had an interconnection arrangement with BellSouth, it could switch the call back into the BellSouth network for termination. If the end user was using Digital Link for incoming calls, the telephone number associated with it might be an 800/888 number, or a standard seven digit number.

*111.* It appears that AT&T really wants an unbundled loop terminated at its POP; however, they insist on purchasing dedicated transport which does not provide the capability they want. In any event, to provide any functionality related to this type of arrangement requires two-way trunking. Under AT&T's agreement, two-way trunks are available via the Bona Fide Request process. These issues are being addressed consistent with the terms of BellSouth's agreements with AT&T in each state.

C. Pricing for Local Transport

Following are the rates contained in BellSouth's Statement for local transport. As discussed under Checklist Item No. 1, the rates for

transport, and the tandem switching rate is the FCC proxy rate. These rates were ordered by the SCPSC and are subject to a capped true-up.

FCC stated in paragraph 767 that "[a] proxy approach might provide a faster, administratively simpler, and less costly approach to establishing

Dedicated DS1 rates are tariffed rates and are not subject to true-up.

	<b>Monthly</b>	<b>Nonrecurring</b>
- Per Mile, Per Minute - Facility Termination, Per Minute	\$0.00042	
Dedicated DS1: - Facility Termination	\$23.50	\$100.49
Tandem Switching, Per Minute		

113.

contained in BellSouth's Statement Section V is in full accordance with the Act's checklist and with Orders of the SCPSC. Additionally, rates, terms and

between BellSouth and such companies as ACSI and ICI.

XIII. CHECKLIST ITEM NO. 6: LOCAL SWITCHING UNBUNDLED FROM TRANSPORT, LOCAL LOOP TRANSMISSION, OR OTHER SERVICES

A. Definition of Local Switching

114. Local switching is the network element that provides the functionality required to connect the appropriate originating lines or trunks wired to the main distributing frame or to the digital cross connect panel to a desired terminating line or trunk. The most common local switching capability involves the line termination (port) and the line side switching (dialtone) capability in the central office. The functionality includes all of the features, functions, and capabilities provided for the given class of service, including features inherent to the switch and the switch software and includes vertical features, such as Call Waiting. It also provides access to additional capabilities such as common and dedicated transport, out of band signaling, 911, operator services, directory services, repair service, etc. The CLEC in purchasing unbundled local switching will determine which vertical features it wishes to activate and which additional unbundled elements it wishes to use in conjunction with the unbundled switching.

B. Provision and Pricing of Unbundled Switching

115. In Section VI of its Statement, BellSouth offers a variety of switching ports and associated usage unbundled from transport, local loop transmission and other services. These include 2-wire and 4-wire analog ports, and 2-wire and 4-wire ISDN digital ports, and hunting. Additional port types will be made available under the Bona Fide Request process.

116. Many of BellSouth's negotiated agreements, such as ACSI, ICI, etc., include the provision of unbundled switching. The provision of the various ports and associated usage have been negotiated at the rates contained in the agreements.
117. A CLEC can purchase unbundled switching separately from the other unbundled components needed to complete a local call. The SCPSC approved the following rates in the Statement for unbundled ports and end-office switching:

<b>Unbundled Local Switching</b>	<b>Monthly</b>	<b>Nonrecurring First/Additional</b>
Unbundled Ports, per line		
2-Wire Analog	\$2.70	\$50.00/\$18.00
4-Wire Analog	\$4.00	\$50.00/\$18.00
2-Wire ISDN	\$14.50	\$150.00/\$120.00
4-Wire ISDN	\$320.00	\$230.00/\$200.00
Rotary Service (Hunting)	\$0.30	\$3.00/\$3.00
End Office Switching, per minute	\$0.003	

118. The port rates are those proposed by BellSouth in the AT&T arbitration. The end-office usage-based switching rate is \$0.003, which, as discussed in the section on interconnection paragraph 54, is based on the FCC proxy interconnection rates. All of these rates are subject to true-up. CLECs must specify which features should be activated with each port. They can activate one or all features for the same price. No charges will be assessed for the activation and use of vertical features until the conclusion of the SCPSC cost proceeding.

Rates established by the SCPSC for these features will be applied only prospectively from the date they are established.

C. Selective Routing

119. Selective routing allows a CLEC purchasing unbundled local switching or reselling BellSouth local exchange services to have calls routed from a BellSouth switch to a CLEC's operator, directory assistance, or repair center using the same dialed digits as employed by BellSouth, for example, 411 or 0-. Selective routing also allows the CLEC to obtain branding for operator services and directory assistance services.
120. BellSouth will provide selective routing to a CLEC's desired platform using line class codes subject to the availability of codes and in accordance with the SCPSC's Arbitration Order. The selective routing capability using line class codes will be offered on a first-come, first-served basis. Should the codes become exhausted, new CLECs operating under the Statement will not be able to purchase this feature until: 1) a longer term, more efficient means of offering selective routing is available; 2) carriers that have reserved line class codes return some of them to BellSouth; or, 3) the SCPSC decides to alter the first-come, first-served methodology.
121. The Statement's rate for selective routing, approved by the SCPSC, is the same as the rate ordered by the Georgia Public Service Commission in Docket No. 6801-U (AT&T Arbitration). This rate is subject to true-up.

- Line or PBX Trunk, each	<b>Nonrecurring</b>
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XIV. CHECKLIST ITEM NO. 7: NONDISCRIMINATORY ACCESS TO:

911 AND E911 SERVICES;

(II) \_\_\_\_\_

CARRIER'S CUSTOMER TO OBTAIN TELEPHONE NUMBERS; AND

OPERATOR CALL COMPLETION SERVICES

A. \_\_\_\_\_

Operator Call Completion

122.

This rule states that a LEC that provides operator services, directory assistance services or directory listings to its customers or provides telephone numbers, shall feature with no unreasonable dialing delays. In addition, this rule requires a LEC to permit competing providers to have access to telephone numbers that is

123. Additionally, for access to 911/E911 services, access to directory assistance, and

access to switching capability including customized routing functions. Paragraph 412 of the FCC's First Report and Order in CC Docket 96-98 states that "it also

such as access to 911, operator services and directory assistance.” Footnote 914 in the Order further states “we also note that E911 and operator services are further unbundled from local switching.”

B. Description of BellSouth’s Service Offerings for 911 and Enhanced 911 (E911) Services to Comply with Checklist Item No. 7 (Statement § VII.A)

124. Access to 911 service provides a universal, easy-to-remember number which is recognized nationally as the appropriate number to call in an emergency.

BellSouth offers to local exchange providers nondiscriminatory access to 911 and E911 service within its serving territories. BellSouth offers access to these services to facility-based providers and to resellers. In all situations, a CLEC’s customer will be able to dial “911” in the same manner as BellSouth’s end user customers, unless a facilities-based CLEC’s switch could not recognize these dialed digits. No such situation is known or expected to exist.

125. BellSouth will enable a CLEC customer to have 911 call routing to the appropriate Public Safety Answering Point (PSAP). BellSouth will provide and validate customer information to the PSAP. BellSouth will use its service order process to update and maintain the automatic Location Identification/Database Management System used to support E911/911 services on the same schedule that it uses for its end users.

126. The Statement contains the terms and conditions that are required to provide this service. For basic 911 service, BellSouth will provide to a CLEC a list consisting of each municipality that subscribes to Basic 911 service. The list will also

provide, if known, the conversion date to E911 and, for network routing purposes,

position for each municipality subscribing to 911. The CLEC will be required to arrange to accept 911 calls from its end users in municipalities that subscribe to

The CLEC will be required to route that call to BellSouth at the appropriate tandem or end office. The CLEC will not have to pay for the specific 911/E911

911/E911 service. The CLEC will be responsible for the trunks needed to reach the appropriate BellSouth 911 switch.

For E911 service, a facilities-based CLEC will be required to install a minimum of two trunks that will connect the trunk side of the CLEC's end office to the

capable of carrying Automatic Number Identification ("ANI") to the 911 tandem and conform to appropriate standards. The trunk interface between the CLEC end

DS1 interface. The CLEC will be required to provide BellSouth with daily updates to the E911 database.

If a municipality has converted to E911 service, a CLEC will be required to forward 911 calls to the appropriate E911 tandem, along with the ANI, based

tandem trunks are not available, the CLEC will be required to route the call to a designated 7-digit number residing in the appropriate PSAP. This call will be

transported over BellSouth's interoffice network and will not carry the ANI of the calling party.

C. Description of BellSouth's Offerings for Directory Assistance Services to Comply with Checklist Item No. 7 (Statement § VII.B)

129. Section VII of BellSouth's Statement offers to perform directory assistance services and other number services on behalf of facilities-based CLECs. BellSouth's Directory Assistance is available on a nondiscriminatory basis to CLECs providing local exchange service to end user customers in exchanges served by BellSouth. CLECs have the ability to provide their end users with the same access to BellSouth's Directory Assistance Service as BellSouth's end users by dialing 411 or the appropriate area code and 555-1212.
130. Providing directory assistance from a CLEC's own switch requires that the call be delivered to the Operator Service Switch in a terminating Feature Group D format. The originating call will be delivered to the Number Services Switch over a dedicated trunk facility. Standard trunk signaling formats will be used to send the originating call to the Operator Services Switch. If the CLEC provides ANI, then additional services such as Directory Assistance Call Completion may be provided.
131. To the extent that line class code capacity allows, BellSouth will provide selective routing to requesting CLECs' directory service platforms in order to route calls using the same dialing arrangements that BellSouth customers use to access directory assistance. Such selective routing can only be provided when a CLEC leases unbundled local switching or uses BellSouth's resold local exchange service

because this capability resides in the switch. BellSouth will offer such selective routing to provide branded directory assistance for directory assistance calls.

BellSouth will include both facilities-based and reseller CLEC's subscriber listings in BellSouth's Directory Assistance databases and BellSouth will not charge the

agree to cooperate with BellSouth in formulating appropriate procedures regarding lead time, timeliness, format and content of listing information. Standard

service order process will be used to add, delete or modify listings for the

Directory Assistance database in the same manner and within the same intervals

133. Even though they are not required under the checklist, BellSouth offers three access to BellSouth's Directory Assistance database under the same terms and conditions that are currently offered to other telecommunications providers. These include: 1) Directory Assistance Access Service (DAAS), by which BellSouth currently provides Directory Assistance to IXC's; 2) Assistance Service (DADAS), which provides direct on-line access to BellSouth's directory assistance database; and 3) Directory Assistance Database Service (DADS), which provides a copy of the BellSouth Directory Assistance database. Rates approved by SCPSC are the same as tariffed rates for these services.

D. \_\_\_\_\_

Comply with Checklist Item No. 7 (Statement § VII.C)

134. BellSouth will make available its operator services to CLECs in the same manner that it provides operator services to its own customers. Additionally, BellSouth will offer Centralized Message Distribution System - Hosting (CMDS-Hosting) and Non-Sent Paid Report System (NSPRS) processing. Operator Services offerings are described below. The rates in this Statement are those rates negotiated between BellSouth with ACSI and ordered in the SCPSC Arbitration Order.
135. *Busy Line Verification (BLV) and Busy Line Verification and Emergency Interrupt (BLVI)* allow an end user to request the operator to verify that a line is busy or to interrupt a conversation that is in progress.
136. *Operator Call Processing Access Service* provides operator and automated call handling. This includes processing and verification of alternative billing information for collect, calling card, and billing to a third number. Unbundled Operator Call Processing Access Service for facility-based carriers also provides customized call handling, dialing instructions, and other operator assistance that the customer may desire.
137. *Operator Services Transport* services used to transport calls to the operator systems are provided based on the rates, terms and conditions as set forth in BellSouth's Intrastate Access Service Tariff. Further, to the extent a CLEC resells

BellSouth's local services or purchases unbundled local switching, the CLEC may also obtain selective routing that would allow an operator call to route to a  
  
in more detail in the discussion of selective routing.

138.

capability would be identical to that which is used today. If an end user called the CLEC's end user, the call would be "intercepted" in the event of a number change

139. *Centralized Message Distribution System (CMDS) Hosting*

administered national system used to exchange Exchange Message Record (EMR) formatted messages among host companies. All intraLATA and local messages

companies will be processed through the Non-Sent Paid Report System (NSPRS) system. NSPRS includes: 1) a mechanized report system that provides the

regarding non-sent paid message and revenue occurring on calls originated and

billed within the BellSouth region; 2) distribution of Bellcore-produced Credit

elements; and 3) distribution of Bellcore-produced non-conterminous CATS reports and administration of associate settlements.

Pricing for 911, E911 Directory Assistance Services and Operator Services

140. For 911 and E911, the CLEC will provide its own trunk facilities or can lease these facilities through Dedicated Transport at the proposed rates in the Statement or applicable tariffs. The rates for the provision of 911 will be billed to the appropriate municipality or reseller.

141. The approved rates for directory assistance service and number services intercept are subject to true-up. These are the same rates established in the AT&T Arbitration Order.

<b>Directory Assistance Access Service (DAAS)</b> <b>CONT'D</b>	<b>Monthly</b>	<b>Nonrecurring</b>
- Switched dedicated transport - DS1 level		
- per mile	\$23.50	
- Facilities termination	\$90.00	\$100.49
- Switched common transport		
- per DAAS call	\$0.0003	
- per DAAS call mile	\$0.00004	
- Access tandem switching, per DAAS call	\$0.00055	
- DA Interconnection, per DAAS call	\$0.00269	
- Installation, trunk side service, per trunk or signaling connection		\$915.00 1st \$100.00 Add'l
Directory Assistance Database Service (DADS)	\$150.00	
- Use Fee, per DADS Request, Listing	\$0.0350	
Direct Access to Directory Assistance Service (DADAS)		
- DADAS Database Service Charge	\$5,000.00	
- DADAS, per query	\$0.023	
- DADAS Service Establishment		\$1,000.00

<b>Directory Assistance Access Service (DAAS)</b>	<b>Monthly</b>	<b>Nonrecurring</b>
DA Call Completion - Per Call Attempt	\$0.25	
Number Services Intercept - Per Query	\$0.30	
DAAS Call, per call	\$0.25	
Directory Transport - Switched local channel - DS1 level, per LC.	\$133.81	\$866.97 1st \$486.83Add'l

142. The approved operator services rates listed below are subject to true-up.

<b>Operator Services</b>	<b>Rate</b>
Operator Provided Call Handling	\$1.17 per minute
Automated Call Handling	\$0.15 per attempt

143. A charge will also apply per local call attempt and is in addition to the Operator Provided Call Handling charge listed above. This approved charge is \$0.08 per attempt and reflects the completion of the call on BellSouth's network. For example, had the facilities-based CLEC completed a comparable local call on a

direct dialed basis, interconnection charges would have applied. This rate will be assessed in lieu of any interconnection charges that would typically apply. This situation is necessitated by the lack of per-minute recording capabilities on these type of calls.

144. BLV and BLVI are offered in the Statement pursuant to the same rates, terms and conditions as contained in BellSouth's Intrastate Access Service Tariff and are not subject to true-up. These rates are:

<b>Operator Services</b>	<b>Rate Per Occurrence</b>
Busy Line Verification	\$0.90
Emergency Interrupt Service	\$1.95

145. Following are the CMDS-Hosting and NSPRS charges, which are contained in the ACSI agreement and are the rates applied to Independent Telephone Companies. These rates are subject to true-up.

<b>CMDS and NSPRS Elements</b>	<b>Rate Per Message</b>
CMDS - Hosting	
- Message distribution	\$0.004
- Data transmission	\$0.001
NSPRS	
- Intrastate	\$0.05
- NSPRS - CATS	\$0.05
- NSPRS - Non-Conterminous	\$0.16

146. The CMDS-Hosting agreement, which outlines the terms and conditions of the agreement between BellSouth and a CLEC, is attached to the Statement as Attachment E.

XV. CHECKLIST ITEM NO. 8: WHITE PAGES DIRECTORY LISTINGS FOR CUSTOMERS OF THE OTHER CARRIER'S TELEPHONE EXCHANGE SERVICES

A. Description and Requirements for White Pages Listings (Statement § VIII)

147. This checklist item requires that BellSouth's interconnection offerings include the provision of a directory listing in the White Pages directory for each customer served by a CLEC. FCC Rule 51.319 regarding switching capability is also applicable to Checklist Item No. 8. The FCC's definition of local switching capability network element includes all features, functions, and capabilities of the switch, which include White Page Listings.

B. Provisioning and Pricing of White Pages Listings

148. BellSouth obtains directory publication services from its affiliate, BellSouth Advertising and Publishing Company (BAPCO). BellSouth will arrange with its directory publisher to make available to any CLEC, for their subscribers, White Pages directory listings which include the subscriber's name, address and telephone number. CLEC subscribers shall receive no less favorable rates, terms and conditions for directory listings than are provided to BellSouth's subscribers, for example, the same information will be included, the same type size will be used and the geographic coverage will be the same.
149. Listings for a CLEC's residential and business customers will be included in the appropriate White Pages or local alphabetical directories (including foreign language directories as appropriate.) These listings will be included with all other LECs' listings without any distinction as to the LEC providing the local service. BellSouth or its agents will deliver White Pages directories to CLEC subscribers at no charge. BellSouth also offers enhanced White Pages Listings which a CLEC may resell to its customers.
150. It should be noted that the Act only requires provision of "White Pages" listings to meet the checklist. In addition, however, BellSouth's affiliate BAPCO has established that a CLEC's business subscribers' listings shall also be included in the appropriate Yellow Pages or local classified directories. CLECs will also be provided with the necessary publishing information to process subscribers' directory listings requests, such as classified heading information, publishing schedules, processes for obtaining foreign directories, and information about listing

BellSouth will provide each CLEC with the proper format for submitting subscriber listings. These procedures are outlined in the CLEC ordering confidentiality provided to BellSouth's own directory listing information.

