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September 23, 1997

Ms. Blanca S. Bayó  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 960786-TL

Dear Ms. Bayó:

On behalf of MCI Telecommunications Corporation (MCI) enclosed for filing in the above docket are the original and 15 copies of MCI's post-hearing brief, together with a Word diskette.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,



Richard D. Melson

ACK RDM/cc  
45A Enclosures  
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth	)	
Telecommunications, Inc.'s entry	)	Docket No. 960786-TL
into InterLATA services pursuant	)	
to Section 271 of the Federal	)	Filed: September 23, 1997
Telecommunications Act of 1996	)	
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MCI'S POSTHEARING BRIEF

MCI Telecommunications Corporation (MCI) hereby files its posthearing brief.

SUMMARY

Section 271 of the Telecommunications Act of 1996, Pub. L. No. 104 (the "Act") expresses Congress's intent that a Bell Operating Company ("BOC") not be allowed to enter the long-distance market in regions where it is the bottleneck monopoly provider of local exchange service until effective local competition is in place. As the FCC recognized in its recent order considering the petition of Ameritech for interLATA authority in Michigan, local markets are historic monopolies in which the incumbents have enormous competitive advantages. Bell Operating Companies (BOCs), such as BellSouth, have no natural incentive to assist new entrants. Section 271 was designed to create an incentive. Memorandum Opinion and Order, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 ("Ameritech Order"), CC Docket No. 97-137, ¶10-14.

Congress and the FCC have recognized that it is far easier for BOCs to enter the mature long-distance market than it is for new entrants to compete in local markets. While the processes for switching long distance customers are well developed, the processes for switching customers for local service to new entrants "are novel, complex and still largely untested." *Ameritech Order*, ¶17. The FCC found that Congress had acknowledged the difficulty of local market entry and the need for incenting the BOCs by requiring that local markets be irreversibly open *before* the BOCs are given authority to provide in-region interLATA service. *Ameritech Order*, ¶18.

BellSouth would have this Commission turn that *quid pro quo* on its head. The minuscule operations of a handful of new entrants do not impose any effective marketplace constraint on BellSouth's exercise of its continuing monopoly power. Thus, §271 of the Act has not been satisfied. Premature BOC entry into the long-distance market would shatter the fragile **prospect** for local competition. If BellSouth was to receive in-region interLATA authority before there is meaningful local competition, BellSouth would have every business incentive to resist any further attempts to open the local market.

In the *Ameritech Order*, the FCC gave the most complete description of the conditions necessary for Section 271 approval to date. The Act sets out three means for ALEC market entry:

resale, facilities, and unbundled network elements ("UNEs"). The FCC made it clear that each means of entry must be truly available and that BellSouth has the burden of proving that they are available. *Ameritech Order*, ¶43. A competitive local market requires nondiscriminatory access to interconnection, transport, termination and UNEs, at prices based on forward-looking economic costs. Nondiscriminatory access to OSS is equally critical. *Ameritech Order*, ¶21.

The FCC also made it clear that BOCs must not only be compliant with §271 at the time of application, but must demonstrate that they can be relied upon to remain in compliance, by showing sufficient testing, reporting requirements, and performance standards. The proof as of the date of filing must contain these kinds of assurances. *Ameritech Order*, ¶22.

This Commission should find that as a matter of law §271(c)(1)(A) of the Act is applicable and thus all of the items described in §271(c)(2)(b) (the "competitive checklist") must be fully implemented in Florida before a favorable recommendation regarding in-region interLATA entry is possible. Since BellSouth has failed to fully implement the competitive checklist, this Commission should further recommend to the FCC that BellSouth not be given in-region interLATA authority.

## ISSUE-BY-ISSUE ANALYSIS

Issue 1.A. Has BellSouth met the requirements of section 271(c) (1) (A) of the Telecommunications Act of 1996?

\*\*MCI: No.\*\*

While BellSouth is not eligible for in-region interLATA authority under Track B, see Discussion under Issue 1.B below, BellSouth has not yet met the Track A requirements. Track A describes the normal requirements for BOC in-region long distance entry. It provides in relevant part:

A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers. For the purpose of this subparagraph, such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.<sup>1</sup>

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<sup>1</sup> In total, the Act provides four requirements that a BOC must satisfy before it may enter its in-region interLATA market under Track A: (1) there must be facilities-based competition with one or more interconnection providers that have entered into agreements that have been approved under Section 252 and that specify the terms under which the BOC is providing access and interconnection to its network facilities to one or more unaffiliated competing providers [Section 271 (c) (1) (A)]; (2) the BOC must be providing access and interconnection pursuant to one or more such agreements, and the access and interconnection provided must meet the requirements of the 14-point competitive checklist set forth under Section 271(c) (2) (B); (3) the requested authorization for the BOC to provide in-region interLATA services must be set up to comply with the separate subsidiary and nondiscrimination requirements of Section 272 [Section 271(d) (3) (B)]; and (4) the requested authorization must be consistent with the public interest, convenience, and necessity [Section 271(d) (3) (C)].

It requires the BOC to "provide" and "fully implement" each of the fourteen checklist items. §271(c)(1)(A); 271(c)(2)(B). It also requires the development of facilities-based competition serving business and residential customers. §271(c)(1)(A).