151.

format shall be provided at no charge to a CLEC or a CLEC's customer. Additional listings and optional listings in the White Pages may be provided at these services are being resold, the wholesale discount would apply.

152.

CLEC's customer is governed by the tariff.

153.

arrangement for the provision of directory listings in the White Pages.

CHECKLIST ITEM NO. 9: UNTIL THE DATE BY WHICH  
TELECOMMUNICATIONS NUMBERING ADMINISTRATION  

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NONDISCRIMINATORY ACCESS TO TELEPHONE NUMBERS FOR  
ASSIGNMENT TO THE OTHER CARRIER'S TELEPHONE EXCHANGE  

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GUIDELINES, PLAN, OR RULES

A. Offerings of Nondiscriminatory Access to Telephone Numbers (Statement § IX)

154. BellSouth, as the North American Numbering Plan (“NANP”) Administrator for its territory, will insure that CLECs have nondiscriminatory access to telephone numbers for assignment to their customers. BellSouth provides numbering resources pursuant to the code administration guidelines published by the Industry Numbering Council. Keith Milner’s affidavit discusses the NANP in more detail. CLECs will be provided numbering plan administration and central office code (“NPA/NXX”) assignment in the same manner as BellSouth. When BellSouth is operating under code conservation, CLECs and BellSouth will be treated in a nondiscriminatory manner. At such time as BellSouth is no longer the NANP Administrator, BellSouth will comply with the final and non-appealable guidelines, plan or rules adopted pursuant to Section 251(e) of the Act which addresses creation or designation by the FCC of numbering administrator(s). BellSouth does not plan to charge for administering the NANP for as long as it is the NANP Administrator. BellSouth is therefore in compliance with both the Act and with orders of the SCPSC. For more information regarding BellSouth’s role as the NANP Administrator for its territory, see the affidavit of Mr. Keith Milner.
155. In each of the negotiated agreements BellSouth has reached with facilities-based carriers, nondiscriminatory access to number resources has been provided. BellSouth should point out, however, that it will not determine how CLECs deploy NXX codes and how they adhere to the existing or revised NPA designation.

XVII. \_\_\_\_\_  
DATABASES AND ASSOCIATED SIGNALING NECESSARY FOR CALL  
ROUTING AND COMPLETION

FCC Rules Regarding Checklist Item No. 10

Rule 51.319 requires an ILEC to provide nondiscriminatory access to signaling networks and call-related databases. When a requesting carrier purchases

that switch in the same manner in which the ILEC obtains such access itself. The ILEC will provide a carrier with its own switching facilities access to the ILEC's

connects one of its own switches. For query and database response, an ILEC will provide access to its call-related databases by means of physical access.

Description of Access to Databases and Associated Signaling (Statement § X)

157.

and completion. Signaling elements include: Signaling Links, which are dedicated transmission paths carrying signaling messages between carriers' switches and

switches that interconnect signaling links to route signaling messages between switches and databases; and Service Control Points (SCPs), which are databases

C. Provision of Signaling Links, STPs and SCPs

158. Signaling Link Transport is a set of two or four dedicated 56 kbps transmission paths between CLEC designated Signaling Points of Interconnection (SPOI) that provides appropriate physical diversity and a cross connect at a BellSouth STP site. BellSouth offers Signaling Link Transport which is a connection between a switch or Service Switching Point (SSP) and a home STP pair, and offers a connection between two STP pairs in different company networks (for example, between two STP pairs for two CLECs).
159. STPs provide the functionality that enables the exchange of Signaling System 7 (SS7) messages between switching elements, database elements and STPs. STPs provide access to other Network Elements connected to the BellSouth SS7 network including: 1) BellSouth-provided Local Switching or Tandem Switching, 2) BellSouth-provided SCPs/Databases, 3) third-party provided Local Switching or Tandem Switching, and 4) third-party provided SCPs/Databases.
160. SCPs/Databases are the network elements that provide the functionality for storage of, access to, and manipulation of information required to offer a particular service and/or capability. Databases include, but are not limited to: 1) Line Information Database (“LIDB”); 2) Toll Free Number Database; 3) Automatic Location Identification/Data Management System; 4) Advanced Intelligent Network (“AIN”); and, 5) Selective Routing.
1. *Line Information Database (LIDB)*
161. The LIDB is a transaction-oriented database accessible through the SS7 networks containing records associated with subscriber line numbers and special billing

numbers. LIDB accepts queries from other network elements or a CLEC's network and provides appropriate responses. The queries include functions such as number billing calls and validation of telephone line number based non-proprietary calling cards.

#### *Toll Free Number Database*

162.

toll free (for example, 800 and 888) number services.

3.

163. The ALI/DMS database contains subscriber information used for determining to

#### *4. AIN Access and Service Creation Environment/Service Management System (SCE/SMS) AIN Access*

CLECs will be given the opportunity to develop competitive AIN service applications via unbundled access to BellSouth's SCE/SMS. Where technically possible, BellSouth will provide access to BellSouth local switches.

165.

utilizing BellSouth AIN service creation tools and deploy those applications via the BellSouth SMS to BellSouth's SCPs. Such capability provides the same AIN

AIN programmable tools.

166. BellSouth believes a mediated form of AIN will be adequate to meet the needs of carriers. Mediation will not hinder a CLEC's ability to use AIN capabilities but may simplify the process that they can use to connect their AIN applications as compared to an unmediated situation. While AT&T may have the technical expertise and resources to deal with unmediated access, a comparable requirement placed on a smaller CLEC may prove to be too onerous, thereby reducing their ability to develop an AIN application. For detailed information regarding mediated AIN, please see the affidavit of Mr. Keith Milner.

*5. Selective Routing*

167. A discussion of Selective Routing is included under Checklist Item No. 6.

D. Pricing of Signaling/Database Services

168. BellSouth offers the following rates for its signaling/database services. The ACSI rates for the CCS7 links, usage and messages and LIDB validation were adopted by the SCPSC in the AT&T Arbitration Order and are subject to a capped true-up. The remaining rates are from existing tariffs and are not subject to true-up.

<b>Signaling/Database Services</b>	<b>Monthly</b>	<b>Nonrecurring First/Add'l.</b>
<b>CCS7 Signaling Connections (Links)</b> - CCS7 Signaling Connection - Signaling Usage Surrogate (56 Kbps) - Signal transfer Point, per msg. - Signal Control Points/Databases, per msg. - Signal Transfer Point, per Port	\$155.00 \$395.00 \$0.000023 \$0.00005 \$355.00	\$510.00
<b>Service Control Points</b> <b>LIDB Validation</b> - LIDB Common Transport, per query - LIDB Validation, per query - Originating Point Code Establishment or Change, per establishment or change	\$0.0003 \$0.0380	\$91.00
<b>Access Ten Digit Screening Service (ATDSS)</b> - Per 800 call using 800 ATDSS w/800 number delivery, per query - Per 800 call using 800 ATDSS w/800 number delivery, for 800 numbers, with Optional Complex Features, per query - Per 800 call using 800 ATDSS w/POTS number delivery, per query	\$0.004 \$0.0045 \$0.004	
- Per 800 call using 800 ATDSS w/800 number delivery, for 800 numbers, with Optional Complex Features, per query - Per 800 call using 800 ATDSS w/POTS number delivery, per query - Per 800 call using 800 ATDSS w/POTS number delivery, with Optional Complex Features, per query	\$0.0045 \$0.004	

**Continued**

Signaling/Database Services CONT'D		Nonrecurring First/Add'l.
Reservation charge per 800 number		\$26.50/\$0.50
- w/800 number delivery		\$60.00/\$1.50
- established w/POTS number delivery		
- number		\$3.00/\$1.50
- carrier requested, per 800 number		\$3.50/\$2.00
- Call handling and destination features per		\$3.00

169.

contain prices, terms and conditions for signaling/database services. One such agreement, with ICI, states that: "Each party will offer to the other party use of its

tariffed rates. Signaling functionality will be available with both A-link and B-link connectivity."

CHECKLIST ITEM NO. 11: UNTIL THE DATE BY WHICH THE  
COMMISSION ISSUES REGULATIONS PURSUANT TO SECTION 251 TO  


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NUMBER PORTABILITY THROUGH REMOTE CALL FORWARDING,  
DIRECT INWARD DIALING TRUNKS, OR OTHER COMPARABLE  


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QUALITY, RELIABILITY, AND CONVENIENCE AS POSSIBLE. AFTER THAT  


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A. Requirements for Number Portability

*Requirements of the Act*

170. Section 251(b)(2) of the Act lists number portability as an obligation of all LECs. As a LEC, BellSouth has the duty to provide, to the extent technically feasible, number portability according to requirements prescribed by the FCC. Number portability is a service arrangement that allows end user customers to retain, at the same location (or nearby location that is served by the same BellSouth central office), their existing telephone numbers when switching from one telecommunications carrier to another facilities-based CLEC. The Act requires that number portability be provided without impairing quality, reliability, or convenience for the customer.

*FCC Rules Regarding Number Portability*

171. The FCC issued regulations regarding number portability on July 2, 1996, in the First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-116 (“Order No. 96-286”). Rule 52.7 provides for the deployment of transitional measures for number portability. On an interim basis, LECs may use Remote Call Forwarding (“RCF”) or Flexible Direct Inward Dialing (“DID”). DID and RCF were described as the “only methods technically feasible” (FCC Order No. 96-286, paragraph 110). Rule 52.3 provides for the deployment of long-term database methods for number portability by LECs. Long-term number portability must support network services, features and capabilities existing at the time number portability is implemented. It must efficiently use number resources and may not require end users to change their phone numbers or telecommuni-

cations carriers to rely on databases or other network facilities or services provided

In addition, service quality and network reliability should be maintained when number portability is implemented and when customers switch carriers.

Offerings for Number Portability (Statement § XI)

172.

satisfy the components of Checklist Item No. 11, FCC Order No. 96-286, and comply with decisions of the SCPSC. BellSouth will provide interim number

as Route Index- Portability Hub, Direct Number Route Index, and Local Exchange Routing Guide (“LERG”) are available through the Bona Fide Request process.

*de facto* interim service

the Act and FCC Rules until a permanent long-term number portability capability is fully developed, tested and implemented by the industry.

RCF is an existing switch-based BellSouth service that redirects calls within the telephone network by translating the dialed number to a new number. For DID,

translating the dialed number to a new number.

174.

or the CLEC) determines in its reasonable judgment that the other company will likely impair or is impairing, or interfering with any equipment, facility or service

or any of its end users, that company may either refuse to provide Service Provider Number Portability (“SPNP”) service or may terminate SPNP service to the other party after providing appropriate notice.

175. This requirement is included in the SGAT to deal with the unlikely emergency situations when a provider cannot be reached. BellSouth will not unilaterally terminate services without extensive discussion with a carrier.

C. Pricing for Number Portability

176. The SCPSC approved the following rates for RCF and DID which are subject to capped true-up and are consistent with the pricing requirements in the Act as discussed in paragraphs 25-30. The DID rates were established in the AT&T Arbitration Order.

<b>Interim Number Portability</b>	<b>Monthly</b>	<b>Nonrecurring</b>
<b>RCF_</b>		
- Business line, per ported number	\$1.50	
- Residence line, per ported number	\$1.25	
- Each additional path	\$0.50	
- Per order, per end user location		\$25.00
<b>Direct Inward Dialing</b>		
- Business, per number ported	\$0.01	\$1.00
- Residence, per number ported	\$0.01	\$1.00
- Per order, per end user location		\$25.00
- SPNP-DID Trunk Termination, per trunk (Initial/Subsequent)	\$13.00	\$164.00/\$81.00
- DS1 Local channel, per channel (first/additional)	\$133.81	\$866.97/\$486.83

177. BellSouth's offerings for number portability are consistent with the SCPSC's

Market and with arbitration decisions of the SCPSC.

D. \_\_\_\_\_

178. A long-term solution to number portability will require standardized methods,

The FCC and other industry forums are reviewing various options to implement a national, standardized solution. BellSouth is participating in these national and

permanent number portability, please see the affidavit of Mr. Keith Milner.

XIX. \_\_\_\_\_

SERVICES OR INFORMATION AS ARE NECESSARY TO ALLOW THE  
REQUESTING CARRIER TO IMPLEMENT LOCAL DIALING PARITY IN

\_\_\_\_\_

A. Requirements for Local Dialing Parity

*Requirements of the Act*

179. Section 251(b) of the Act outlines the duties or obligations of all LECs. Section 251(b)(3) specifically addresses the LEC responsibility to provide dialing parity by stating that LECs have “The duty to provide dialing parity to competing providers of telephone exchange service . . .”.

*FCC Rules Regarding Local Dialing Parity*

180. Under Rule 51.205 in the FCC’s Second Order, a LEC shall provide local and toll dialing parity to competing providers with no unreasonable dialing delays. Dialing parity shall be provided for all services that require dialing to route a call. Rule 51.207 states that a LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local call notwithstanding the identity of the customer’s or the called party’s telecommunications service provider. Rule 51.217 requires a LEC to permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides itself.

B. Description and Provision of Local Dialing Parity (Statement § XII)

181. The “local dialing parity” covered by this checklist item creates an environment where local service subscribers dial the same number of digits without the use of an access code to place a local call regardless of their choice of local service provider. For example, BellSouth’s customers in the Columbia, South Carolina local calling area, dial either a 7 or 10 digit number to make local calls. With local dialing parity, CLEC customers in Columbia will likewise be able to dial a 7 or 10 digit number to make local calls. Of course, the CLEC’s switch determines how

the CLEC's end users dial specific calls. BellSouth, however, will interconnect with the CLEC such that identical 7 and 10 digit dialing is possible.

Pricing for Local Dialing Parity

182.

can use the same dialing and numbering plans, local dialing parity simply happens as CLECs begin operating.

CHECKLIST ITEM NO. 13: RECIPROCAL COMPENSATION  
ARRANGEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF

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A. Requirements for Reciprocal Compensation

Section 252(d)(2) of the Act places a standard for just and reasonable prices for reciprocal compensation such that each carrier receives mutual and reciprocal

facilities of calls that originate on the network facilities of the other carrier. The costs shall be on the basis of a reasonable approximation of the additional costs of

B. Pricing for Reciprocal Compensation

184. Under Checklist Item No. 1 regarding interconnection, BellSouth has addressed not only how interconnection would be accomplished but also the rates for reciprocal transport and termination of local calls. To reiterate, BellSouth offers the following rates which are consistent with the requirements of the Act and are also consistent with the FCC proxy rates ordered by the SCPSC:

<b>Interconnection Component</b>	<b>Rate Per Minute</b>
Interconnection at an end office	\$0.003
Interconnection at a tandem (in addition to end office rate)	
- Tandem Switching	\$0.0015
- Common transport	
- Facility Termination per mou	\$0.00042
- Per mile per mou	\$0.00011

185. The Statement includes reciprocal compensation at the interim rates outlined above but a CLEC can negotiate a different reciprocal compensation arrangement with BellSouth.

C. \_\_\_\_\_

186. The ESP category includes a variety of service providers such as information internet through ISPs that originate on the network facilities of an ILEC do not “terminate” on the network facilities of a CLEC, as would be required for call may communicate with interstate, foreign, and local destinations simultaneously. As a jurisdictional matter, such traffic cannot be considered

187. Although ESPs have been exempted from paying interstate access charges, the will neither pay, nor bill, local interconnection charges for traffic termination to an

XXI. \_\_\_\_\_

AVAILABLE FOR RESALE IN ACCORDANCE WITH THE \_\_\_\_\_

SECTIONS 251(c)(4) AND 252(d)(3)

Requirements for the Resale of Local Telecommunications Services

Section 251(c)(4) of the Act describes the duty of an incumbent LEC to offer

impose unreasonable or discriminatory conditions or limitations on such resold

resold service which is available only to a category of subscribers to a different category of subscribers. An example is the prohibition against reselling residence basic local exchange service to business customers at the lower residence rate.

189. Section 252(d)(3) of the Act describes the pricing standard for resold services. The Act describes an “avoided cost” standard such that wholesale rates are determined on the basis of retail rates excluding that portion of marketing, billing, collection and other costs that will be avoided by the local exchange carrier.

B. Description of a Retail Service Offered by BellSouth

190. Retail telecommunications services are telecommunications services that BellSouth provides to subscribers that are not telecommunications carriers. Retail services are available to CLECs at wholesale discounts as ordered by the SCPSC. Discounts apply to intrastate tariffed service prices, except as noted under section C below. The tariff in which a retail telecommunications service is offered contains not only the applicable retail rates for the service, but the terms and conditions that have been approved by the SCPSC.

C. Resale of Retail Services as Addressed in BellSouth's Statement

191. In its Statement, BellSouth offers its tariffed retail telecommunications services for resale to other telecommunications carriers that will, in turn, sell such services to their end user customers. A CLEC may resell BellSouth's tariffed retail telecommunications services subject to the terms and conditions specifically set forth in the Statement. BellSouth's Statement outlines specific terms and conditions on the resale of certain services: (1) BellSouth must offer for resale its promotions of 90 days or less at the promotional rates; (2) grandfathered services may only be resold to subscribers who have already been grandfathered and may not be resold to a different group or a new group of subscribers; and (3) Contract Service Arrangements ("CSAs") are available for resale at the same rates, terms and conditions offered to BellSouth's end users but the wholesale discount will not apply.
192. The SCPSC recognized (Arbitration Order at page 4) that AT&T and BellSouth reached agreement on the provision of grandfathered services, such that AT&T will only resell the grandfathered services to subscribers who have already been grandfathered. The Commission also established that promotions of 90 days or less would be sold to resellers at the promotional rate (not discounted). Further, the wholesale discount would not be applied to CSAs.
193. A reseller of BellSouth's retail services is prohibited from cross-class selling. Further, resellers must resell services in compliance with the applicable terms and conditions of the retail service as contained within BellSouth's existing retail tariff. For example, a CLEC is prohibited from furnishing both flat and measured rate

of BellSouth's General Subscriber Services Tariff. This is but one example of conditions that apply to not only the retail provision of certain services but resale as

194. The CLEC will be the customer of record for all retail services purchased from from, bill and expect payment from the CLEC for all services. The CLEC will also be BellSouth's single point of contact for all services purchased pursuant to this accept presubscribed interexchange carrier ("PIC") changes from the CLEC as the customer of record, but BellSouth will also accept PIC changes directly from the

195. Shared tenant service (STS) is offered through the STS tariff and is usage-based. STS. However, STS providers can become certificated as CLECs, thereby making flat-rate local exchange service available to them at wholesale rates.

#### Wholesale Rates for Retail Services

196. and business services. This rate was established by the SCPSC in its Arbitration Order. The discount rate applies to all tariffed recurring, nonrecurring and

197. BellSouth Affiant Mr. Guy Cochran explains in detail the methodology and factual evidence the SCPSC used to determine the 14.8% discount rate.

E. Negotiations with CLECs Regarding Resale Discount Rates, Terms and Conditions

198. BellSouth has negotiated numerous resale only agreements with CLECs and has negotiated resale of services as a part of many facilities-based carrier agreements. Examples of resale only agreements are those negotiated with Unidial Communications and Jetcom Inc. Resale arrangements as part of facilities-based agreements have been reached with such companies as ICI and US LEC.

XXII. IntraLATA Toll Dialing Parity Implementation

199. BellSouth filed its intraLATA Toll Dialing Parity Implementation Plan (Exhibit AJV-8) with the SCPSC on April 2, 1997, with the tariff effective April 16, 1997. IntraLATA 1+ Subscription will become available in South Carolina once BellSouth is authorized to provide interLATA service in the state.

200. IntraLATA 1+ Subscription will be implemented using a dual or two-PIC method (one for interLATA and one for intraLATA). This will allow the customer a carrier of choice for the transport of intraLATA toll calls. BellSouth will also equip each end office switch throughout the state with the capability of allowing each end user customer to select "no-PIC" as a valid subscription selection. Customers selecting "no-PIC" as their subscribed carrier will not be able to make intraLATA toll calls on a 1+ or 0+ dialed basis. BellSouth will notify all end users regarding intraLATA subscription implementation.

Cost Recovery for the incremental cost of dialing parity will be implemented in a competitively neutral manner over a five-year period across all providers of

BellSouth. The incremental costs include specific switch software, any necessary hardware and signaling system upgrades, and customer education costs that are

in the tariff filing that was approved by the SCPSC.

XXIII. \_\_\_\_\_

WITH SECTION 272 OF THE ACT

202.

the Act.

A. \_\_\_\_\_

the Act

203.

region interLATA services, other than incidental services; or provision of interLATA information services. Nevertheless, my comments will demonstrate that

authorized to engage in such activities. Such section 272 affiliate is referred to herein as BSLD.

Section 272(c)(1) of the Act prohibits BST from discriminating between BSLD and

any other entity when BSLD provides in-region, interLATA relief. Consistent with this requirement, BST does not and will not discriminate in favor of BSLD in the provision or procurement of goods, services, facilities, and information or in the establishment of standards. Except as specifically permitted by the Act (e.g., section 272(g)(3)) and relevant FCC requirements, BST will make available to unaffiliated entities the same goods, services, facilities and information that BST provides to BSLD at the same rates, terms, and conditions.

205. As long as the duties of section 272 apply, BST will provide unaffiliated entities with the same exchange access, interconnection, collocation, unbundled network elements, and resold services that it provides BSLD. BST will provide telecommunications services and network elements to unaffiliated entities using the same network facilities, systems, and databases, and, where applicable, the same service parameters, interfaces, intervals, standards, procedures, and practices used to serve BSLD.
206. As described below in connection with BST's implementation of section 272(e), BSLD will receive the same access and information as unaffiliated telecommunications carriers to BST's Operations Support Systems ("OSS") functions.
207. Services provided by BST to BSLD, including billing and collection services and software support in connection therewith, will be provided on the same terms and conditions to unaffiliated entities for so long as is required under section 272. To the extent BST develops new services for or with BSLD, it will also cooperate with

other entities on a nondiscriminatory basis to develop new services, with the exception of joint marketing, so long as BST is required to do so under section 272.

208. For the duration of applicable section 272 requirements, BST will continue to participate in public standards-setting bodies. BST will not discriminate in favor of BSLD in the establishment of any standards, including but not limited to industry-wide standards that affect the interconnection or interoperability of public networks.
209. New local exchange or exchange access services and new interfaces that affect interconnection or interoperability, including any carrier-specific interfaces introduced by BST, will be made available to all carriers at the same time, and on the same terms and conditions, for so long as this duty applies.
210. BST does not and will not, for so long as the requirement applies, discriminate between BSLD and other entities with regard to the dissemination of technical information and interconnection standards related to telephone exchange and exchange access services.
211. Subject to removal of this restriction, BST will continue to provide public notice regarding any network change that will affect a competing telecommunications carrier's performance or ability to provide service, or will affect BST's interoperability with other telecommunications carriers. BST Carrier Notification Letters are distributed by posting them on the BST Interconnection Services web

page. Until public notice has been given in accordance with sections 51.325-51.335 of the FCC's rules, BST will not disclose to BSLD, or to any other affiliated or unaffiliated telecommunications carrier, information about planned network changes that are subject to the FCC's network disclosure requirements.

212. BST does not and will not, for so long as the duty adheres, disclose to BSLD, without the consent of the carrier involved, any unaffiliated carrier's proprietary information, including, but not limited to, its network configuration or interconnection arrangements, exchange access usage, customers' interexchange carrier selections, and purchases of telephone exchange services or network elements from BST. Also, BST will not disclose to BSLD, without the consent of the carrier involved, any unaffiliated carrier's proprietary information that has come into BST's possession as a result of its provision of billing services to that carrier.
213. BST will not disclose any individually identifiable Customer Proprietary Network Information ("CPNI") to BSLD, or any other person, except to the extent such disclosure is consistent with section 222 of the Act and any applicable FCC rules.
214. BST does not and will not, for so long as the restriction is in effect, discriminate between BSLD and unaffiliated interexchange carriers in the processing of PIC change orders. BSLD has implemented a specialized automated interface for handling PIC changes that provides for the electronic exchange of order information. Through this interface, BST is able to process PIC change orders and update switches and billing and repair records automatically, without human intervention. BST will use this interface for PIC changes for both BSLD and

215. Section 272(c)(2) requires a BOC to account for transactions with its section 272

between BSLD and BST in accordance with all applicable requirements of Parts 64 and 32.27 of the FCC's accounting rules, as modified by the rules adopted by the

affidavit of Mr. Guy L. Cochran.

B. \_\_\_\_\_

216. Section 272(e)(1) of the Act requires a BOC to fill requests from an unaffiliated

service within a period no longer than the period in which it provides such service to its own affiliates. BST will fulfill these requirements for as long as they are in

217. BST does not and will not discriminate in favor of BSLD or against any unaffiliated

order exchange access services in accordance with the same procedures and on the same terms and conditions as unaffiliated telecommunications carriers, using the

assigned on a non-discriminatory basis in accordance with published standards, except that BST negotiates interval parameters on a nondiscriminatory basis for

manner as other interexchange carriers in such negotiations.

218. BST does not and will not discriminate in the repair of exchange access services based on the identity of the interexchange carrier involved. BST uses the same procedures, systems, and personnel to maintain and repair comparable services, regardless of which carrier or customer, including BSLD, is receiving the service. All interexchange carriers, including BSLD, use (or will use) the same centralized repair centers for reporting trouble to BST. In establishing repair commitments, BST accords priority, in accordance with the National Security Emergency Preparedness guidelines, to trouble reports for known critical services, such as hospitals and police and fire departments. Trouble tickets that do not fall into these categories are handled on a first-in, first-out basis, with priority given to total outages. Dispatch of technicians is driven by commitment intervals, not by the identity of the carrier.
219. BST already regularly files nondiscrimination reports and other service quality reports arising from a variety of regulatory proceedings, including ARMIS 43-05 reports and ONA reports. For example, the ARMIS 43-05 report includes installation and repair reporting intervals for interexchange access and local service, common trunk blockage, total switch downtime and service quality complaints. Collectively, these reports provide more than adequate information for the FCC and other entities to determine whether the BOCs are properly meeting the service needs of other parties. However, BST will make available to unaffiliated entities performance measurements for exchange access services it provides based upon requirements the FCC adopts in CC Docket No. 96-149. Further, BST is developing additional reports to demonstrate parity between affiliated and

unaffiliated entities. This issue is discussed in the Performance Measurements affidavit of Mr. William Stacy.

220. BST does not and will not, for so long as restrictions apply, discriminate in favor of BSLD or against any unaffiliated carrier in the installation of telephone exchange services. As is more fully described in the affidavit of Mr. William Stacy, BST offers unbundled, nondiscriminatory access to BST's OSS functions via electronic and manual interfaces. Through such access, unaffiliated carriers are able to manage and monitor the installation and maintenance of telephone exchange services they purchase from BST to the same extent as BSLD is able to do so.

221. By using access to BST's OSS functions, unaffiliated telecommunications carriers are able to transfer and receive, on an equivalent basis to BST and BSLD, information necessary for the pre-ordering, ordering, and provisioning of telephone exchange services. BSLD will access BST's OSS functions through the same interfaces and on the same basis as unaffiliated telecommunications carriers. Thus, BSLD will receive access to the pre-ordering, ordering, and billing functions on the same terms and through the same processes as unaffiliated carriers.

222. BST does not and will not discriminate in favor of BSLD or against any unaffiliated carrier in the repair of telephone exchange services. Unaffiliated telecommunications carriers are able to use access to BST's OSS functions to transfer and receive, on an equivalent basis to BST and BSLD, the data necessary to perform maintenance and repair functions. BSLD and all other requesting telecommunications carriers may transmit to BST a trouble report and receive an

initial status and an appointment commitment. This report is submitted through an electronic or manual interface, with no preference given to BSLD regarding the use of manual vs. electronic interfaces. Repair dates are established for all carriers on a nondiscriminatory basis. BST will provide to BSLD and all other requesting telecommunications carriers an update, including a completion report to the trouble report status, each time the status is updated by BST personnel. Again, BSLD obtains access to these functions through the same interfaces, and on the same basis, as unaffiliated carriers.

223. Section 272(e)(2) forbids a BOC from providing any facilities, services, or information concerning its provision of exchange access to its section 272 affiliate unless it provides such facilities, services or information to competing interLATA providers on the same terms and conditions. So long as this restriction applies, BST will not provide any facilities, services, or information concerning its provision of exchange access to BSLD unless such facilities, services, or information are made available to other providers of interLATA services in that area on the same terms and conditions. Access to information concerning exchange access services will be provided to BSLD only under the terms and conditions discussed in paragraphs 211-212 above.

224. To the extent that BSLD purchases exchange access services from BST, BSLD will purchase such services at tariffed rates, terms, and conditions so long as it is required to do so. If such services are detariffed at the state or federal level, they will be made available to BSLD on rates, terms and conditions available to other providers of interLATA services, and in a manner consistent with all applicable

225. Section 272(e)(3) requires a BOC to charge an affiliate or impute to itself an charges an unaffiliated interexchange carrier. To comply with this requirement, BST will charge BSLD rates for telephone exchange service and exchange access interexchange carrier for such service. Also, where BST uses access for provision of its own services, BST will impute to itself the same amount it would charge an

226. If BSLD purchases telecommunications services from BST, BSLD will purchase discounts) as those available to nonaffiliated providers of interLATA telecommunications services, for so long as it is required to do so.

Section 272(e)(4) permits a BOC to provide interLATA or intraLATA facilities or services to its section 272 affiliate if such services are available to all carriers at the

FCC has interpreted section 272(e)(4) as a prohibition against discrimination, not an affirmative grant of authority. (Non-Accounting Safeguards Order ¶ 262.) To

services to BSLD, it will make such services or facilities available to all carriers at the same rates and on the same terms and conditions. BST also will record such

Safeguards Order.

C. BST Will Comply With The Joint Marketing Requirements Of Section 272(g) of the Act

228. Section 272(g)(1) prohibits a BOC's section 272 affiliate from marketing or selling the BOC's telephone exchange services unless the BOC permits other entities offering the same or similar services as the affiliate to market the BOC's telephone exchange services. To comply with this requirement, BST will not permit BSLD to market or sell its telephone exchange service unless BST permits BSLD's competitors to do so as well.
229. Section 272(g)(2) forbids a BOC from marketing or selling interLATA services of an affiliate in any of its in-region states until it receives interLATA authority under section 271(d). BST has not and will not market or sell BSLD's interLATA services in South Carolina until the FCC grants interLATA authority for that State. If BST markets or sells BSLD's interLATA service, BST will inform any customer who orders new local exchange services on an inbound call of the names, and, if requested, the telephone numbers of carriers offering interexchange services in its service area. A customer orders "new local exchange service" when the customer either receives service from BST for the first time or moves to another location within BST's in-region territory.

D. \_\_\_\_\_

230.

continue the Equal Access disclosure when discussing PICs and Local Primary Interexchange Carrier (“LPICs”) (for intraLATA calls) in the inbound channel.

Representative will offer BSLD products under the joint marketing agreement.

BST does not use verbatim scripts for such customer contacts. Customer contact

distance, recommend BSLD and offer to read from a list of available carriers. An example of an acceptable statement is:

service. I can read from a list the companies available for selection, however, I’d like to recommend BellSouth Long Distance”

These company names will be read in random order if the customer requests it to be read. Based on the customer’s response, the order will be completed with the

232. BST is seeking reconsideration of the FCC’s Order in CC Docket No. 97-137 with

Ameritech Long Distance unless the customer affirmatively requests the names of the providers, violates the equal access requirements of section 251(g) of the Act.

272 of the Act, as well as FCC precedent.

E. BST's Policy on Customer "Winback" Campaigns

233. Many of the companies who are BST's competitors in the new environment are also BST's customers. BST is committed to encouraging competition and presenting a fair environment in which competition may be fostered.
234. For a period of time beginning in late 1996, BST sent letters to both residential and business customers as confirmation that the customer had chosen a different local service provider other than BST. The letters encouraged customers that had elected to leave BST to consider coming back. Beginning in March 1997, due to a programming change, these letters were inadvertently sent to customers on a pre-completion basis, meaning that they may have been sent before the order to convert the customer's service was completed. Once it was realized within BST that such letters were being mailed on a pre-completion basis, the mailing of the letters was terminated for all customers on August 4, 1997.
235. On September 16, 1997, BST resumed sending confirmation letters to residential customers and will resume sending confirmation letters to business customers later this year. Attached as Exhibit AJV-5 is a copy of the letter currently being sent to those customers who have left BST and chosen another local service provider. The current letter contains revised language due to objections expressed by competitive providers. It serves as a confirmation to the customer that BST has received the change request and the change has been processed. Confirmation letters will only be sent to customers on a post-completion basis. With this change, BST will not engage in "winback" campaigns for residential customers lost to competitors at least through 1997. When BST implements winback programs, they will be in

compliance with section 222 of the Act and FCC regulations. In no circumstance will BST knowingly misuse confidential and proprietary information to gain a competitive advantage.

236. For large business customers, BST will not engage in proactive discussions with customers about competitive winbacks. However, BST account teams will continue to contact customers regarding both new services and services similar to those under contract with other local service providers, as well as any subject that would ordinarily, customarily be discussed with customers. However, in these discussions, the account team will not, under any circumstances, suggest nor encourage the customer to breach any contract they may have with a competitor.

F. BST's Policy on the Provision of IntraLATA Toll Service to CLEC

Customers

237. When purchasing a circuit from BST, a CLEC purchases the ability to offer intraLATA toll from BST to their end users. CLECs are prohibited from using BST's name in a joint marketing offering that includes BST's intraLATA toll, however, CLECs could route customers to BST's intraLATA toll if desired.

G. BST Will Operate Independently From Its Section 272 Affiliates

238. A BOC and its section 272 affiliate each are precluded from performing operating, installation, and maintenance functions associated with the other's facilities. (Id. ¶163.) BST has not provided and will not provide operating, installation and maintenance services to BSLD in connection with switching and transmission facilities owned by BSLD or leased by BSLD from a provider other than BST, for so long as this restriction applies. Moreover, BST is not currently receiving and, for so long as the restriction applies, will not receive from BSLD operating, installation and maintenance services in connection with BST's switching and transmission facilities, except that BSLD may perform such services for BST for sophisticated equipment purchased from BSLD pursuant to paragraph 164 of the Non-Accounting Safeguards Order.

XXIII. CONCLUSION

239. Throughout this affidavit I have described the requirements in the Act and of the FCC with regard to BellSouth's entry into the long distance market. The Act was written both to open the local market to competition and to allow the BOC, in turn, to offer long distance service. I have described the conditions of the Act, including the requirement to meet the 14-point checklist, and have described how BellSouth complies with each of these requirements.

240. BellSouth has satisfied the provisions to open local exchange service to competition. BellSouth has negotiated agreements in good faith with its

approved BellSouth's Statement, which is available to any competitor who wishes to enter the telecommunications market in South Carolina.

Once BellSouth has demonstrated compliance with the provisions in section 271, the Act entitles BellSouth to receive in-region interLATA relief. Within this

within the constraints of the law and will maintain open local markets to all interconnectors.