Section 271(c)(2) additionally requires that the BOC proceeding under Track A actually be "providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A)." Paragraph (2)(B) specifies that the access or interconnection "provided" must include "each of" the fourteen checklist items. Finally, §271(d)(3) requires that the BOC prove that it "has *fully implemented* the competitive checklist in subsection (c)(2)(B)." (emphasis added)

As the FCC has noted, the BOC has the burden of proof on all factual issues in its section 271 application. *Ameritech Order*, ¶43. Consequently, BellSouth must prove that it is "providing access and interconnection" pursuant to agreements with other carriers, §271(c)(2)(A)(i)(I), and that "such access... provided...meets the requirements of" the competitive checklist. §272(c)(2)(B). BellSouth does not meet this burden. While BellSouth has interconnection agreements which, on paper, address each of the checklist items, see, e.g., MCI/BellSouth Interconnection Agreement, such agreements are not in full compliance with the checklist,<sup>2</sup> BellSouth is not providing access

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<sup>2</sup> For example, the MCI and AT&T interconnection agreements contain

and interconnection in compliance with such agreements,<sup>3</sup> and BellSouth has not fully implemented and is not providing each checklist item.<sup>4</sup>

BellSouth's recognition that it has not fully implemented all checklist items in interconnections agreements is evidenced by its attempt to rely on a Statement of Generally Available Terms and Conditions (SGAT) in which it simply offers terms to fill the gaps where it is not providing and has not fully implemented a checklist item. Thus, BellSouth argues that it may comply with section 271 by employing a SGAT. As discussed below in response to Issues 1.B and 1.C, that argument rests on a fundamental misreading of the Act. At the outset, this Commission must direct BellSouth that the appropriate standard in Florida is the one set forth in Track A.

**Issue 1.A(a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?**

**\*\*MCI: Yes. BellSouth has entered into an agreement approved under Section 252 with MCI, which plans to offer both business and residential service either exclusively or predominantly over its own facilities. BellSouth has also entered into agreements with numerous other ALECs.\*\***

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several interim rates for UNEs. In addition, cost-based rates for combinations of UNEs have not yet been finalized under those agreements. See Discussion under Issue 3 below.

<sup>3</sup> For example, BellSouth has not provided physical collocation to MCI in compliance with the MCI/BellSouth Interconnection Agreement. See Discussion under Issue 2 below.

<sup>4</sup> See Discussion under Issues 2-14 below.

Mr. Varner answered "yes" this exact question in his testimony in this matter. (Varner T 122) Mr. Varner stated that BellSouth had entered into interconnection agreements with over 55 competitors in Florida. Id. BellSouth has entered into an Interconnection Agreement with MCI, which plans to offer both business and residential service either exclusively or predominantly over its own facilities. MCI has already made extensive investment to provide local service in Florida by installing four switches. MCI is already serving business customers via its own switches. When MCI begins serving residential customers in Florida it intends to serve some of them off its own switches. Others will be served by a combination of resale and use of collocation facilities and unbundled network elements once the rates for combinations of network elements are finalized. (Martinez, T 3309-12; Gulino, T 3165-66)

**Issue I.A(b)** . Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?

**\*\*MCI:** BellSouth is providing access and interconnection to MCI, but not in compliance with the MCI/BellSouth Interconnection Agreement or the Act.\*\*

MCI has an Interconnection Agreement with BellSouth under which BellSouth is providing some interconnection. However, BellSouth is not providing access and interconnection to MCI in Compliance with that agreement or with the Act. For example,



BellSouth has failed to provide to MCI any of the physical collocation facilities which MCI has ordered in Florida. The BellSouth/MCI Agreement states that physical collocation shall be provided within 90 days of the firm order. Firm orders were placed by MCI for four physical collocation facilities in April, 1997. All are now past due. See Discussion under Issue 2 below.

Further, while MCI has two virtual collocation facilities in Florida, BellSouth stated at the hearing in this matter that it is under no obligation to combine any UNEs at any ALEC's virtual collocations. In essence, BellSouth stated that, in its sole discretion, it could refuse to combine any elements at the virtual collocation or could charge any price it wanted to for doing so. (Scheye, T 584-87) If BellSouth can prohibit ALECs from combining elements at a virtual collocation, it renders the virtual collocation essentially useless. See Discussion under Issue 2 below.

In addition, BellSouth still is not allowing ALECs to interconnect at the local tandems. While MCI had received a letter from BellSouth stating that MCI would be able to interconnect at the local tandems in September, 1997, Mr. Scheye testified at the hearing that ALECs would be required to go through BellSouth's bona fide request process to determine whether they could interconnect at the local tandems. See Discussion under Issue 2 below.

Issue 1.A(c). Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

\*\*MCI: MCI is not providing telephone exchange service to both residential and business customers either exclusively over its own telephone exchange service facilities or predominantly over its own telephone exchange service facilities. The record is unclear as to whether any other ALEC is providing such service.\*\*

MCI is serving a number of business customers either exclusively or predominantly over its own telephone exchange service facilities in Florida. MCI is not currently serving any residential customers either exclusively or predominantly over its own telephone exchange service facilities in Florida. MCI is conducting a residential resale test in Florida utilizing approximately sixty of its employees. MCI is also conducting a business resale test in Florida utilizing a few of its own business offices. Finally, MCI has attempted to conduct employee tests in Florida utilizing combinations of unbundled network elements. However, despite that fact that it has no authority to do so, BellSouth has treated such orders as orders for resale. See Discussion of UNE combinations under Issue 3 below.