The state of South Carolina has aggressively promoted telecommunications competition, beginning with the House Bill 4694 enacted by the state legislature

This state law provides for local competition for South Carolina consumers.

Consumers will benefit if BellSouth is one of the carriers they can choose to

243. This concludes my affidavit.

In the Matter of

Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc., and  
BellSouth Long Distance, Inc., for Provision of  
In-Region, InterLATA Services in South Carolina

CC Docket No. \_\_\_\_\_

Glenn A. Woroch, being duly sworn, deposes and says:

1. I am currently Visiting Professor of Economics and Executive Director of the Consortium for Research on Telecommunications Policy at the University of California, Berkeley. I received an M.A. in Statistics and a Ph.D. in Economics from Berkeley. I have taught economics at the University of Rochester and Stanford University as well as at Berkeley. My past research has examined the design of regulatory policy and the viability of competition in network industries, especially the telecommunications and computer industries. For more than six years I was a research economist at GTE Laboratories where I developed and managed several projects investigating the effects of deregulation and emerging competition on local telecommunications markets. In particular, I examined the market and strategic factors determining the incidence and timing of entry by competitive access providers in U.S. cities. My current research explores the structural effects of regulatory pricing rules on network competition and empirical estimation of market and regulatory determinants of competitive entry into local telecommunications markets. On several occasions, I have advised government agencies and private corporations—including Regional Bell Operating Companies (“RBOCs”)—on these matters.

2. I have been asked by counsel for BellSouth Telecommunications (“BST”) to examine BST’s Statement of Generally Available Terms and Conditions for South Carolina (the “Statement”) to determine its effectiveness to open and keep open the state’s local exchange markets to competition. I examined, among other issues, the ability of the Statement to remove strategic entry barriers to all feasible routes into the various local exchange markets. In making this evaluation I took into account the various interconnection and resale agreements (the

“Agreements”) the company has negotiated with competitive local exchange companies (“CLECs”) and their legal enforcement, as well as market conditions and statutory and regulatory barriers in the state. I also sought to determine whether conditions prevail that prevent BST from reversing the opening of its markets. Along these same lines, I was also asked to evaluate the effectiveness of BST’s Statement and Agreements to prevent exclusionary conduct before and after BST’s entry into in-region interLATA services in South Carolina.

3. In this affidavit I will not focus on the Statement’s compliance with each item on the “competitive checklist.” Before approving BST’s Statement, the South Carolina Public Service Commission (“SCPSC”) verified each of the fourteen items and called for modifications where it determined them to be necessary.<sup>1</sup> Nor will I assess at any length the competitive impact of BST’s entry on the performance of interLATA markets in South Carolina. Rather, my focus is on economic conditions facing potential entrants into local service markets in South Carolina. In the process I set out to determine reasons for the lack of widespread, facilities-based entry into BST’s local exchange markets in the state.

4. In performing my analysis I received BST’s Statement and the various external documents that it references. I reviewed roughly two dozen interconnection and resale agreements signed by BST with competitive local exchange carriers in South Carolina. I have read the SCPSC decision on BST’s application to provide in-region interLATA services as well as other matters including arbitration proceedings. I examined the Ameritech and SBC applications for interLATA authority in Michigan and Oklahoma, respectively, and related comments and FCC decisions. Finally, I studied the evidence of local exchange competition in South Carolina and throughout BST’s nine-state serving area.

5. I conclude that BST’s Statement assures that efficient firms can enter local exchange markets in South Carolina and offers them the prospect of financial viability and sustained growth to the extent possible given market conditions in the state. It achieves this objective by creating

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<sup>1</sup> SCPSC Order No. 97-640, “Order Addressing Statement and Compliance with Section 271 of the Telecom Act of 1996,” July 31, 1997.

an expansive array of entry options that give CLECs the freedom to adopt all manner of pricing, service, locational, technological and structural entry strategies. Such opportunities fulfill the FCC's goal of making available every conceivable commercial opportunity so as to maximize the likelihood that efficient entrants will succeed.

6. The scores of interconnection and resale agreements that BST signed with CLECs in South Carolina and elsewhere in its serving area further confirm the openness of its local exchange markets. These Agreements tailor the engineering and commercial parameters of interconnection and resale to the specific business conditions facing the CLECs. They represent the efforts of the parties to support mutually-beneficial transactions essential to commercial relationships between vertically-related buyers and sellers.

7. Potential entrants in South Carolina local exchange markets have rationally chosen to delay extensive facility-based entry and to seek out other profit opportunities. In fact, economic and demographic conditions in South Carolina do not support early, extensive entry into its local exchange markets. Low population density, long loop lengths and under-representation of large business customers and telecommunications-intensive industries combine to explain CLECs' lack of interest in facility-based entry in this state.

8. While entry into local exchange markets in South Carolina has been limited, BST has experienced significant facility-based entry elsewhere in its region. This evidence is consistent with local exchange markets that are open to competition. Through their negotiated agreements, competitors have entered BST local exchange markets using unbundled network elements and through resale. Removal of statutory and regulatory barriers at the state and local levels has assisted this entry. Furthermore, BST's Statement and the agreements, in combination with market trends and regulatory safeguards, prevent BST from "backsliding" on their terms and from engaging in exclusionary conduct that could reverse competitive opportunities.

9. In my professional opinion, the Statement offered by BellSouth—along with its interconnection and resale agreements, the market conditions in South Carolina, and state and local laws and regulations—ensure that BST’s local exchange markets in South Carolina are open to competitors, and will remain open.

**I. THE 1996 TELECOM ACT RECOGNIZES BOTH THE POTENTIAL AND THE LIMITATIONS OF ENTRY INTO LOCAL EXCHANGE MARKETS, ADOPTING MULTILATERAL, REDUNDANT POLICIES TO MAXIMIZE THE LIKELIHOOD OF COMPETITIVE BENEFITS**

A. The Act Embraces the Feasibility, Viability and Efficiency of Local Exchange Competition But Rejects a Policy of “Entry for Entry’s Sake”

10. The 1996 Telecom Act put its faith in competition as the best means to achieve efficient provision of local services. This conclusion was grounded in the belief that monopoly was no longer the least-cost structure in many local exchange markets. Multiple facility-based providers feasibly could serve the same exchange area as a consequence of advances in local service technology. In particular, the developments in optical fiber transmission and wireless access methods greatly reduced the cost of alternative networks. Furthermore, the possibility of unbundling the modern digital network expanded the opportunities for less-than-full-service firms to participate in these markets.

11. The Act correctly sees competition as the source of many economic benefits including lower prices and improved service as well as innovative services and technologies introduced by the incumbent or one of its challengers. To raise the likelihood that these benefits will be realized, the Act takes steps to facilitate entry by facility-based carriers.

12. At the same time, the Act recognizes that in certain areas construction of duplicate networks could be economically wasteful—net of the benefits of competition. And even in those

areas where facility-based competition is viable over the long run, entrants may find it impossible to achieve complete coverage or to offer the full range of services necessary for short run viability. Accordingly, the Act requires incumbent local exchange carriers (“ILECs”) to terminate traffic originating on competitors’ networks and to share their landline networks with competitors—either through provision of unbundled network elements (“UNEs”) or resale. By sharing network facilities, the local exchange realizes the scale and scope economies of unified production while securing the benefits of competition.

13. Despite these measures, entry at any cost is not a purpose of the Telecom Act. It discourages inefficient entry, for example, by insisting that ILECs charge cost-based rates: fees for interconnection and unbundled network elements must cover costs and may include a reasonable profit,<sup>2</sup> and compensation for termination services must recover the additional costs.<sup>3</sup> Entrants are also required to contribute their fair share toward support of universal service<sup>4</sup> and for use of public rights of way.<sup>5</sup>

14. Implicitly and explicitly, the Act accepts that in certain markets a single facility-based local exchange provider may be the efficient industry structure. Scale and scope economies, sunk network investment and demand-side scale economies rule out the possibility that a large number of small facility-based providers will serve this market efficiently. The tradeoff between efficient production (attained through large scale production) and competition (achieved through entry) is a common occurrence, one embraced by the DOJ-FTC “Horizontal Merger Guidelines.”<sup>6</sup>

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<sup>2</sup> § 252(d)(1).

<sup>3</sup> § 252(d)(2)(A).

<sup>4</sup> § 254(b)(4).

<sup>5</sup> § 253(c).

<sup>6</sup> DOJ-FTC HORIZONTAL MERGER GUIDELINES, Washington, DC, April 2, 1992, especially pp. 47-54. The Guidelines acknowledge the power of competitive entry to counteract potentially anticompetitive behavior of large incumbent firms. They also specifically take into account the possibility that production efficiencies lead to lower prices and improved products not possible with smaller firms. See REVISION TO

Fragmentation of the local exchange industry in South Carolina and elsewhere by subsidizing inefficient entrants could sacrifice scale economies leading to higher unit production costs and, in turn, higher prices.

15. As an inducement to open their markets to competition in compliance with the Act's standards, the Act offers the RBOCs the "carrot" of permission to enter in-region interLATA services. But when Congress devised the procedure for RBOC entry, it accepted that facility-based competition for both business and residential customers might not and should not materialize in certain areas. Accordingly, "Track B" was created to grant interLATA authority in states where no legitimate facility-based carriers had stepped forward—provided the RBOC demonstrates that its local exchange markets are open to efficient competitors.

16. Furthermore, some regulators and lawmakers foresaw the possibility that, absent the threat that RBOCs might enter interLATA services, interexchange carriers ("IXCs") may forebear from entering local exchange markets and defeat attempts to quickly bring competition to local exchange markets. Economic reasoning supports this possibility under fairly general conditions that likely hold in South Carolina and elsewhere. The logic follows from modeling the decisions of potential competitors as to when to enter new markets based on competitors' threats to profits in their "home markets."<sup>7</sup> To see how the availability of Track B alters IXC incentives to enter local exchange markets, we begin by considering how events would unfold if an IXC has already entered an RBOC's local exchange markets on a facility basis consistent with Track A.

17. In the specific context of South Carolina, suppose that an IXC had entered BST's local exchange markets, and answer the question: What would be the profitable response by BST? It is reasonable to expect that BST would find it more profitable to enter in-state interLATA services

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THE HORIZONTAL MERGER GUIDELINES, April 4, 1997 (replaces Sec. 4 of 1992 version).

<sup>7</sup> An example of this approach applied to competition between telephone and cable television companies for switched broadband services is Michael Riordan, *Regulation and Preemptive Technology Adoption*, RAND JOURNAL OF ECONOMICS, 23:3, Autumn 1992, pp. 334-349.

compared with continuing to share its local markets with the IXC. Its statutory right to jointly market local and long distance services will make it an especially potent competitor in interLATA services. If permitted, it is only a matter of when, not if, BellSouth will enter in-region interLATA markets through a separate subsidiary. Of course, the timing depends on the ease of entry. With a strong brand name and image,<sup>8</sup> we can expect BellSouth swiftly to enter these markets through resale of long distance services the moment it receives authorization.

18. Backing up a step, consider the IXC's decision about whether to enter BST markets on a facilities basis. Given the prospect of BST's rapid and devastating competitive response, any increment in overall earnings the IXC might hope to gain from building local exchange facilities would be short-lived. The IXC can forestall BellSouth's incursion, however, by refraining from entering local services in the first place without a Track B alternative. When Track B is available, it is likely that an IXC will forebear throughout the waiting period established by the Act. The moment BellSouth enters long distance markets in South Carolina, however, we can expect the IXCs in the state to begin entering local exchange services.

19. In fact, other firms besides IXCs potentially could enter BST's local exchange markets on a facility basis and trigger BST's application under Track A. Furthermore, many of these—including Competitive Access Providers ("CAPs"), cable companies, and electric power utilities—do not have home markets that are vulnerable to BST competition unlike in-state IXCs. Nevertheless, the major IXCs are far more likely to enter residential exchange services given their formidable financial resources and powerful incentive to reduce access costs. Non-IXC entry into BST's local exchanges will set off a chain reaction in which BellSouth enters interLATA markets, in turn causing IXCs to enter local markets in competition with the other CLECs. CLECs' profits will be dissipated in the process, discouraging or at least delaying their entry in the first place.

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<sup>8</sup> In both 1996 and 1997, J.D. Power & Associates reported that residential subscribers rated BellSouth first among local phone companies in terms of several dimensions of customer service including corporate image.

B. The Act Seeks to Open Every Possible Option for Efficient Entry into Local Service Markets, But Some Opportunities May Be Closed by Factors Outside the Incumbent's Control

20. Keeping in mind the variety of entry paths desired by efficient competitors, and the range of unique characteristics they possess, the Act devised multilateral, redundant policies to promote local exchange competition. Generally, the Act imposes duties on ILECs to open their networks and assigns competitors rights to acquire ILEC services needed for successful entry. Besides a requirement to interconnect with CLECs, ILECs must unbundle their network services and offer them for sale along with retail services for resale. This policy creates three different but often complementary routes for CLECs to enter local exchange markets: facility-based entry, purchase of UNEs and resale of retail services.

21. If and when entry occurs in any given local exchange market depends on many factors. Some of those factors are outside the control of the incumbent provider, and by creating Track B, Congress acknowledged that such factors should not determine the openness of local markets. For instance, business and residential demand and production economies together determine the number of local exchange providers that are viable in any given area. In general, market size and demand growth are well known to be positively related, both theoretically and empirically, to the rate of entry into industries.<sup>9</sup>

22. Other factors affecting local exchange entry are within the ILEC's control, yet not all of these are the proper target of the Act's policies. Most importantly, ILECs should not be prevented from competing on the merits in retail markets by offering lower prices and superior services. Strategic behavior by an ILEC would become a concern, however, when its control of bottleneck network services is used to discourage entry into downstream markets, especially retail local exchange and long distance services.

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<sup>9</sup> See Paul Geroski, Richard Gilbert and Alexis Jacquemin, BARRIERS TO ENTRY AND STRATEGIC COMPETITION, Chur, Switzerland: Harwood Academic Publishers, 1990, p. 70.

The Act attacks this kind of strategic behavior on many fronts. *First*, it carves out the three entry paths—facility-based entry, purchase of UNEs and resale—and enables potential entrants to use one or any combination of these means. In particular, sale of network elements and wholesale services nurtures fledgling firms who may aim one day to offer services over their own facilities; facility-based entry may not become an attractive option until the CLEC has accumulated capital, technical expertise and favorable customer reputation. Clearly entry is facilitated by allowing CLEC strategies to evolve rather than forcing them to choose a single, unchanging strategy.<sup>10</sup>

24. *Second*, the Act takes deliberate steps to increase the size and diversity of the pool of potential entrants. It invites cable TV companies by eliminating the cable-telco cross-ownership ban.<sup>11</sup> Restrictions on electric utility provision of telecommunication services in the Public Utility Holding Company Act of 1935 were also relaxed.<sup>12</sup> A large, diverse group of potential entrants, with their special capabilities and unique business strategies, should raise the likelihood that efficient entry will occur.<sup>13</sup>

25. *Third*, all local exchange services and all geographic areas should be opened for competition. Entry is an inherently risky prospect, and the possibility of entering multiple services and multiple areas allows new entrants to diversify their business risks and thereby to lower

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For an analysis of the determinants of cable operators choice among modes to enter telephony see Glenn Woroch, *Turning the Cables: Economic and Strategic Analysis of Cable Entry into* \_\_\_\_\_, in *GLOBALISM AND LOCALISM IN TELECOMMUNICATIONS*, edited by Eli Noam, Elsevier Science, 1996.

<sup>11</sup> §§ 651-653.

<sup>12</sup> §103.

<sup>13</sup> It is possible that enlarging the pool of entrants could discourage entry as each potential entrant \_\_\_\_\_ *Potential*

*Entrants Discourage Entry* JOURNAL OF POLITICAL ECONOMY  
models, potential entrants make their entry decisions ignorant of other firms' decisions, significantly raising the likelihood of duplicate investment and post-entry losses.

financing costs. Furthermore, challenged on every front, incumbent providers will be unable and unwilling to attempt predation in any single service, even aside from regulatory safeguards. To do so would require financing low prices in one service with high prices in another, with the latter attracting entrants who will undercut the incumbent's rates and steal its sales.

26. By adopting this multilateral, redundant approach to facilitating entry into local exchange markets, Congress has acknowledged its inability to select the efficient competitors, or to choose the best business strategy or communications technology, now or in the future. However, these entry options invariably require the assistance of the incumbent carrier, and the Act dealt squarely with the crucial question: To what degree should ILECs facilitate competitors using each of the entry options?

27. In my evaluation, I judge BST's Statement and its Agreements in terms of their ability to promote three policies reflected in the Act: (1) create multiple routes for efficient entrants, with the three identified by the Act and their various combinations being the minimum; (2) expand the size and diversity of the pool of potential entrants; and (3) open all local services and geographic areas to competition. Table 1 lists these three policies, the enabling provisions of the Act, and the specific provisions of BST's Statement responsive to each.

28. The intent of Congress was to ensure that, after initial entry, efficient competitors have the opportunity to achieve financial viability and sustained growth consistent with market conditions, and in the more distant future, for new efficient firms to enter local exchange markets. BST's Statement achieves these goals by offering competitors the opportunity to make tactical adjustments in response to their own growth and to changing market conditions, such as by changing the size and mix of their purchases. More strategic revisions to their business plans are also accommodated, including expansion into new products or geographic areas and the deployment of new technologies.

**II. BST's STATEMENT AND AGREEMENTS, IN COMBINATION WITH MARKET AND REGULATORY CONDITIONS, OPEN SOUTH CAROLINA LOCAL EXCHANGE MARKETS TO COMPETITION**

A. BST's Statement Establishes Conditions That Open Local Exchange Markets to Competition Meeting and Exceeding the Goals of the Act

29. My evaluation of the Statement will assess whether it opens local exchange markets to the extent discussed above and prevents BST from erecting strategic entry barriers before or after it has entered interLATA services. This exercise takes place in two steps: first identifying novel provisions in the Statement, and then examining how it addresses the principal requirements of the Act.

30. ***The Bona Fide Request Process.*** Many times throughout the Statement, the CLEC is offered the opportunity to use the “bona fide request process.” This procedure, developed jointly by BST and AT&T, allows a CLEC to make requests that are outside the scope of the Statement or to modify its current Agreement.<sup>14</sup> After the CLEC's request, BST must respond according to a rapid timetable (*e.g.*, BST must respond in 30 days with a preliminary analysis and rate quote) and obey certain procedural rules.

31. This process reduces entry barriers facing CLECs in a number of ways. First, it expands options available to a CLEC seeking to introduce an innovative service that requires new and unusual unbundled network elements from BST. It would also allow an established CLEC to adjust its production levels or expand its product line as market information arrives. More generally, the process gives the CLEC flexibility to respond to market uncertainties that are a major source of entry costs, and to create profit opportunities it did not contemplate originally.

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<sup>14</sup> See Attachment B of the Statement.

32. ***Adoption of Industry Standards.*** On many occasions, the Statement requires BST to adhere to industry technical standards for network interfaces,<sup>15</sup> standard accounting and reporting formats<sup>16</sup> and service descriptions.<sup>17</sup> In most cases, these standards were developed by industry committees and consortia including Bell Communications Research (BellCore), the Alliance for Telecommunications Industry Solutions (ATIS), the Ordering and Billing Forum (OBF) and the American National Standard Institute (ANSI). BST is a member of these organizations which represent a broad cross section of the telecommunications sector including equipment manufacturers and vendors and large users as well as carriers and resellers. Membership is open to all firms with an interest in the standards. Each member has the opportunity to register its preferences either through formal polling with each company having a vote or through discussion that builds to a consensus. Besides publicizing the final standard, the proceedings are usually carefully documented and made public. Lastly, BST publishes all interface specifications so that interconnectors are able to achieve technical compatibility with its network. For all these reasons, it is highly unlikely that the resulting standards could be chosen to favor ILECs' affiliates to the detriment of local exchange competitors.

33. By adhering to industry standards, facility-based CLECs are spared the expense and delay of purchasing and configuring equipment to be compatible with proprietary specifications. Standardization of operations further reduces CLECs' transaction costs as they attempt to interconnect with BST in multiple locations throughout its nine states as well as with other ILECs who adopt these same standards. In general, standardization of interfaces and procedures have the effect of leveling the playing field for various CLECs as well as the ILEC's affiliates.

34. ***Requirements of Coordination and Cooperation.*** On many occasions, the Statement requires BST and the CLECs to work together to address problems that interfere with smooth

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<sup>15</sup> See Sections I.H and XV.B of the Statement.

<sup>16</sup> See Sections I.B.6, I.F and XIV.P of the Statement.

<sup>17</sup> See Attachment C of the Statement.

operation of their relationship. For instance, the parties agree to exchange traffic and engineering information and generally to cooperate so as to aid their respective network planning efforts.<sup>18</sup> BST is required, in addition, to notify the CLEC of changes in technical specifications, facilities and equipment upgrades affecting interconnection.<sup>19</sup>

35. Terms for mutual provision of access to interexchange carriers also reflects the Statement's cooperative approach to interconnection. Under "meet point trunking," both BST and the CLEC supply access to an IXC. Each collects access fees directly from the long distance company, and they settle up afterwards using a standardized meet-point billing arrangement.<sup>20</sup> A CLEC is able to achieve higher utilization of its network resources—especially tandem and other switching resources—lowering the capital outlays necessary for entry. Perhaps more importantly, CLECs deal directly with their IXC customers rather than through BST, giving them the opportunity to establish a reputation necessary for entry into other local exchange markets.

36. ***Variety of Interconnection Options.*** In addition to offering the statutory minimum of interconnection through physical or virtual collocation and at technically feasible network points, the Statement offers CLECs several other interconnection options. For example, BST agrees to provide "intermediary tandem switching and transport services"<sup>21</sup> which facilitates CLECs working together or with IXCs to offer competitive services. CLECs can request interconnection at additional network points by initiating the bona fide request process.

37. ***Supplementary Unbundling of Network Elements.*** The Statement offers several network elements besides those identified in the Act. These include several subloop elements such as channelization (*e.g.*, multiplexing) and cross connection. Cross connection can be

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<sup>18</sup> See Sections I.G, III.B and XV.E of the Statement.

<sup>19</sup> See Sections XV.A of the Statement.

<sup>20</sup> The Statement stipulates use of ATIS's "Multiple Exchange Carrier Access Billing System."

<sup>21</sup> See Section I.A.5 of the Statement.

especially valuable to a CLEC who needs to link up with another CLEC to get a unique or less expensive network services meeting at a BellSouth central office. “Centralized message distribution system” is an additional unbundled network element that may assist entrants by permitting easier inter-carrier billing. The Statement also offers “dark fiber” which is optical fiber strands without the lasers and detectors necessary for transmission. This unbundling of the electronics has been sought by some CLECs who claim that it aids their entry. Finally, as usual, other elements can be obtained through the bona fide request process.

38. Pricing of unbundled network elements satisfies the cost proxies proposed in the FCC Order. Charges for local loops at \$18.00 per loop is at the ceiling of the FCC default range. The per minute charge of 0.3¢ for local switching is the midpoint of the FCC default range of 0.2 ¢ to 0.4¢ per minute. The rate of 0.15¢/min for tandem switching is at the FCC default ceiling for this unbundled network element. The rates for these and other elements are subject to a “true up” by the SCPSC intended to adjust rates to economic costs. CLECs would continue to pay the negotiated rate if the true up resulted in a higher rate. If rates fell, they would receive a refund equal to the difference going back to the first purchase. The SCPSC decision will be based on the results of BST’s verifiable cost studies which can be challenged by interested parties. BellSouth has already submitted its methodology as well as estimates of total element long run incremental costs (“TELRIC”) for local interconnection and UNEs.<sup>22</sup>

39. ***Resale Opportunities.*** BST offers its retail services to competitors at wholesale rates as required by the Act. These services may be bundled and resold with only those restrictions sanctioned by the Act. In particular, BST requires the reseller to offer the same functions, features and service levels as stipulated in its South Carolina retail tariffs.<sup>23</sup>

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<sup>22</sup> See BST’s cost model submission in SCPSC Docket 96-358-C, 1997.

<sup>23</sup> See Section XIV.C of the Statement.

40. Resellers may purchase business and residential retail services at a discount of 14.8% off retail rates. This discount was selected by the SCPSC based on a calculation made in testimony submitted in the AT&T arbitration proceeding.<sup>24</sup> This calculation computed both avoided and avoidable cost of retailing these services. The SCPSC chose the larger avoidable cost estimate, and after adding some additional avoidable costs, arrived at 14.8% for both residential and business services. While this figure falls below the default range of 17-25% proposed in the FCC Interconnection Order, it adheres to the FCC's preferred and more demanding methodology of avoidable, not avoided, cost. BST submitted estimates of both avoided and avoidable cost of retailing. The SCPSC chose the avoidable cost figure of 13.2% and arrived at 14.8% after adding expense items it determined to be avoidable.<sup>25</sup>

41. ***Favorable Reciprocal Compensation.*** The Statement adopts the Act's requirement for mutual and reciprocal compensation between ILECs and CLECs for transmission and termination of traffic. Furthermore, the Statement accepts the symmetry of charges recommended by the FCC in its Interconnection Order.<sup>26</sup>

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<sup>24</sup> SCPSC "Order on Arbitration (between AT&T-Southern States and BST)," Order No. 97-189, March 10, 1997.

<sup>25</sup> See Guy Cochran affidavit at ¶ 31 and Exhibit A.

<sup>26</sup> Implementation of the Local Competition Provisions of the Telecom Act of 1996, CC Docket 96-98, released Aug. 8, 1996 (the "FCC Interconnection Order") at ¶¶ 1085-1093.

B. BST's Interconnection and Resale Agreements Open South Carolina Local Exchange Markets to Competition

42. BST has successfully negotiated an extraordinary number of agreements with CLECs for interconnection and resale. The first such Agreement was signed on February 14, 1996, just days after the Telecom Act was signed by President Clinton. The United States Telephone Association reports that, as of July 1, 1997, BST had signed 556 state-level Agreements out of a total of 1,231 nationwide which alone represented over 45% of the RBOC total.<sup>27</sup>

43. In South Carolina, BST has signed agreements with 83 CLECs for interconnection or resale to date. Nearly all of the BST Agreements were voluntarily negotiated with very few mediated or arbitrated by state commissions. Only BST's agreement with AT&T was arbitrated in South Carolina by the SCPSC. At this time, the SCPSC has approved agreements between BST and 67 CLECs. Elsewhere in BST territory, state commissions have approved approximately 38 agreements in Alabama, 57 in Florida, 55 in Georgia, 25 in Kentucky, 36 in Louisiana, 18 in Mississippi, 30 in North Carolina and 21 in Tennessee.

44. As with the Statement, BST's various Agreements address each of the checklist items. But as before, my purpose is not to demonstrate that the agreements, either individually or collectively, satisfy all of these requirements. Instead I will identify unique features in the Agreements that promote competition in South Carolina local exchange markets. In particular, because they are the product of bilateral negotiations, the Agreements reveal the extent to which BST willingly cooperates with individual CLECs now and in the future. I will argue that this cooperation is inherent in well functioning commercial relationships.

45. One distinguishing characteristic of the company-specific agreements is the fact that they cover all, or nearly all, of BellSouth's territory. At a minimum, the multi-state approach reduces

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<sup>27</sup> See COMPETITION REPORT: INTERCONNECTION AGREEMENTS BY STATE, United States Telephone Association, July 1, 1997.

negotiating costs and entry delays that can be murder on cash-strapped startups. Perhaps a more important cost saving of a regional agreement is the fact that it allows entrants to conduct uniform marketing and network planning. This is especially helpful to CLECs who wish to offer intercity services within BST's region in their product line because the same conditions will prevail at both ends of a call. By signing region-wide agreements, BellSouth demonstrates that it is not attempting to "contain" the scope of competition to specific geographic areas. In fact, no fewer than six CAPs have five or more fiber networks operating in BST territory: ACSI has 14, ICI has 8, ICG and Time Warner have 7, MCImetro has 6 and Teleport Communications has 5. Most of these companies have interconnected their local networks. Recently, US LEC, a small but fast growing regional CLEC, announced its plans to interconnect its local exchange networks in Georgia, North Carolina and Tennessee.<sup>28</sup>

46. While the Agreements' (and Statement's) duration—typically two years—is not remarkable, it deserves mention because it bears upon CLEC entry conditions. A contract that ran very long, say five years or more, could "lock in" a CLEC by making it difficult for it later to switch to another supplier of exchange services (*e.g.*, a current IXC or cable company). Very short contracts (*e.g.*, a year or less), on the other hand, would deny entrants the assurances regarding interconnection terms and conditions needed to undertake financial and operations planning.

47. Finally, many BST Agreements allow CLECs to renew their agreement for additional years under the prevailing terms and conditions. This clause provides successful entrants with protection against renegotiation that would result in new unfavorable terms. Furthermore, there are no contract termination penalties assessed against the CLEC, lowering the cost of exit should the local exchange business fail to meet their original expectations.

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<sup>28</sup> COMMUNICATIONS DAILY, Sept. 11, 1997.

48. Aside from satisfying the specific requirements of the Act, the agreements reveal attempts by BST to support robust, productive transactions typical of commercial relationships found in almost any industry. As with any contract, the Agreements attempt to anticipate possible contingencies that threaten benefits of the relationship and stipulate a mutually-agreeable response. In case of future disagreements, Agreements provide for private arbitration,<sup>29</sup> private mediation, or both, supplementing the Act's arbitration procedures. The Agreements, as the Statement, provide for coordination and exchange of information that should avert many potential conflicts.

49. The Agreements also protect returns on the parties' private assets. For instance, some Agreements ban disparaging remarks by BST's repair workers to prevent devaluation of a CLEC's brand name capital. Similarly, other provisions ensure that BST cannot misuse proprietary knowledge of CLECs' customer records.<sup>30</sup> The Agreements (as well as the Statement) spell out rights of the parties to intellectual property connected with their transactions.<sup>31</sup>

50. Most of the Agreements adopt a *de minimus* rule which limits disadvantages that an entrant could experience because it originates less traffic, on a *per capita* basis, than BST. Under this rule, no money changes hands for six months, so it is essentially a "bill and keep" system to begin with. Gradually over time, net payments between the carriers are allowed to increase. Always, however, the payments are limited by a ceiling equal to 105% of the smaller of the total charges incurred by the two carriers—where the charges are calculated using the total number of minutes of traffic each terminates for the other, multiplied by the per minute rate.

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<sup>29</sup> See "Interconnection Agreement Between ACSI and BellSouth," Section XXV.

<sup>30</sup> See, e.g., Intermedia Communications, Inc. Interconnection Agreement, Article XXII (Treatment of Proprietary and Confidential Information).

<sup>31</sup> Section XX of the Statement; ACSI Interconnection Agreement, Article XXIV (Nondisclosure).

C. State and Local Legal and Regulatory Barriers to Local Exchange Entry Have Been Removed

51. South Carolina state laws governing telecommunications effectively eliminate barriers to entry into local exchange markets. The statutes empower the SCPSC to certify competitive carriers provided they meet minimum conditions of all exchange service providers and file informational tariffs.<sup>32</sup> All certified local exchange carriers must interconnect, arrange for phone number portability and unbundle their networks.<sup>33</sup> At this time the SCPSC has certified at least 16 competitive local exchange carriers.<sup>34</sup> Consistent with the 1996 Telecom Act, the SCPSC has taken a pro-competitive approach to local exchange markets, for instance by streamlining certification and tariffing procedures.<sup>35</sup>

52. There has been scant evidence that municipalities in South Carolina have pursued policies that hinder competition on the local level. To my knowledge, no claims have been filed regarding local taxation of CLECs, restrictions on access to or excessive charges for local public rights of way, or imposition of municipal minimum build-out requirements. I have examined BST's standard franchise contract used to acquire access to necessary local public rights of way. This contract is nonexclusive and provides for only reasonable restrictions on use of this property and charges for its use.

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<sup>32</sup> SC Code, § 58-9-280 (B).

<sup>33</sup> SC Code, § 58-9-280 (C).

<sup>34</sup> Up to this time, the SCPSC has authorized 12 parties to BST Agreements to provide local services: ACSI, AT&T, DeltaCom, Hart Communications, ICI, KMC Telecom, LCI, MCImetro, OmniCall, Preferred Carrier Services, Tel-Link and TTE. Four other carriers who have not signed agreements with BST were also certified. See Gary Wright Affidavit, Exhibit 1, Attachment WPE-A.

<sup>35</sup> SC Code, § 58-9-280 (G). It is important to note that SCPSC orders have the full force and effect of law. SC Code § 58-9-390.

53. South Carolina's statutes and its Commission's policy are designed to counteract possible exclusionary behavior on the part of BellSouth. First of all, BST has opted for incentive regulation under the Commission's policy. Basic and interconnection rates were frozen for five years and three years, respectively, after which they are allowed to rise by the inflation rate less a 2.1% productivity offset.<sup>36</sup> Specific measures are included which safeguard consumers of noncompetitive local services, "including other telecommunications companies,"<sup>37</sup> and which prohibit cross subsidization of competitive services.<sup>38</sup> The Commission has also adopted the FCC accounting rules which are specifically designed to prevent cross subsidization.<sup>39</sup> Finally, policies creating these safeguards have been adopted throughout BST's nine states,<sup>40</sup> making it more likely that the company will adopt a uniform pro-competitive response throughout the region.

### **III. BST's STATEMENT AND AGREEMENTS, IN COMBINATION WITH MARKET TRENDS AND REGULATORY SAFEGUARDS, PREVENT BST FROM REVERSING COMPETITIVE OPPORTUNITIES**

54. As stated above, the mere fact that a competitor has accepted BST's invitation to enter its local exchange markets is not alone sufficient to ensure those markets will remain open to competition in the future. In this section I will demonstrate that the provisions contained in the Statement and Agreements prevent BST from closing its South Carolina local exchange markets.

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<sup>36</sup> SCPSC Order No.96-19, "Order Granting Alternative Regulation and Approving Plan as Modified," Jan. 30, 1996.

<sup>37</sup> SC Code § 58-9-575 (B)(4).

<sup>38</sup> SC Code § 58-9-575 (B)(5).

<sup>39</sup> SCPSC Order 87-1396, "Adoption of Revised Uniform System of Accounts for Telephone Companies," Dec. 22, 1987.

<sup>40</sup> See, generally, NARUC Report on the STATUS OF COMPETITION IN INTRASTATE TELECOMMUNICATIONS, September 1, 1994 and 1995/96: LOCAL TELECOM COMPETITION REPORT, Connecticut Research Reports.

55. A perennial fear of telecommunications regulators is the possibility that a local exchange carrier could use its ownership of exchange facilities to exclude competitors. This fear is addressed repeatedly throughout the new Telecom Act, and not just with regard to RBOC entry into interLATA services. It is important to remember, moreover, that a dominant market share does not imply abuse of market power. What matters is any residual monopoly power, given competitive forces in the market and after enforcement of the Statement and the Agreements and statutory and regulatory safeguards.