Due to the large number of confidential filings in this matter, the record is unclear as to whether any other ALECs are providing telephone exchange service to residential and business

customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities. MCI notes that the burden of proof in this matter is on BellSouth.

**Issue 1.B.**        **Has BellSouth met the requirements of section 271(c) (1) (B) of the Telecommunications Act of 1996?**

**\*\*MCI:**        **No. As a result of requests for access and interconnection from potential providers of facilities-based business and residential service, BellSouth is ineligible to proceed under Track B at this time.\*\***

As discussed below, as a matter of law, Track B is not available to BellSouth in Florida. Track B enables a BOC to apply for long-distance entry based on a qualified Statement of Generally Available Terms and Conditions ("SGAT") without the prior development of facilities-based competition; however, it is narrowly tailored to a specific circumstance. Section 271(c) (1) (B) or Track B "Failure to Request Access," begins as follows:

(B) Failure to Request Access - A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, **no such provider has requested the access and interconnection described in subparagraph (A)** before the date which is 3 months before the date the company makes its application under subsection (d) (1) and a statement of the terms and conditions that the company generally offers to provide such access and

interconnection has been approved or permitted to take effect by the State commission under section 252(f). (Emphasis added).

A BOC that has received a "qualifying request" for access and interconnection is barred from proceeding under Track B. Memorandum Opinion and Order, In the Matter of Application of SBC Communications Inc. Pursuant to Section 271 ("Oklahoma Order"), CC Docket No. 97-121, ¶27. A qualifying request is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A). Such a request need not be made by an operational competing provider, "[r]ather, the qualifying request may be submitted by a potential provider of telephone exchange service to residential and business subscribers." Id.

Since several potential competing providers, including MCI, requested access and interconnection at least 3 months prior to BellSouth's application date, and since many of these agreements, if implemented, would result in facilities-based residential and business competition, BellSouth is barred from proceeding under Track B. Indeed, BellSouth has acknowledged that there are numerous carriers who have requested access and interconnection with BellSouth and has stated that it is not proceeding under Track B in Florida. (Varner, T 276, 278)

Section 271(c)(1)(B) contains only two exceptions to the provision that a BOC that has received a qualifying request for

access and interconnection is barred from proceeding under Track B: (1) All the providers that requested such access and interconnection negotiated in bad faith; or, (2) all such providers have failed to abide by an implementation schedule contained in their interconnection agreements. See Oklahoma Order, ¶37.

BellSouth has admitted that none of the carriers who have requested access and interconnection with BellSouth negotiated in bad faith. (Varner, T 276, l. 16-15) As stated above, to qualify for the first exemption, all such carriers would have had to negotiate in bad faith.

BellSouth witness Varner did suggest that there might be carriers who have not complied with an implementation plan contained in their agreements. (Varner, T 276, l. 23 to 277, l. 5) BellSouth produced no evidence on this issue, and other than this vague suggestion, Mr. Varner did not make any specific allegations that any carrier had failed to comply with an implementation schedule. He certainly did not allege that all carriers had failed to comply with implementation schedules contained in their agreements.

**Issue 1.B(a). Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?**

**\*\*MCI: Yes, MCI has requested such access and interconnection.**

**Other ALECs have also requested access and interconnection with BellSouth.\*\***

Several potential competing providers requested access and interconnection at least 3 months prior to BellSouth's application date. Many of these agreements, if implemented, would result in facilities-based residential and business competition. BellSouth has acknowledged that there are carriers who have requested access and interconnection with BellSouth and that it is not eligible under Track B. (Varner, T 276-78) MCI, which plans to offer both business and residential service either exclusively or predominantly over its own facilities is one such potential provider. MCI has already made extensive investment to provide local service in Florida by installing four switches. MCI is already serving business customers via its own switches. When MCI begins serving residential customers in Florida it intends to serve some of them off its own switches. Others will be served by a combination of resale and use of collocation facilities and unbundled network elements once cost-based rates for combinations of unbundled elements are finalized. (Martinez, T 3309-12; Gulino, T 3165-66)<sup>5</sup>

**Issue 1.B(b). Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take**

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<sup>5</sup> The nature of MCI's entry will, however, depend on the level of prices finally established.

effect under Section 252(f)?

\*\*MCI: No. At the conclusion of the hearings, BellSouth still had not filed a statement of generally available terms and conditions (SGAT) with the Commission, though it had submitted "Draft SGATs." Since the hearings ended, BellSouth has submitted two different "Final SGATs." One was submitted after the deadline imposed by the Commission. The approval of a BellSouth SGAT is not relevant to its ability to seek interLATA authority in this case. Further, none of the SGATs presented by BellSouth are in compliance with the 14 point checklist.\*\*

This Commission has neither approved a statement of terms and conditions that BellSouth generally offers to provide access and interconnection, nor has this Commission permitted one to take effect under Section 252(f). At the conclusion of the hearings, BellSouth still had not filed a statement of generally available terms and conditions (SGAT) with the Commission, though it submitted a "Draft SGAT" with its testimony in this case and a "Revised Draft SGAT" the week before the hearings started. Since the hearings ended, BellSouth has submitted two different "Final SGATs." One was submitted after the deadline imposed by the Commission. It is not clear which of the proposed SGATs this Commission will be considering in this matter. In any event, the approval of a BellSouth SGAT is not relevant to its ability to seek interLATA authority where, as here, BellSouth has received qualifying requests for access and interconnection from potential providers of facilities-based business and residential telephone exchange service. *Oklahoma Order*, ¶27. Further, none of the

proposed SGATs are in compliance with the 14 point checklist.

Even assuming arguendo that it is appropriate to consider any of BellSouth's SGATs in this proceeding, this Commission "may not approve such statement unless such statement complies with subsection (d) of this section [252] and section 251 and the regulations thereunder." Section 252(f). While the Commission's recommendation to the FCC under Section 271 is a consultation, the Commission's review of an SGAT under Section 252(f) is not. Under Section 252(f) the Commission must actually make a determination that the SGAT complies with Section 251 and 252(d), deny the SGAT, or permit it to take effect. The consultation under Track B is not whether an SGAT should be approved or permitted to take effect but whether an SGAT which has already been approved or permitted to take effect complies with the checklist.<sup>6</sup>

Pursuant to Section 252(f), BellSouth's SGATs should be denied. None of BellSouth's SGATs offer pricing consistent with Section 252(d). The SGAT includes many rates which this Commission has never determined to be cost-based and BellSouth has failed to present to this Commission any cost studies which would support such rates. See Discussion under Issue 3 below. In addition, none of BellSouth's SGATs offer access and

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<sup>6</sup> Stated another way, BST's claim that this Commission cannot stop it from filing with the FCC under Track B is only half true. While BST could file anything it wants with the FCC, if this Commission rejected BST's SGAT, a



interconnection consistent with Section 251 and the rules promulgated thereunder. The deficiencies in BellSouth's SGATs and their noncompliance with Section 251 are set forth in detail under Issues 2 through 15 below.

Finally, BellSouth asks this Commission to approve its SGAT in part on the theory that small carriers desire the option of an SGAT to enter the Florida market. First, because the SGAT is so deficient, the Commission would not be doing small carriers any favors by approving it. Second, BellSouth has not shown that there are any small carriers who want an SGAT at all, let alone any of the SGATs proposed in this matter. Not a single small carrier or potential smaller carrier appeared before this Commission requesting that an SGAT be approved.

Based on the above, this Commission should deny the proposed SGATs. In the event this Commission decides that it is appropriate to allow an SGAT to go into effect to meet some need in the market place, this Commission should specifically find that the SGAT is not checklist compliant for the reasons set forth in the discussion under Issues 2 through 15 below.

**Issue 1.C.** Can BellSouth meet the requirements of section 271(c)(1) through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B))? If so, has BellSouth met all of the requirements of those sections?

**\*\*MCI:** No. Tracks A and B are mutually exclusive. More

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Track B filing would fail as a matter of law.

**importantly, an SGAT cannot be used to supplement a Track A filing.\*\***

Section 271 clearly creates two separate, mutually exclusive tracks. See Ameritech Order, ¶7-10. BellSouth has stated that it is not seeking to combine Tracks A and B. (Varner, T 278) Instead, BellSouth argues that the SGAT is applicable under either track. Id. However, interpreting the Act to allow BellSouth to rely on an SGAT under Track A would destroy the requirement of full implementation of the fourteen point competitive checklist.

Section 271(d)(3)(A)(i) requires that a BOC pursuing Track A must "fully implement the competitive checklist in subsection (c)(2)(B)." See Ameritech Order, ¶105. The threshold requirements of subsection (d)(3)(A) require more than reciting the competitive checklist in a contract -- they require that the BOC be "providing access and interconnection pursuant to one or more agreements" that "ha[ve] fully implemented the competitive checklist." The Conference Report declares that the Congress meant what it said when it required real access and interconnection:

The requirement that the BOC is "providing access and interconnection" means that the competitor has implemented the inter-connection request and the competition is operational. This requirement is important because it will assist . . . in the explicit factual determination by the Commission under

new section 271(d)(2)(B) that the requesting BOC has fully implemented the interconnection agreement elements set out in the "checklist" under new section 271(c)(2).

H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996) (emphasis supplied). Because BellSouth has not implemented in any respect -- let alone fully -- many of the checklist items recited in any approved agreements, the Commission should not grant it a favorable recommendation. Section 271(c) does not require the Commission to predict whether BellSouth will be able to deliver on promises to implement the checklist in the future. The Commission should strongly reject BellSouth's invitation to substitute speculation for analysis of implemented systems. Promises of future performance have no probative value in demonstrating present compliance with Section 271. "Paper promises do not, and cannot, satisfy a BOC's burden of proof." *Ameritech Order*, ¶55.

The requirement that the checklist items be "fully implemented" through working "interconnection" assures that -- at a minimum -- the technological preconditions to local competition are present before the BOCs may compete in downstream markets. Many of these technical requirements are new and complex. As the FCC recognized in its *Ameritech Order*, the processes for switching customers for local service to new entrants "are novel, complex and still largely untested." *Ameritech Order*, ¶17. This

is particularly so for the many OSS functions and interfaces that need to be operational before a competitor can offer retail services to customers with any assurance that it will be able to provide and maintain the quality of service it promises in a timely and reliable manner.