56. There are several potential anticompetitive practices which an integrated ILEC such as BellSouth might theoretically undertake. For any anticompetitive practice to be successful, (1) the ILEC must necessarily possess nontrivial market power in the relevant exchange markets, and (2) existing regulatory or legal safeguards must be ineffective in containing this market power. In each case, the Statement and Agreements work to neutralize BST's ability and incentive to carry out such practices. Table 2 collects together specific terms found in the Statement that eliminate the possibility of any of these practices along with the relevant provisions in the Act.

57. *Nonprice Foreclosure.* An extreme expression of a network's market power is the simple refusal to deal with competitors. By "foreclosing" a rival, the incumbent trades off the sales of intermediate services against lost revenue as final consumers migrate to the rival. The Act, however, mandates that BST and other ILECs interconnect their networks with rivals and provide some form of collocation. They must also provide nondiscriminatory access to exchange infrastructure such as conduits, poles, and rights of way. The FCC has, in addition, begun to take steps to ensure public infrastructure is open to all carriers.<sup>41</sup>

58. More fundamentally, the presence of actual and potential competitors who could supply substitute services on short notice contradicts claims of market power. High-capacity local access and transport services are available from alternative suppliers in major cities in BST's region

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<sup>41</sup> FCC Local and State Advisory Committee, "Policy Statement on State and Local Rights of Way and Telecommunications Services Competition," June 27, 1997.

including South Carolina as explained in the Gary Wright affidavit. Switching services can be self supplied using a PBX, or alternatively, by turning to an IXC or a Commercial Radio Mobile Service (“CRMS”) who has substantial local switching capacity. Vertical services such as voice mail, operator services and yellow pages directories are all competitively supplied. In comparison, competitive supply of residential access and switching services is in an embryonic stage. Each day, however, brings additional competitive exchange services to residential customers with the deployment of cable telephony and wireless access alternatives.

59. The new Telecom Act does not tolerate refusals to interconnect, and is vigilant against more subtle strategies such as inferior interconnection or discriminatory pricing of network elements. Not only do BST’s interconnection agreements conform to these provisions, they go to great lengths to coordinate the engineering decisions between BST and the CLECs.

60. *Unequal Access.* A less drastic tactic to discourage competition is the provision of inferior network services to less-than-full-service entrants. Such services may have fewer features, be less reliable, or be provisioned with a longer delay. The Statement and Agreements take several steps to ensure equal access by CLECs. *First*, the Agreements repeatedly demand that CLECs receive service of equal quality<sup>42</sup> and with equal ordering and provisioning<sup>43</sup> when compared to BST’s affiliate. *Second*, by adopting industry standards for technical interfaces, uniformity is assured or at least departures from the standards are easily detected. *Third*, the agreements establish arrangements to monitor quality of the interconnection and network elements that are supplied. *Fourth*, BST also agrees to notify CLECs well in advance of any change in the interconnection configuration or the equipment it uses.

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<sup>42</sup> See Statement, Sections I.I, II.F, IV.D, V.C, VI.C and X.D for interconnection, network elements, local loops, local transport, local switching, and signaling/signaling databases, respectively.

<sup>43</sup> See Statement, Sections I.J, II.I, IV.E, V.D, VI.D, VII.B.5, VII.C.7 and X.C for interconnection, network elements, local loops, local transport, local switching, directory assistance, operator call completion and signaling/signaling databases, respectively.

61. **Price Squeeze.** An incumbent might, in theory, discourage or forestall competitors by raising the price of some essential input (*e.g.*, local loops or local switching) sold to its downstream competitors. In that case a CLEC will operate at a cost disadvantage relative to the ILEC's downstream affiliate. First of all, this strategy is ineffective when the CLECs have alternative sources should they suspect they are the victim of a "squeeze." This is currently true for high-capacity access purchased by large business customers and will increasingly be the case for lower-volume customers.

62. When no close substitute exists for ILEC's services, detailed regulations are nevertheless in place to prevent the incumbent from disadvantaging rivals. Most significantly, the new Act imposes various forms of "imputation" on an ILEC's rates, in which case an ILEC charges its competitors no more than it charges itself implicitly. Under the Act, imputation is applied to transport and termination services and to wholesale purchases for resale.

63. BST's Statement and Agreements conform to the Act's application of imputation rules. In particular, provisions for resale adhere to the avoided cost rule, and parties agree to accept any interpretation of avoided costs decided by regulators or the courts. Furthermore, pricing of interconnection is required to be nondiscriminatory between internal operations and competitive carriers. Finally, attempts at a price squeeze are easily detected especially given CLECs' rights to undertake an audit of BST's operation under the Statement and the Agreements.

64. **Tying and Bundling.** Another way an ILEC could theoretically disadvantage its rivals is by conditioning the availability of a service over which it has market power (*e.g.*, residential exchange access) on the purchase of a competitive service (*e.g.*, voice mail).

65. The BST Statement and Agreements take pains to ensure that network services are unbundled in conformance with the Act, in most cases incorporating the exact wording of the law. In addition, as mentioned above, the Statement and Agreements unbundle network services

beyond what is required by the Act. A CLEC can always request additional elements through the Bona Fide Request Process.

66. ***Cost Shifting.*** When firms participate in both regulated and unregulated markets, there may be an opportunity to report costs that are caused by unregulated activities as if they were incurred in supply of regulated services. Under cost-based regulation, the dominant carrier is able to subsidize activities in unregulated markets using revenues from protected local exchange services.

67. To be effective, this practice requires, among other conditions, that the higher reported costs result in higher prices for the regulated services. In certain exchange markets such as high-capacity business access, attempts to raise rates will be met with losses in market share to competing carriers. The Act limits the ability to cross subsidize by banning rate of return regulation of charges for network elements and for transport and termination. Additionally, the Act prescribes accounting procedures to prevent misallocation of costs, and separates local and long distance divisions to minimize the possibility of cost shifting. Perhaps more important of all, BST has adopted price cap regulation of basic local services and interconnection services in South Carolina as well as for interstate services at the federal level. This scheme effectively eliminates the company's ability and desire to engage in cost shifting.

68. BST's Statement and Agreements often set rates based on its intrastate or interstate tariffs. To the extent that SCPSC and FCC proceedings have purged unattributable costs from these rates, and incentive regulation reduces the desire to cost shift, BST's competitors will not subsidize its competitive ventures. In addition, the Agreements give CLECs the right to conduct an audit of BST accounts which could expose cost shifting. Several agreements also adopt a "transparent accounting system."

69. ***Misappropriation of Proprietary Information.*** The close working relationship between incumbent and entrant local exchange carriers creates the potential for misuse of critical business

information, especially information about current or prospective customers. The BST Statement and Agreements specifically address the proper use of confidential information by the parties including directory information and service change requests. They also ensure that BST does not withhold critical engineering and customer information from its competitors. Recently, the FCC has opened a docket examining appropriate policy towards customer network proprietary information.<sup>44</sup>

70. More generally, the Statement and Agreements impose little in the way of restrictions on how CLECs conduct their business. Resale of retail services are unencumbered by limitations, aside from the terms of the offering specified in BST's tariff. No requirement of exclusivity is made or obstruction in CLECs dealings with other carriers or equipment suppliers. They explicitly permit CLECs to purchase network elements from third parties in addition to BellSouth, and so no implication of an exclusive relationship is warranted. Generally, a CLEC has access to the full array of entry options even while it plans to use only one, at least initially. This freedom gives it the option of adjusting its strategic approach without the need to renegotiate another agreement.

#### **IV. THE PATTERN OF LOCAL EXCHANGE ENTRY THROUGHOUT BST'S SERVING AREA IS CONSISTENT WITH SOUTH CAROLINA'S LOCAL EXCHANGE MARKETS BEING OPEN TO COMPETITION**

##### **A. Entry Has Been Early, Extensive and Persistent in BST's Serving Area**

71. Many different companies are providing local exchange services of some kind in BST's serving area or are in the process of building their network or starting a business. The rich variety that characterizes this collection of competitors attests to the wide range of entry opportunities they face in BST's local exchange markets.

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<sup>44</sup> Notice of Proposed Rulemaking, "Carrier Use of Customer Proprietary Network Information," FCC Docket 96-115, released Feb. 20, 1997.

72. Entrants into the BST region take on all characteristics. Several are startup companies responding to the opportunities created by the Telecom Act and by new technologies (*e.g.*, Hart Communications). Many others are established firms in neighboring communications industries who have chosen to diversify into local exchange services. These include in-region and out-of-region LECs (*e.g.*, ALLTEL<sup>45</sup> and US West's MediaOne, respectively), long distance retailers and wholesalers (*e.g.*, MCI and Intermedia Communications, respectively), competitive access providers (*e.g.*, Brooks Fiber and American Communications Services, Inc.), cable operators (*e.g.*, Time Warner and Hyperion), cellular/wireless operators (*e.g.*, Bell Atlantic/NYNEX Mobile, GTE Mobilnet), pay phone operators (*e.g.*, Payphone Consultants) and paging companies (*e.g.*, American MetroComm). Some plan to offer services as pure resellers (*e.g.*, Georgia Comm South), others are entirely facility-based (*e.g.*, Time Warner Communications in North Carolina), and some intend to employ a mixture of facilities, UNEs and resale (*e.g.*, AT&T). The CLECs vary in terms of the territory they serve or intend to serve. Some have targeted specific metropolitan areas (*e.g.*, US West's MediaOne in Atlanta, GA) or the southeastern region (*e.g.*, Intermedia Communications, Inc. ("ICI"))

73. In addition to purchasing unbundled network elements and reselling BST retail services, the CLECs are deploying a wide variety of telecommunications technologies. They include the standard landline networks made up of copper and optical fiber cable as well as new technologies putting two-way voice over existing coaxial cable networks (*e.g.*, Time Warner AxS). Traditional wireless technologies such as cellular are also being deployed (*e.g.*, 360 Comm) as well as new digital personal communications networks (*e.g.*, Sprint PCS) and "wireless fiber" (*e.g.*, WinStar Communications).

74. Facility-based Competitive Access Providers long ago entered the BST region to provide access services to business customers. Table 3 documents entry of wireline CAPs by each of the nine BST states, excluding wireless competitive access providers. Among the access services

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<sup>45</sup> ALLTEL to Offer Fiber to Charlotte, FIBER OPTIC NEWS, 17:37, Sept. 22, 1997.

CAPs provide are high-capacity dedicated and switched access, private line, ISDN, PBX trunks and internet access. In terms of exchange services, business customers have available Centrex, ISDN and direct inward dialing.

75. To my knowledge, the first competitive facility-based entry into BST territory occurred in 1988 when Intermedia Communications, Inc. (ICI) built its first fiber ring in Orlando, FL. Since then, at a minimum, 22 CAPs have built a total of 68 urban networks in 33 cities in BST's territory. (See Table 3.) Much of this entry occurred before passage of the Telecom Act and so was motivated by market and regulatory conditions that prevailed at the time. Over time the pace of CAP entry has accelerated in the southeast region. The recent surge is due in part to the opportunities created by the Telecom Act but also to efforts by CAPs to serve small and medium business customers and to venture into smaller cities.

76. This facility-based entry has been persistent over time. There has been no reported case of exit in BST territory that resulted in scrapping the network. Several networks have been built and then sold to subsequent entrants who went on to expand their coverage and capabilities. This exit rate is exceptionally low for facility-based entrants when compared, for instance, against the high exit rate among cable television entrants. "Overbuilds" in the cable industry are rare but when they occur in an overwhelming majority of the cases they result in bankruptcy or merger with the incumbent franchise.<sup>46</sup>

#### B. Competition in South Carolina's Local Exchange Markets Has Been More Limited

77. Entry into South Carolina local markets has been neither early nor extensive when compared to some of the other states in BST's territory or other regions of the country. In

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<sup>46</sup> In 1989, a mere 55 communities out of the roughly 11,000 franchise territories in the U.S. were identified in the TELEVISION AND CABLE FACTBOOK (Vol. 58, Washington, DC: Warren Publishing, 1990) as having overlapping and competing cable firms. See Paul Kagan & Associates, CABLE TELEVISION FRANCHISING, Roundup Edition, Oct. 31, 1989.

particular, it appears that facility-based entry has occurred in South Carolina—but only in “larger” cities and only for business services, especially exchange access. The first instance of facility-based entry in South Carolina known to me occurred in 1994 when Piedmont Teleport was constructing a fiber ring in Greenville. In October of that same year, Piedmont was purchased by American Communication Services, Inc. (ACSI). ACSI began operating in Greenville in May of 1995. Notice the late date of first entry in South Carolina compared with other BST states (especially Florida, Georgia and Kentucky) in Table 3. Subsequently ACSI entered the remaining three of South Carolina’s largest cities: Columbia (September 1995), Charleston (July 1996) and Spartanburg (June 1996). In each of these four cities served by BST, the company deployed an urban fiber ring to deliver high-capacity access and data transmission services to business customers.

78. It is instructive that the experience with facility-based entry has been quite different in cities which lie on South Carolina’s northern and southern borders. Each of three “border towns”—Augusta and Savannah, GA and Charlotte, NC—has experienced entry by multiple facility-based providers. Augusta, Georgia has two operating fiber networks providing various local and interexchange services—Jones Lightwave and Interstate Fibernet—along with AT&T which has begun to resell residential service.<sup>47</sup> Savannah, Georgia also has two fiber networks: ACSI and Jones Lightwave. Charlotte, North Carolina’s first CAP, Privacom Ventures, began operating in June of 1991 and was acquired by IntelCom Group two years later, followed by Time Warner AxS in 1994 and US LEC in 1996. There are currently two switches installed in Charlotte.

79. Each of the three border towns is larger than any of South Carolina’s largest four cities, and in the case of Charlotte, larger than all four combined.<sup>48</sup> Clearly, metropolitan size and population density is crucial to attracting facility-based entry, and not the overall regional

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<sup>47</sup> COMMUNICATIONS DAILY, June 25, 1997.

<sup>48</sup> The 1990 Census population figures are 234,358 for Augusta, GA, 137,560 for Savannah, GA and 395,934 for Charlotte, NC.

economy since these cities are within 10 miles of the state line. Furthermore, since BST serves all three cities and provisions of its Agreements with these particular CLECs are the same as for South Carolina, differences in competitive experience cannot be attributed to unequal treatment by the incumbent local company.

80. Non-facility-based entry has occurred throughout BST's region, but to a limited extent in its South Carolina local exchange markets. As the SCPSC documents in its approval of BST's Statement, there has been sale of local loops, unbundled network elements, termination of CLEC traffic and extensive resale of BST's retail services throughout its region.<sup>49</sup>

C. Economic and Demographic Conditions in South Carolina Do Not Support Early, Extensive Entry into its Local Exchange Markets

81. The incidence of local exchange entry depends on many factors. As discussed above, they can be grouped in categories: market conditions, legal and regulatory rules, and behavior of the incumbent provider. My earlier discussion establishes that the latter two are not determinative of current and future competition in South Carolina: BST has taken steps open its local markets to competition and statutory and regulatory barriers to entry have been removed. Instead, we find past and current conditions of demand and supply in South Carolina local exchange markets simply are not conducive to facility-based entry.

82. On the demand side, entrants must anticipate healthy profit margins on the customers and the lines they attract away from the incumbent. Rapid growth in the number of lines and line usage makes entry even more attractive since, upon entering, traffic will be shared among more

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<sup>49</sup> As of June 1, 1997, BST provisioned 2,654 unbundled loops and 716 dedicated trunks in its territory but none of either had been requested in South Carolina; as of May 31, 1997, BST had provided 56 physical and 133 virtual collocation arrangements, whereas no physical collocation had been ordered in South Carolina though five virtual collocation arrangements have been provided; as of May 15, 1997, CLECs had purchased 88,000 resold services throughout BST territory with 596 in South Carolina; as of June 23, 1997, BST activated 496 NPA/NXX codes for CLEC in its territory and 25 in South Carolina. See SCPSC Order No. 97-640, op. cit.

carriers. South Carolina demographics do not indicate either the level or growth of telecommunications demand in either the business or residential segment is attractive. Importantly, current demographic conditions in South Carolina are not likely to support multiple, facility-based carriers in many areas.

83. South Carolina's population is small and dispersed. The 1994 state population was 3,664,000 and had grown by 5.1% since 1990, slightly above country's growth rate for this period of 4.7%.<sup>50</sup> The 1990 Census classified a mere 54.6% of population as "urban" compared with 75.2% nationwide. No city in South Carolina had a population of 100,000—and so the state was not represented among the largest 200 cities in the U.S. South Carolina's four largest cities are tiny relative to most any other state: Columbia (pop. 98,052), Charleston (pop. 80,414), Greenville (pop. 58,282) and Spartanburg (pop. 43,467).

84. Residential telephone business in South Carolina does not represent a particularly lucrative opportunity. First, the telephone penetration rate in the state has been low historically: in 1996 it was 91.3% compared with the national average of 93.9%.<sup>51</sup> Usage tends to be higher than average: South Carolina had 15,367 local dial-equipment minutes per switched access line in 1996 compared with 14,470 for all U.S. local carriers.<sup>52</sup> The greater line usage could be detrimental for competitive exchange carriers because it will raise costs but, under standard flat rate pricing, will result in no additional revenue. In another dimension, South Carolina lagged significantly in broad measures of economic activity. In 1994, the state had a per capita state gross product of \$20,959, far below the U.S. average of \$25,004 and placing it 41st out of the 50 states and

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<sup>50</sup> Population figures taken from the STATISTICAL ABSTRACT OF THE U.S., 1995, Washington, DC: Government Printing Office.

<sup>51</sup> "Trends in Telephone Service," *op. cit.*, Table 2. Back in 1984, with a penetration rate of 83.7%, South Carolina was lower than all states except New Mexico and Mississippi.

<sup>52</sup> Data for 1995 from MONITORING REPORT, FCC, July 1997.

District of Columbia. Between 1990 and 1994, South Carolina's gross state product grew by 10%, slightly above the national average of 9% over this period and giving it a rank of 29.<sup>53</sup>

85. The customers who have been the primary engines of competitive entry into urban markets elsewhere in the country are missing in South Carolina. Of 1,508,537 switched access lines in South Carolina, 28% are purchased by business customers compared to an average of 32% nationally.<sup>54</sup>

86. More importantly, the composition of South Carolina business lacks characteristics that have supported facility-based entry in cities across the country. Elsewhere, it has been large business users with huge data demands that justify facility-based entry. These businesses come disproportionately from the Financial, Insurance and Real Estate ("F.I.R.E.") sector which includes depository and nondepository institutions, security brokers, insurance carriers and agents and real estate. Two other sectors which historically have been telecommunications-intensive are Services and Business Services. Figure 1 displays per-capita gross state products of these sectors for South Carolina and selected other states.<sup>55</sup> I chose California, Illinois and New York for comparison because these states have led the nation in terms of facility-based local exchange competition. I also chose Florida because it stands out in BST territory in terms of early and extensive facility-based entry. While these other highly competitive states rank in the top third in these sectors, South Carolina falls in the bottom quintile. Furthermore, South Carolina experienced a 4.35% growth rate in the crucial F.I.R.E. sector between 1990 and 1994, well below the 7.57% national average and placing it 43rd out of 51.<sup>56</sup>

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<sup>53</sup> U.S. Department of Commerce, Bureau of Economic Analysis, GROSS STATE PRODUCT BY INDUSTRY, 1977-1994, June 1997.

<sup>54</sup> FCC's MONITORING REPORT, *op. cit.* and STATISTICS OF COMMUNICATIONS COMMON CARRIERS, *Preliminary 1996 Edition*, Table 2.5.

<sup>55</sup> Nearly identical orderings were obtained when gross state products were expressed on a per access line basis.

<sup>56</sup> Bureau of Economic Analysis, *op. cit.*

87. On the cost side, some of the same demographic factors that resulted in low revenues tend to also raise costs of entering South Carolina local exchange markets. As is well known, low population density leads to long loop lengths raising the cost of facility-based entry, and is a significant explanatory variable in most models of local exchange costs. One indicator of loop length that can be computed from available data is sheath feet of copper cable per switched access line: the average for the state of South Carolina is 180.1 compared with 123.6 nationwide.<sup>57</sup> This represents a 37.5% increase above the national average in the length of lines. It is possible, of course, that the number of copper wires per sheath in South Carolina is much smaller than the national average, explaining this discrepancy. Computing the length of copper wire per switched access line leads to a similar conclusion: there were 19.752 kilometers of copper wire per switched access line in South Carolina as compare to 16.329 for the entire country, a 21% difference.

88. In sum, South Carolina offers facility-based entrants relatively thin profit margins given the meager revenues and relatively high costs per line even for business services. Entry becomes a nonstarter because it is profitable large business services that underwrite the initial entry that later justifies entry into other local exchange services. Repeatedly throughout the U.S., facility-based carriers have successfully penetrated high-end business services before expanding into adjacent markets such as switched services for smaller businesses and exchange service for residential customers. Through this strategy they take advantage of the scope economies between fiber networks and local exchange services as well as the significant learning that occurs while entering these markets. In addition, the presence of CAPs has facilitated entry by other carriers—especially long distance carriers and PCS providers—who require transmission capacity or “dark fiber” to complete their service offering.

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<sup>57</sup> Both sheath kilometers and total switched access lines were taken from Tables 2.2 and 2.5, respectively, in the FCC’s STATISTICS OF COMMUNICATIONS COMMON CARRIERS, Preliminary 1997 edition.

## V. CONCLUSION

89. The Telecom Act takes a “shotgun approach” to achieving its goal of creating competition in the country’s local exchange markets. It creates multiple entry routes for entrants, expands the size and diversity of the entrant pool, and opens all service and geographic markets to potential competitors. The purpose is to maximize the likelihood that efficient entry will take place, whether facility based or otherwise, and that the corresponding benefits of competition will be realized. Nevertheless, aware that certain local exchange markets may not be efficiently served by facility-based exchange carriers, Congress offered Track B as an alternative means for the RBOCs to gain authority to enter in-region interLATA services. In fact, market and demographic conditions in South Carolina local exchanges are not conducive to early, extensive entry by facility-based carriers. Competition in both local and long distance markets may be postponed if long distance carriers can stymie BellSouth’s entry into interLATA services by forbearing from entering the local exchange.

90. The fact that facility-based carriers have not entered BST’s local markets in South Carolina to offer residential services as well as business services is a product of the state’s market and demographic conditions. The Statement gives efficient entrants every opportunity to enter these local exchange markets and to achieve viability and sustained growth. Along with BST’s interconnection and resale Agreements, the state’s market conditions and state and local laws and regulations, the Statement prevents BST from withdrawing these competitive opportunities now or in the future.

<b>Table 1: Policies for Opening Local Exchange Markets under the Telecom Act and BST's Statement in South Carolina</b>			
<b>POLICY</b>	<b>PROVISIONS OF THE ACT &amp; FCC's IMPLEMENTATION</b>	<b>PRO-ENTRY EFFECTS</b>	<b>TERMS OF BST's SOUTH CAROLINA STATEMENT</b>
<b>Create Multiple Entry Routes</b>	<ul style="list-style-type: none"> <li>- Interconnection at technically feasible points [§251(c)(2)]</li> <li>- Physical and virtual collocation [§251(c)(6)]</li> <li>- Sale of UNEs at technically feasible points [§251(c)(3)]</li> <li>- Resale of retail services [§251(c)(4)]</li> <li>- Combine UNEs [§251(c)(3), 47 CFR §51.315]</li> </ul>	<ul style="list-style-type: none"> <li>- Allows facility-based entry in dense markets, resale elsewhere</li> <li>- Permits entrants to follow evolutionary growth path.</li> <li>- Accommodates entrants having different initial strategic assets.</li> </ul>	<ul style="list-style-type: none"> <li>- Interconnect at technically feasible points [I.A.1]</li> <li>- Additional interconnection points provided if technically feasible [I.A.2]</li> <li>- additional elements via bona fide request [II.A]</li> <li>- Offer local loop transmission, local transport, local switching, signaling, operating support systems, dark fiber [II.B]</li> <li>- Unbundle local loops [IV.A] and subloops [IV.B]</li> <li>- Three transport elements plus requests for additional elements [V]</li> <li>- Three local switching options, plus requests for additional options and "selective routing" [VI.A]</li> </ul>
<b>Increase Size and Diversity of Entrant Pool</b>	<ul style="list-style-type: none"> <li>- Removal of cable-telco cross-ownership ban [§§651-653]</li> <li>- Relax restrictions on electric utility provision of phone service [§103]</li> </ul>	<ul style="list-style-type: none"> <li>- Raises likelihood of inviting efficient entrants.</li> <li>- Increases entry threats through joint ventures and alliances.</li> <li>- Broader range of entrants' capabilities increases chance of success.</li> </ul>	<ul style="list-style-type: none"> <li>- Available to any CLEC certified by SCSPSC to offer local exchange service in South Carolina [Sec. 0.A]</li> <li>- Negotiated agreements may be utilized by other parties [Preamble]</li> </ul>

**Table 1: Policies for Opening Local Exchange Markets under the Telecom Act and BST's Statement in South Carolina**

<p><b>Open All Services and Areas</b></p>	<ul style="list-style-type: none"> <li>- No unreasonable limitations on resale [§251(c)(4)(B)]</li> <li>- Branded or unbranded resold services [47 CFR §51.613(c)] and for 911, call completion and directory assistance [47 CFR §51.217(d)]</li> <li>- No restrictions that would impair CLEC ability to serve [47 CFR §51.309(a)]</li> <li>- All switching capabilities [§251(c)(24)(B)(iv)]</li> <li>- All tandem switching capabilities [47 CFR §51.319(c)(2)]</li> </ul>	<ul style="list-style-type: none"> <li>- Assists entrants in differentiating their services and evolving their product line over time.</li> <li>- Reduces entry risk by permitting geographic specialization and product diversification.</li> <li>- Counteracts attempts at ILEC cross-subsidization.</li> </ul>	<ul style="list-style-type: none"> <li>- Additional elements and subelements via bona fide request process [II.A]</li> <li>- BST's UNEs may be combined in any manner [II.G]</li> <li>- Nondiscriminatory access to 911/E911 services [VII.A.2]</li> <li>- CLEC subscribers listed at no charge [VII.B.1]</li> <li>- Unbranded directory assistance [VII.B.2]</li> <li>- selective routing to CLEC directory assistance [VII.B.3]</li> <li>- Operator services to CLEC equal to BST's [VII.C]</li> <li>- Listing of CLEC business and residential customers in BST white pages at no charge [VIII.A]</li> <li>- Directory assistance listing at no charge [VIII.E]</li> <li>- Delivery of directories at no charge [VIII.H]</li> <li>- Offers unbundled signaling links and STPs [X.A.1]</li> <li>- Offers SCP databases on unbundled basis plus selective routing [X.A.3]</li> </ul>
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<b>Table 2: Safeguards Against Exclusionary Conduct Found in the Telecom Act and BST's Statement</b>		
<b>EXCLUSIONARY PRACTICE(S)</b>	<b>PROVISIONS IN THE ACT</b>	<b>TERMS OF BST's STATEMENT</b>
<b>Nonprice Foreclosure</b>	<ul style="list-style-type: none"> <li>- Mandatory direct or indirect interconnection [251(a)(1)] for access or exchange services [251(c)(2)(A)] at technically feasible points [251(c)(2)(C)]</li> <li>- Provide physical collocation, or virtual if no space [251(c)(6)]</li> <li>- Provide access to poles, ducts, conduits, ROWs under rates, terms, conditions [251(b)(4)]</li> <li>- Offer retail services for resale [251(c)(4)(A)]</li> </ul>	<ul style="list-style-type: none"> <li>- Interconnect at 5 different network points [I.A.1] and additional interconnection points provided if technically feasible [I.A.2]</li> <li>- Interconnect two CLECs at common tandem [I.A.5]</li> <li>- Physical or virtual collocation or purchase of facilities [I.C]</li> <li>- Nondiscriminatory access to any pole, duct, conduit or right of way owned or controlled by BST [Att. D]</li> </ul>
<b>Unequal Access</b>	<ul style="list-style-type: none"> <li>- Equal quality of interconnection to a rival and affiliate [§251(c)(2)(C)]</li> <li>- Collocation arrangements must be nondiscriminatory [§251(c)(6)]</li> <li>- Industry technical standards for interconnection specifications [§251(a)(2)]</li> <li>- Give notice of change of interconnection conditions [251(c)(5)]</li> <li>- Nondiscriminating access to operator services and directory assistance [251(b)(3)]; 911/E911, directory assistance, operator call completion services [271(c)(2)(B)(vii)]; directory listings [251(b)(3)]; white pages [271(c)(2)(B)(viii)]; phone numbers [251(b)(3)]; databases and associated signaling information [271(c)(2)(B)(x)]</li> <li>- Duty to provide dialing parity for both exchange and toll [251(b)(3)] and nondiscriminatory access to services/info needed to provide dialing parity [271(c)(2)(B)(xii)]</li> <li>- Biennial federal/state audit [252(d)(1)]</li> </ul>	<ul style="list-style-type: none"> <li>- Adhere to industry technical standards [I.H]</li> <li>- Advanced notice of change of service</li> <li>- Quality at least equal to BST's for interconnection [I.I], network elements [II.E], local loops [IV.D], transport [V.C], switching [VI.D], signaling databases [X.C]</li> <li>- Parity in treatment of reseller's and BST customers [XIV.F]</li> <li>- BST provides engineering information [III.B]</li> <li>- Number portability with minimum impairment of service to CLEC customer [XI.C]</li> <li>- BST accepts industry/national standards for transmission and traffic blocking [XV.B]</li> <li>- Parity in treatment of CLEC and BST customers [XIV.F]</li> </ul>

<b>Table 2: Safeguards Against Exclusionary Conduct Found in the Telecom Act and BST's Statement</b>		
<b>EXCLUSIONARY PRACTICE(S)</b>	<b>PROVISIONS IN THE ACT</b>	<b>TERMS OF BST's STATEMENT</b>
<b>Price Squeeze</b>	<ul style="list-style-type: none"> <li>- Nondiscriminatory charges for interconnection [§252(d)(1)(A)(ii)]</li> <li>- Imputation by RBOCs for pricing interLATA origination and information services sold to competitors and affiliates [§272(e)(3)]</li> <li>- Wholesale rates for resold services equal retail rates less avoided retailing [§252(d)(3)d]</li> <li>- Biennial federal/state audit [252(d)(1)]</li> </ul>	<ul style="list-style-type: none"> <li>- Uniform, nondiscriminatory rates for local loops [IV.C], local transport [V.B], local switching [VI.B]</li> </ul>
<b>Tying and Bundling</b>	<ul style="list-style-type: none"> <li>- Nondiscriminatory access to unbundled network elements at technically feasible points; able to combine for use [251(c)(3)]</li> <li>- Not prohibit and not impose unreasonable, discriminatory conditions on resale [251(b)(1)]</li> </ul>	<ul style="list-style-type: none"> <li>- All required UNEs [II.B]</li> <li>- Additional UNEs via bona fide request process [II.D]</li> </ul>
<b>Cost Shifting</b>	<ul style="list-style-type: none"> <li>- Adopts accounting methods to prevent subsidies [§254(k)]</li> <li>- Separate books, people and credit, plus arms' length transactions [§272(b)]</li> <li>- Prohibits rates for network elements based on an ILEC's rate of return [§252(d)(1)]</li> <li>- Prohibits use of a rate regulation proceeding to assess the level of mutual transport and termination charges [§252(d)(2)]</li> </ul>	
<b>Misappropriation of Proprietary Information</b>	<ul style="list-style-type: none"> <li>- Confidentiality of carrier proprietary information required [§222(b)]</li> <li>- Maintain privacy of customer proprietary network information [§222(c)]</li> </ul>	<ul style="list-style-type: none"> <li>- BST has limited contact with CLEC resale customers [XIV.L]</li> <li>- Proper treatment of confidential and proprietary information required [XX.A]</li> </ul>

<b>Table 3: Facility-Based, Wireline Entry by Competitive Access Providers in BST's Nine-State Region</b>					
<b>STATE</b>	<b>YEAR OF FIRST ENTRY</b>	<b>NUMBER OF NETWORKS</b>	<b>NETWORKS WITH SWITCHES</b>	<b>CITIES SERVED</b>	<b>NETWORKS UNDER CONSTRUCTION</b>
Alabama	1991	7	3	4	1
Florida	1988	23	13	8	2
Georgia	1990	5	4	2	2
Kentucky	1989	6	2	2	0
Louisiana	1997	2	0	2	3
Mississippi	1996	2	1	1	0
North Carolina	1991	11	7	6	2
South Carolina	1994	4	0	4	0
Tennessee	1993	8	5	4	3
<b>TOTALS</b>		68	35	33	13

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

In the Matter of )  
 )  
 Application of BellSouth ) Docket No. \_\_\_\_\_  
 Corporation to Provide )  
 In-Region, InterLATA Long )  
 Distance Services Under )  
 Section 271 of the )  
 Telecommunications Act of 1966 )

AFFIDAVIT OF Gary M. Wright

I, GARY M. WRIGHT, being of lawful age and duly sworn upon my oath, depose and state:

1. My name is Gary M. Wright. I am employed by BellSouth Telecommunications, Inc. (BST) as a Manager- Regulatory Competitive Analysis in the Federal Regulatory Department. My business address is 675 West Peachtree Street, Room 38L64, Atlanta, Georgia 30375.

2. I started employment with South Central Bell in 1982 in the Business Marketing Department. From 1983 to 1987, I worked in National Accounts Marketing for AT&T. During 1987 and 1988 I worked as an associate for Callahan & Associates, Inc., an independent telecommunications consulting firm primarily serving large banking, health care and governmental institutions. I joined BellSouth Advanced Systems, Inc. in 1988 as a National Account Manager serving the aerospace industry. In 1990 I returned to South Central Bell's staff in the Marketing Technical Support Department as competitive analyst in the Special Bids Support Group. My work at BellSouth has continued to focus on the field of competitive intelligence and analysis since 1990 in various marketing and regulatory positions. I have a Bachelor of Arts degree from Birmingham Southern College in Birmingham, Alabama where I double-majored in Political Science and Analytic Philosophy. I completed one year of post-graduate study at the University of Alabama in Birmingham in the field of Computer Science and Mathematics and have completed numerous corporate-sponsored management and technical education programs including work in technical marketing management at the Massachusetts Institute of Technology's Sloan School of Business and telecommunications technology at the University of Pittsburgh .

3. My current assignment, Manager-Regulatory Competitive Analysis, began in 1992. My primary responsibilities include monitoring and analyzing the activities of BellSouth's competitors including Competitive Access Providers (CAPs) and

Competitive Local Exchange Companies (CLECs) within the BellSouth region in support of BellSouth Telecommunications Inc.'s (BST's) regulatory and public policy activities. In carrying out this responsibility I have documented the progress of BST's facility-based competitors in deploying their networks in BST's region and developed maps which document the known fiber routes of facility-based competitors in selected markets throughout BST's region. I also have developed mapping studies which document the proximity of competitor's networks to current BST customers and have calculated an approximation of BST customer revenues which are at risk.