In its recent Ameritech decision, the FCC reiterated that Track A requires a BOC to be "providing" access and interconnection pursuant to the terms of the checklist. To provide an item, the FCC concluded, a BOC must make "that item available as a legal and a practical matter." *Ameritech Order*, ¶107. The FCC made it clear that merely offering an item under an SGAT did not constitute providing the item and did not meet the requirements of Track A:

For the reasons discussed below, we conclude that a BOC "provides" a checklist item if it actually furnishes the item at rates and on terms and conditions that comply with the Act or, where no competitor is actually using the item, if the BOC makes the checklist item available as both a legal and a practical matter. Like the Department of Justice, we emphasize that the mere fact that a BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance. To be "providing" a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state approved interconnection agreements that set forth prices and other terms and conditions for each checklist item. Moreover, the petitioning BOC must demonstrate that it is presently ready to furnish each checklist item in quantities

that competitors may reasonably demand and at an acceptable level of quality.

*Ameritech Order, ¶110 (emphasis added).*

**Issue 2.** Has BellSouth provided interconnection in accordance with the requirements of sections 251(c) (2) and 252(d) (1) of the Telecommunications Act of 1996, pursuant to 271(c) (2) (B) (i) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. Among other things, BellSouth has not yet implemented any of MCI's pending requests for physical collocation; the terms and conditions for collocation arrangements are not nondiscriminatory; and BellSouth will not provide interconnection at local tandems. In addition, it is unclear whether BellSouth will provide the interconnection required to terminate calls to the customers of independent telephone companies where a single local calling area is served in part by BellSouth and in part by an independent company.\*\*

Checklist Item 1 (Interconnection) requires interconnection in accordance with §§251(c) (2) and 252(d) (1) of the Act. Section 251(c) (2) of the Act requires that BellSouth provide for the facilities and equipment of any carrier that requests interconnection (A) for the transmission and routing of telephone exchange service and exchange access, (B) at any technically feasible point within the carrier's network, (C) that is at least equal in quality to that provided to BellSouth by itself or to any subsidiary or affiliate of BellSouth, and (D) on rates, terms and conditions that are just and reasonable, nondiscriminatory and in accordance with §252 of the Act.

Section 252(d)(1) of the Act sets forth the pricing standards pursuant to which BellSouth must provide network interconnection and provision network elements. With regard to network elements, BellSouth must provide elements pursuant to rates which are (1) based on cost and (2) nondiscriminatory. With regard to interconnection, BellSouth must provide interconnection in a manner which provides for mutual and reciprocal recovery by each carrier of costs associated with transport and termination on the network facilities of each carrier. While pricing is discussed in more detail under Issue 3 below, it is worth noting that this Commission has not yet determined cost-based rates for physical or virtual collocation.

Under the FCC's analysis, a BOC "provides" a checklist item if it makes that item available as a legal and practical matter. *Ameritech Order ¶107*. That means that the BOC has a concrete and specific legal obligation to furnish the item on request pursuant to approved interconnection agreements that set forth prices and other terms and conditions, and that the BOC has demonstrated that it is ready to furnish the item in quantities that competitors may reasonably demand and at an acceptable level of quality. *Ameritech Order ¶110*.

Collocation. BellSouth has not yet fully implemented interconnection in part because it has not yet fully implemented collocation. MCI has four pending orders for physical

collocation in Florida. Firm orders for these were placed in April, 1997. Pursuant to the terms of the MCI/BellSouth Interconnection Agreement, BellSouth must provide physical collocation within 90 days of the firm order. (Ex. 14, Att. V, p.8) BellSouth has already missed this deadline on all four orders. (Gulino, T 3160) At this point, BellSouth is incapable of providing physical collocation in compliance with the MCI/BellSouth Interconnection Agreement.

The duty to interconnect includes the duty to permit collocation, because collocation (both physical and virtual) is a primary method of interconnection. The FCC recognized this requirement in its Rules which implement the Act. *First Report and Order of the FCC ¶543, 550-53*. Collocation represents one of the most important ways from an engineering perspective that any carrier can truly provide competition to BellSouth. (Gulino, T 3129)

Would-be competitors must have a reliable and fixed time period for collocation in order to plan and market in a way which will sustain competition. (Gulino, T 3130) Indeed, while fixed intervals are necessary in order to determine whether BellSouth is implementing the collocation requirements adequately and in good faith, BellSouth's proposed SGAT contains no intervals for providing collocation. (Gulino, T 3130-31) Even if BellSouth's SGAT contained set and reasonable intervals, whether BellSouth

would be successful in meeting these intervals appears doubtful since BellSouth cannot meet the fixed periods contained in the MCI/BellSouth Agreement.

In addition to BellSouth's inability to provide physical collocation to MCI in compliance with established intervals (or at all for that matter), there are other implementation issues relating to collocation. One set of problems will not even manifest itself until BellSouth starts providing physical collocation. For example, while BellSouth discussed at the hearing the notion of providing unbundled loops and ports at the collocation, BellSouth has never done it before. (Scheye, T 582-584) BellSouth's excuse for not having ever provided an unbundled port at a physical collocation was that no one had ever ordered it. (Scheye, T 584) Of course, BellSouth did not explain how MCI could place such an order in light of the fact that it has never received its physical collocations.

Another problem is that BellSouth will make the determination of whether a would-be competitor will be allowed physical or virtual collocation. (Gulino, T 3133) This means that BellSouth will control the response to a request for collocation. Because the process for obtaining collocation will be controlled by BellSouth **in every way** under its proposal, there will be great opportunity and incentive for BellSouth to use that process to its competitive advantage. (Gulino, T 3133) Despite



the need for fixed intervals for physical collocation so as to measure performance, BellSouth has proposed that the intervals for providing collocation, as well as many other important factors, should be determined pursuant to BellSouth's Negotiations Handbook for Collocation. Apparently, BellSouth proposes to control this "handbook" and reserves the right to change it substantively at any time since it is not part of an interconnection agreement or the proposed SGAT. The obvious danger is that by virtue of its bottleneck monopoly position, absent any controls, BellSouth will be able to easily delay the deployment of MCI facilities.<sup>7</sup> (Gulino, T 3133-34)

Finally, while MCI has two virtual collocation facilities in Florida, BellSouth stated at the hearing in this matter that it is under no obligation to combine any UNEs at an ALEC's virtual collocation. In essence, BellSouth stated that, in its sole discretion, it could refuse to combine any elements at the virtual collocation or could charge any price it wanted to for

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<sup>7</sup> Additional delays are made possible as a result of BellSouth's policy of requiring that ALEC technicians be escorted by BellSouth personnel at all times while performing maintenance and repairs upon collocated equipment. This policy necessitates coordination with BellSouth whenever a ALEC needs access to its collocation cages, as well as additional and unnecessary expenses. This is another place where BellSouth retains a measure of control over ALECs' success in local competition -- a ALEC can only perform as well as BellSouth permits. The issue here is time. MCI should not be at the mercy of the BellSouth escort schedule. MCI could be required to provide BellSouth with adequate notice that it needs access to perform maintenance and repairs to collocated equipment. BellSouth would then have to provide an escort or simply allow MCI unescorted access at that noticed time. MCI should not be forced to wait for BellSouth to decide when it would be convenient to allow repairs and maintenance of MCI facilities by MCI employees. (Gulino, T 3134-35)

doing so. While BellSouth would "negotiate" with the ALEC, ultimately, if BellSouth was willing to do it at all, the ALEC would have to pay BellSouth's price -- a so-called "glue" charge. (Scheye, T 584-87) BellSouth's position that an ALEC does not have a right to combine elements at a virtual collocation is in direct conflict with Section 251(c)(3) of the Act which states that "[a]n incumbent local exchange carrier shall provide such unbundled elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Furthermore, BellSouth's glue charges are in direct violation of the pricing standards set in the MCI/BellSouth Interconnection Agreement, Att. III, §2.6. See Discussion of UNE Combinations under Issue 3 below.

Local Tandems. Although the point of interface for the exchange of local and EAS traffic between independent telephone companies and BellSouth is the local tandem switch, BellSouth has to date refused to permit MCI and other ALECs to interconnect at their local tandem switches. (Martinez, T 3272-3273; Gulino T 3135) BellSouth had agreed that it would allow MCI to interconnect at the local tandems beginning in September, 1997. (Exhibit 113 @ Deposition of Ron Martinez, p.164-167 and Depo. Ex. 9) At the hearing in this matter, however, it appeared that BellSouth has once again changed its policy on this matter. While Mr. Milner admitted that interconnection at the local tandem was

technically feasible (Milner, T 862), Mr. Scheye stated that it was not currently allowed and that ALECs would have to go through the bona fide request process to determine whether they would be allowed such interconnection. (Scheye, T 593) Mr. Scheye stated that such interconnection was not offered in the SGAT (Scheye, T 610), Mr. Milner stated that it was. (Milner, T 862)

As Mr. Martinez testified, it is quite clear that the SGAT does not allow interconnection at the BellSouth Local Tandem. BellSouth's local traffic remains on a dedicated network that does not utilize the Access Tandem. Hence traffic won by the ALEC is removed from the BellSouth Local Network and Local Access Tandem and placed onto the IXC Toll Network. This has the net effect of enhancing the BellSouth local service at the cost or degradation of the IXC Toll Network. (Martinez, T 3273)

**Access Rates.** It appears at page 4 of the Draft SGAT that BellSouth seeks to dictate the interstate and intrastate switched access rates which ALECs charge to BellSouth. The ALEC should charge its own appropriate and tariffed access rates, not those of BellSouth. (Martinez, T 3274)

**Billing Disputes.** The proposed SGAT does not contain a dispute resolution clause. Such a provision should be included at page 5 of the proposed SGAT. BellSouth may claim that the SGAT controls billing disputes and thus ALECs must remit payment with no defined procedure for mediation of billing disputes.

(Martinez, T 3276)

Customer Daily Usage Data. BellSouth has refused to provide usage detail on resold flat-rated business or residential lines, (Martinez, T 3276), even though this is a requirement of the MCI/BellSouth Interconnection Agreement, Att. VIII, §4. This information is critical to determine if a customer is better served by a measured line or should remain on a flat-rated service offering. In the competitive world we are heading toward, an ALEC will need to provide its end user customers with the products that best meet their needs. One basic need, from an ALEC's perspective, will be information needed to counsel its customers on the products and services for which they are paying. BellSouth has indicated that they do record this usage information, but, since they do not pull the information for themselves, they have no intention of providing it to ALECs. This is true even though the ALEC would be compensating BellSouth for these usage records. Clearly the difference is that BellSouth has the ability to access this information at will but they choose not to. This is a shortcoming in the SGAT which must be corrected. (Martinez, T 3276-77)