4. The purpose of my affidavit is first to document the current status of local exchange service and access competition within BST's South Carolina serving area. In support of this purpose I will document current CLEC activity within South Carolina to the extent that it can be readily identified as of September 1997. Secondly, information is presented to illustrate the degree to which BST business and residence accounts and their associated local exchange service revenues are within the typical reach of, and are therefore at the greatest risk of loss to, facility-based CLECs in selected South Carolina markets. BST customer locations located within 3000 feet of selected South Carolina CLEC fiber optic networks have been selected for this analysis. I also provide information concerning the future plans and market entry schedules for CLECs which have announced their intent to participate in the competitive local exchange service market in South Carolina. Information concerning current competitive activities and the future plans of competitive entrants is provided to support BST's position that as of June 1997 no potential facility-based CLEC was making any reasonable effort to serve both residential and business local exchange customers in South Carolina, and to substantiate the fact that as of September 19, 1997 no such provider could be identified by BST as actively providing local exchange services to both business and residential customers utilizing their own facility-based networks within BST's South Carolina serving area.

5. The Wright Confidential Exhibit (WCE), provided as part of this affidavit, includes information which describes the wire-line facility-based networks of current and potential CLECs in South Carolina. Additional information is also presented which indicates the relative concentration of BST revenue streams across its South Carolina serving area and the proximity of these revenues to BST-identified competitive facilities. This information was developed at considerable expense by BST, utilizing in-house and third-party research, and presents highly sensitive proprietary information affecting BST's South Carolina operations. The WCE also includes information which describes in detail the current activity of CLECs and potential CLECs in South Carolina with regards to interconnection, unbundling, and resale activities. For these reasons the WCE, and all

attachments provided therein, is being filed under seal with a request for confidential treatment.

6. As of September 19, 1997 BST had signed local exchange interconnection and resale agreements with 83 different South Carolina telecommunications service providers. The South Carolina Public Service Commission (SCPSC) had reviewed and approved agreements with 66 of these providers. Attachment WPE-A, included in the Wright Public Exhibit (WPE) of this affidavit, provides further details concerning South Carolina interconnection and resale contract activity including the original contract signing and approval dates of all negotiated and/or arbitrated agreements as of September 19, 1997. Attachment WPE-E provides a list of BST's current negotiations with 71 additional companies which may possibly result in South Carolina agreements in the future. As shown in Attachment WPE-A, 26 of the CLECs which have signed interconnection agreements with BST in South Carolina indicated in their interconnection negotiations that they may provide competitive local exchange services in whole or in part over their own facility-based networks. These 26 potential facility-based South Carolina CLECs are : ACSI, ALEC Inc., American MetroComm, AT&T, AXSYS Inc., Business Telecom, Communications Brokerage Services, Competitive Communications Inc. (CCI), Comm Depot, Cybernet Group, ITC DeltaCom, FiberSouth, GNET, Hart Communications, Intermedia (ICI), IntelCom Group, Interstate Telephone, KMC, MCI, National Telephone, Southeast Telephone, Teleport Communications Group (TCG), Time Warner Communications (TWC), Tricom, US LEC, and Winstar Communications. Each of these 26 companies included in their respective agreements with BST terms and conditions for local exchange interconnection and the unbundling of BST network elements. These interconnection and unbundling services are readily available from BST for use by these CLECs, in conjunction with their own facilities, to provide facility-based local exchange services to South Carolina customers. However, as of September 1, 1997 only one SCPSC-authorized CLEC had requested and installed BST-provided local exchange interconnection services in South Carolina.

7. As of September 19, 1997, a total of 28 companies had requested certification from the SCPSC seeking authority to provide competitive local exchange services within the state. Of the 28 seeking CLEC certification, 9 had signed agreements with BST which included terms and conditions for the provisioning by BST of services which could be used to serve South Carolina customers on a facility-based basis. These 9 potential facility-based local exchange service providers are: ACSI, AT&T, ITC DeltaCom, FiberSouth, Hart Communications, Intermedia Communications (ICI), Kamine Multimedia Corp. (KMC), MCI, and US LEC.

8. Seven of the potential facility-based providers seeking SCPSC local exchange service authority, ACSI, AT&T, ITC

DeltaCom, Hart Communications, Intermedia Communications (ICI), Kamine Multimedia Corp. (KMC), and MCI had been approved by the SCPSC and certified to provide local exchange services within the state as of September 19, 1997.

9. As of September 19, 1997 BST had been unable to identify any CLEC marketing activity for wire-line facility-based local exchange services to any class of customer in South Carolina. Two certified South Carolina CLECs, American Communications Services Inc. (ACSI) and ITC DeltaCom were providing access and private line services over their own networks throughout South Carolina and one potential facility-based CLEC, Time Warner Communications, operates a hybrid fiber/coax network in Columbia, which is currently utilized to provide CATV services. These three companies are the only potential facility-based CLECs identified by BST with currently operational networks in South Carolina.

10. ACSI at present provides non-switched dedicated services, including special access, data services, and private line services over its own fiber optic facilities in Columbia, Charleston, Greenville and Spartanburg. ACSI requested authority to provide local exchange services in South Carolina on May 31, 1996. This request was approved by the SCPSC on September 9, 1996. ACSI signed an interconnection agreement with BellSouth on July 25, 1996 which establishes negotiated terms and conditions for the interconnection of networks, the mutual exchange of local traffic, the unbundling of network elements, and resale of BST's network facilities and services in South Carolina. This negotiated contract was approved by the SCPSC on October 28, 1996. A re-negotiated resale agreement was signed by ACSI and BST on December 26, 1996 and approved by the SCPSC on February 7, 1997.

11. ACSI has traditionally targeted business customers of all sizes for its switched service offerings including local exchange services. ACSI's four networks in South Carolina serve the central business districts located in the downtown areas of the respective cities. ACSI has stated before the SCPSC that it does not plan to offer facility-based residential local exchange service in any market where it is currently active in the BellSouth region including South Carolina. ACSI filed a local exchange service tariff in South Carolina which were approved by the SCPSC in April 1997. ACSI's tariff includes terms and conditions for basic local exchange service, PBX services, and other enhanced telecommunications services and features in the Greenville, Spartanburg, Columbia, and Charleston markets. The ACSI basic local exchange offering is priced to compete with BST's tariffed basic business local exchange service in each of these South Carolina markets. ACSI has not tariffed residential local exchange services in South Carolina. The ACSI tariff offering makes no mention of any planned future residential service offering on either a resold or facility-based basis. A

copy of the ACSI South Carolina local exchange service tariff is included as Attachment WPE-B of this affidavit.

12. BST does not expect ACSI to offer residential local exchange services in South Carolina or any other market within BellSouth territory on either a resold or facility-based basis at any time in the foreseeable future. ACSI began offering business local exchange services in the BST region during the fourth quarter of 1996 in Columbus, GA on a resold and a facility-based basis and has offered resold business local exchange services in South Carolina as well as 11 other markets in 8 states across BST's region since April 1, 1997. ACSI has yet to offer residential local exchange service in any BST market where it currently operates as a CLEC on either a facility-based or resold basis.

13. Descriptions and analyses of ACSI's current South Carolina facility-based CAP operations are included in Attachment WCE-A in the Wright Confidential Exhibit (WCE) of this affidavit. As is clearly demonstrated in Attachment WCE-A, sufficient revenue opportunities exist to sustain facility-based local exchange competition for both business and residential customers in the South Carolina markets currently served by ACSI's CAP operations. However, as of September 19, 1997 ACSI had made no identifiable effort to provide facility-based local exchange services to any customer in South Carolina.

14. The only other currently certified potential facility-based CLEC in operation in South Carolina, ITC DeltaCom Inc., applied for SCPSC certification to provide local exchange services on October 2, 1996. The application was approved in January 1997 and a certificate was granted. ITC DeltaCom signed a negotiated interconnection, unbundling, and resale agreement with BST on March 12, 1997 which was approved by the SCPSC on April 3, 1997.

15. ITC DeltaCom is a subsidiary of Georgia-based ITC Holding Co. and is a regional long-distance company in the southeast that has traditionally focused on the business market. ITC DeltaCom's regional fiber-optic network extends throughout 8 of the 9 states in the BST region. ITC DeltaCom also offers Internet access through MindSpring Enterprises Inc., another subsidiary of ITC, and Viper, a leading Internet access provider in the Southeast, that ITC DeltaCom acquired in June 1996. The current ITC DeltaCom network currently comprises over 2100 miles of fiber-optic cable and spans the Carolinas, Georgia, Florida, Alabama, Mississippi, Louisiana, and parts of Texas. ITC DeltaCom has constructed a series of SONET-rings along its fiber routes in order to provide self-healing HICAP access and transport services. Eventually, the company plans to offer access services to all 44 LATAS in the BellSouth region. The regional fiber network delivers digital telecommunications long haul transport at DS3 bandwidths and above to other carriers and

large corporate customers. Its dedicated access offerings are delivered in a variety of options from DS1 to OC-3. The company has also installed 64-port Signal Transfer Point (STP) systems in mated pairs within the company's network, which allow customers to have access to Signaling System 7 (SS7) functionality. ITC DeltaCom offers interLATA and intraLATA long distance and private line services throughout its network and operator services through its subsidiary, InterQuest Inc. InterQuest markets a wide range of automated and live operator services to interexchange carriers (IXCs), independent Telcos, coin-operated and customer-owned (COCOT) providers, hotels/motels, and cellular companies.

16. ITC DeltaCom's parent, ITC Holdings, also owns interest in several other BellSouth competitors including InterCel, a wireless provider with licenses throughout the BellSouth region including Atlanta. InterCel provides wireless services utilizing PCS spectrum licenses under the name, PowerTel. ITC DeltaCom will provide access, transport, and operator services to PowerTel as it builds out its PCS network and expands current cellular coverage areas in Georgia and the Carolinas.

17. ITC DeltaCom has formed a strategic partnership to share use of network facilities with CARONET. CARONET was formed as a partnership of smaller regional networks in December 1995. The partnership became active during the first quarter, 1996 with the interconnection of the partners four smaller fiber optic networks and the launch of major expansion projects to reach new markets. CARONET's equity partners include: PalmettoNet, DukeNet, Carolinas FiberNet, and Access/On. PalmettoNet was formed by 11 independent telcos during 1985 in an effort to economically deliver fiber-based services within their serving areas. DukeNet is a telecommunications subsidiary of Duke Power which provides internal telecommunications services to corporate affiliates. CARONET is the telecommunications subsidiary of Carolina Power & Light. Access/On, like PalmettoNet, was formed by a consortium of independent telcos serving parts of northeastern and northwestern North Carolina. The partnership, CARONET, now provides fiber-based services utilizing a 3200 mile network which extends from Atlanta throughout the Carolinas. The network not only provides internal services to each of the partners but also provides HICAP access and transport services to IXCs, facility-based resellers, cellular providers, PCS providers, and other non-affiliated commercial customers.

18. A map of ITC DeltaCom's regional fiber optic network within the BST region including South Carolina is attached to this affidavit as Attachment WPE-C.

19. ITC DeltaCom publicly announced its intentions to offer local exchange service throughout its service area during

the second quarter of 1997 . ITC DeltaCom initiated both resold and facility-based business local exchange service offerings on a limited basis in selected Alabama markets during June 1997. ITC DeltaCom's current core long distance business focuses on the business market and BST anticipates that business customers will remain the primary target of any future local exchange service marketing efforts. Business customers have clearly remained the focus of its early local exchange market entry efforts in Birmingham and Montgomery, Alabama.

20. ITC DeltaCom has not publicly announced plans to market residential local exchange services at this time in South Carolina or any other BST market. A description of ITC DeltaCom's residential service offerings included on its September 19, 1997 Internet Website is provided as Attachment WPE-D to this affidavit. The current residential service offerings listed on the webpage make no mention of local exchange service offerings in any ITC DeltaCom market. The ITC DeltaCom business service offerings webpage, provided herein as Attachment WPE-D, does include descriptive information about local exchange service offerings for business customers. Additional information concerning ITC DeltaCom's South Carolina CLEC market entry activities is provided as Attachment WCE-B to this affidavit. Despite recent ITC DeltaCom activity, BST has been unable as of September 19, 1997 to identify any active marketing of local exchange services to either business or residential customers in South Carolina. No public announcement of the availability of ITC DeltaCom local exchange services in South Carolina has been found by BST in the South Carolina media. No public advertising of the availability of ITC DeltaCom local exchange services of any type has come to the attention of BST employees residing in South Carolina.

21. The sole publicly available information source, identified by BST, indicating ITC DeltaCom's intent to provide local exchange services in South Carolina is contained in the ITC DeltaCom local exchange service tariff filing which was approved by the SCPSC in August 1997. The ITC DeltaCom approved tariff which includes both business and residential local exchange service offerings is provided as Attachment WPE-E to this affidavit. As of September 19, 1997 BST competitive research efforts have been unable to determine if ITC DeltaCom will provide South Carolina business and residential local exchange services on a facility-based basis only, on a resold basis only, and/or a combination of both provisioning methods.

22. The only other potential South Carolina CLEC with currently operational network facilities, Time Warner Communications (TWC) signed an interconnection, unbundling, and resale agreement with BST on June 2, 1996. TWC only recently filed this agreement with the SCPSC for review and approval in August 1997. In mid-1996 TWC announced plans to offer competitive local exchange services utilizing its own network

facilities to both business and residential customers in its cable service areas. TWC launched a major national construction effort to upgrade its coaxial cable network facilities to support the delivery of telephony services. TWC's Columbia, South Carolina network facilities were substantially upgraded as part of this national TWC effort. During late 1996 and early 1997, the press began to release reports that TWC was scaling back plans for aggressive local exchange market entry. TWC was reportedly focusing its initial deployment plans and local exchange marketing efforts on serving business customers in selected TWC markets.

23. Descriptions and analyses of TWC's current South Carolina facility-based CAP operations, which are primarily concentrated in the Columbia market, are included in Attachment WCE-C in the Wright Confidential Exhibit (WCE) of this affidavit. Attachment WCE-C supports BST's position that sufficient revenue opportunities exist to sustain facility-based local exchange competition for both business and residential customers in TWC's Columbia serving area. However, as of September 19, 1997 TWC had made no effort to utilize the services available via its negotiated and signed interconnection agreement with BST to provide facility-based local exchange services to any customer in South Carolina. As of September 19, 1997 TWC had not requested CLEC certification from the SCPSC.

24. To the best of BST's knowledge as of September 19, 1997 no wire-line facility-based local exchange service competition had begun in South Carolina. No South Carolina CLEC had placed an order for the provisioning of unbundled loops, number portability services, or CLEC directory listing services. Thirteen CLECs had processed initial orders for resold services in the South Carolina market which were completed and in service as of September 11, 1997. A description of South Carolina resold lines in service by CLEC is provided as Attachment WCE-E to this affidavit. As of September 11, 1997, South Carolina CLECs were providing approximately 1785 resold business local exchange access lines and 573 resold residential local exchange access lines within the state.

25. When and if any of the companies discussed in this affidavit choose to in fact make a commitment to construct facilities or utilize the facilities currently available to them from BST to serve South Carolina customers, BST fully expects that their facility-based offering will be generally available only to a select group of South Carolina businesses. Moreover, it should be reiterated that only ACSI, Time Warner, and ITC DeltaCom have been identified by BST as having sufficient distribution facilities currently in place to support the general delivery of facility-based local exchange services. Clearly the major IXCs such as AT&T, MCI, and Sprint have current transport and switching facilities in place throughout South Carolina, as they do across a large part of the nation,

which could be utilized to facilitate the provisioning of facility-based local exchange services in whole or in part. However, the general lack of commitment demonstrated by these potential facility-based providers in serving the local exchange market has led BST to discount any possibility of their facility-based entry in South Carolina in the foreseeable future.

26. BST's highly concentrated South Carolina local exchange and access revenues will be at risk when major facility-based CLECs commit to the marketing and delivery of local exchange services. As graphically illustrated in Attachment WCE-D of this affidavit, BST's critical South Carolina business revenue streams are highly concentrated in extremely small geographic areas in South Carolina's metropolitan areas. Almost one-third of all BST's South Carolina business revenues are generated by business customers served by only 5 of the 115 BST wire centers currently operating in South Carolina. Current business customer concentrations have always been, and will remain, the primary focus of facility-based access competition in South Carolina. These heavy concentrations of large business and governmental customers have been the target for construction of new facilities and are the focus of competitor's product/service development and marketing efforts. BST fully expects these business and governmental customers to remain the primary focus of any future facility-based local exchange service competition within South Carolina.

27. Clearly, a more-than-sufficient economic opportunity exists for the successful entry and growth of multiple facility-based competitive local exchange service providers in South Carolina's major markets. The currently identified and mapped competitive facilities, as discussed in the Attachments provided in the Wright Confidential Exhibit (WCE), pass within a mere 3000 feet of highly significant percentages of BST's annual business and residential revenues in South Carolina. BST expects current facility-based competitors as well as new facility-based entrants to make their bid for these business revenue streams in the not too distant future. **However, it is now BST's firm belief, supported by the historical growth patterns over the past year of wire-line facility-based local competition in 8 of the 9 states it serves, that residential wire-line facility-based competition will never emerge on a widespread basis in South Carolina or anywhere else in the BST region until competitive facility-based providers such as the major IXC's are forced by market conditions, including BellSouth's interLATA entry, to provide such services.**

28. BST has no knowledge of any non-affiliated facility-based provider currently providing wireless services utilizing FCC-licensed PCS spectrum in South Carolina as of September 1, 1997.

29. The information contained in this affidavit and in the attached Exhibits is true and correct to the **best** of my knowledge and belief.

I hereby swear that the foregoing is true and correct to the best of my information and belief.

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Gary M. Wright  
Manager, Competitive Analysis  
Federal Regulatory  
BellSouth Telecommunications, Inc.

Subscribed and sworn to before me this \_\_\_\_  
day of \_\_\_\_\_, 1997.  
NOTARY PUBLIC