800 Access Screening. Additionally in the SGAT, there is a serious issue relative to 800 access screening. Paragraph 7 of page 4 of the Draft SGAT limits ALECs from accessing the BST STP for purposes of obtaining the proper routing information

necessary to complete 800/888 calls. ALECs must be allowed the options of establishing connection to the BellSouth Toll Free Database. There are three options which should be available: 1) the ALEC is non-SS7-capable and the ILEC provides functionality for the ALEC; 2) the ALEC is SS7-capable and the ALEC makes a query through the ILEC's STP/SCP; and, 3) the ALEC is SS7-capable and makes the query through a third party's STP/SCP. The 800 Access Ten Digit Screening Service described on page 4 of the SGAT satisfies only the first option, where BellSouth performs both the database lookup function and the subsequent call routing function. Because 800 Access Service with ten digit screening is a tariffed offering of BellSouth, an ALEC would have the right to obtain this service without this paragraph in the SGAT. However, BellSouth appears to be representing this offering as an Unbundled Network Element. That is, by making this tariffed service available to ALECs, BellSouth appears to be trying to claim that it is offering unbundled access to the toll free databases and the associated signaling. As discussed in connection with Checklist Item 10, below, this service falls far short of true unbundled access to the Toll Free Database.

(Martinez, T 3275-76)

**Divided Local Calling Areas.** In order to provide competitive local service, MCI will need to be able to terminate traffic throughout a local calling area. Otherwise, MCI will be

offering a service of a much lesser quality than that offered by BellSouth. In Memphis, MCI attempted to launch local service. However, MCI calls between BellSouth's Memphis service area and Southwestern Bell Telephone Company's ("SBC's") Memphis service area were blocked by BellSouth. This occurred despite the assurance on at least two occasions that BellSouth was ready to terminate MCI traffic in Memphis. BellSouth informed MCI that it would not pass MCI traffic to SBC until MCI and SBC had an interconnection agreement. BellSouth claimed this was at SBC's request, although there is no evidence that SBC has made such a request. (Gulino, T 3151-3154)

The issue this Commission must consider is: does BellSouth meet the checklist when MCI cannot terminate local traffic for its customers throughout all Florida local calling areas which are served at least in part by BellSouth. The clear answer to this question is "no". Where local calling areas are split between BellSouth and another LEC, MCI's customers will be isolated -- in some cases literally unable to call home from the office, not to mention unable to call local hospitals, schools and other important community locations. (Gulino, T 3151-3154)

**Issue 3.** Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

\*\*MCI

No, BellSouth has failed for a number of reasons. First, the prices for UNEs are not cost-based as required by the Act. Second, BST refuses to provide combinations of UNEs, even where those elements are combined in its network today. Third, BST's OSS for UNEs do not meet the nondiscrimination requirement of the Act.\*\*

Checklist Item 2 (Unbundled Network Elements) requires that the access and interconnection provided by BellSouth include "nondiscriminatory access to network elements in accordance with the requirements of §§251(c)(3) and 252(d)(1.)" Section 271 (c)(2)(B)(ii). BellSouth has failed to meet this checklist item for a number of reasons. First, the prices for UNEs are not cost-based as required by the Act. Second, BST refuses to provide combinations of UNEs, even where those elements are combined in its network today. Third, BST's OSS for UNEs do not meet the nondiscrimination requirement of the Act.

As a result of its failure to comply with Checklist Item 2, relatively few unbundled network elements have been provided by BellSouth. Ironically, BellSouth attempts to blame the minimal use of unbundled network elements, and hence BellSouth's need to rely on an SGAT, on the ALECs' business decisions. To date, however, it is BellSouth's own policies and failure to provide interconnection in compliance with the Act that are the primary cause of the problem. For example, while BST's OSS for even stand-alone UNEs does not meet the nondiscrimination requirement

of the Act, its systems are nonexistent for UNE combinations.

Further, BellSouth, in violation of both the Act and the MCI/BellSouth Interconnection Agreement, has made it nearly impossible for MCI and other ALECs to serve customers using unbundled network elements. As was the case with MCI, if an ALEC attempts to order an unbundled loop in combination with an unbundled port, BellSouth treats the order as resale and then claims that the ALEC has not ordered any UNEs. Compare Ex. 2 (BellSouth's response to subpoena which asserts that MCI has not ordered any UNEs) with Ex. 113 (Martinez Depo. Ex. 4 which consists of an MCI order for an unbundled loop and port combination and a BellSouth bill treating the order as resale).

In the same vein, BellSouth now states that it will charge an ALEC UNE pricing for UNE combinations only if the ALEC pays BellSouth an undetermined "glue" charge or if the ALEC connects the UNEs at the ALEC's collocation. BellSouth even goes so far as to state that, in violation of basic common sense and FCC Rule 51.315(b), it will rip apart UNEs that are already combined just so that they can charge the ALECs to recombine them. Glue charges, of course have never been authorized by this Commission and are in violation of the MCI/BellSouth Interconnection Agreement. This issue is discussed in more detail below. BellSouth's statement that ALECs can combine the UNEs themselves at physical collocations is an empty promise since as discussed



under Issue 2 above, BellSouth has failed to provide any physical collocation to MCI.

#### COST-BASED RATES

Section 271(c)(2)(B)(ii) requires that the access and interconnection provided be in accordance with the requirements of section 252(d)(1). Compliance with §252(d)(1) requires that:

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of §251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section,

(A) shall be:

(i) based on the 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

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

These requirements have not been met in Florida. At a minimum, compliance with item (ii) of the competitive checklist requires 1) that BellSouth be currently providing unbundled network elements -- purchased separately or in combination -- at the cost-based rates determined by the Commission and reflected in the Interconnection Agreements between BellSouth and other carriers, and 2) that these cost-based rates (both recurring and

nonrecurring, if applicable) be determined by the Commission for each of the unbundled network elements (and combinations of elements) requested by carriers seeking to compete with BellSouth's local exchange services. To date, neither of these two requirements has been met. (Wood, T 1951-52)

First, as discussed in more detail in the Section below on Combinations of Network Elements, BellSouth has made it clear to AT&T and MCI that it neither currently provides unbundled network elements at the rates which were ordered by this Commission (and which appear in BellSouth's Interconnection Agreements with AT&T and MCI), nor stands ready to provide unbundled network elements at the rates which appear in its draft SGAT, if certain unbundled network elements are purchased in combination. (Wood, T 1952)

Second, a number of the prices for unbundled network elements in the Commission's Order No. PSC-96-1579-FOF-TP in Docket Nos. 960833-TP and 960846-TP -- these rates also appear in the MCI and AT&T Interconnection Agreements and in BellSouth's SGAT -- are interim rates which are not rates that have been determined by the Commission to be cost-based as required by section 252(d)(1). In addition, limitations in the cost data available to the Commission in the arbitration proceedings appears to have resulted in the establishment of a number of permanent rates for unbundled network elements that are not cost-based and which therefore cannot be used to demonstrate

compliance with item (ii) of the competitive checklist. (Wood, T 1953) Item (ii) of the competitive checklist cannot be met if some, but not all, of the requested network elements have been priced in accordance with section 252(d)(1). For this reason alone BellSouth's application for in-region interLATA authority is premature.

Interim Rates. The interim rates set in the MCI and AT&T arbitrations<sup>8</sup> do not meet the requirements of section 252(d)(1) for the establishment of cost-based rates for two primary reasons: 1) they are not cost-based, and 2) they are not rates.

The interim rates are not cost-based. At page 33 of Order No. PSC-96-1579-FOF-TP ("Arbitration Order"), the Commission points out that it is establishing interim rates based on BellSouth's tariffed rates (or, in some cases, based on modifications to the results of the Hatfield Study presented by AT&T and MCI). In doing so, the Commission made clear in the that "tariffed rates are not an appropriate basis for pricing unbundled network elements." See Order on Reconsideration, p. 14. In order to determine cost-based rates for these elements, the Commission required BellSouth to provide cost studies within

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<sup>8</sup> According to Attachment A to Order No. PSC-96-1579-FOF-TP, the following rates are interim and subject to true-up: the Network Interface Device, or NID (recurring only); access to the NID (nonrecurring only); loop distribution for both 2-wire and 4-wire circuits (recurring and nonrecurring); 4-wire analog ports (recurring and nonrecurring); DA transport switched local channel, dedicated DS-1 transport per mile and per termination (recurring and nonrecurring); dedicated transport per termination (nonrecurring only); virtual collocation (recurring and nonrecurring); and physical collocation

60 days of the Arbitration Order. See Order on Reconsideration, p. 20. BellSouth has produced these studies, but this Commission has not yet conducted an investigation of the merits of these studies in order to determine the costs of providing the elements. Until this process is complete and cost-based rates are developed, the requirements of section 252(d)(1) will not be met. (Wood, T 1958-59)

Interim rates are not "rates" pursuant to the requirements of 252(d)(1). Interim rates, whether or not cost-based, simply cannot be used to meet the requirements of the Act; in other words, interim rates are not "rates" for purpose of permitting competition for local exchange services to develop. In order to begin to assemble the resources necessary to enter the markets for local exchange services, potential competitors will need to be able to determine, with a reasonable degree of accuracy, the costs of doing so. The capital budgeting process simply cannot be conducted if significant costs remain unknown. With interim rates for a number of important network elements, new entrants do not know what they will be paying to BellSouth for these elements. To be clear, interim rates serve an important purpose: they permit potential competitors to begin testing their market assumptions, training their employees, and testing the reasonableness and effectiveness of the processes established for

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(recurring and nonrecurring).

interconnecting with BellSouth. Interim rates, therefore, while useful for some limited purposes, represent a very real barrier to entry that must be removed before local competition can develop. (Wood, T 1959-61)

Permanent Rates. At page 23 of the Arbitration Order, the Commission stated that its decisions were driven in part because "the record does not contain sufficient cost evidence." Specifically, the Commission stated that it did not implement geographically deaveraged rates for this reason. Similarly, the Commission concluded that the costs for unbundled network elements should be developed using a methodology based on the premise that BellSouth's existing network should be assumed to exist going forward, and rejected the methodology proposed by the FCC which is based on an efficient network (constrained only by BellSouth's existing central office locations). The order indicates at page 24 that this decision was based, at least in part, on the Commission's assumption that there would not be a substantial difference between costs for network elements developed using these different methodologies. In each of these cases, currently available information compels a different conclusion. (Wood, T 1965)

In the arbitration proceedings and in subsequent cost investigations in other states, it has become clear that there is little dispute among the parties that the cost of providing some

unbundled network elements varies, potentially significantly, based on the geographic area being studied. The cost of loop facilities, for example, has been shown to be geographically sensitive because the primary drivers of the cost of these facilities -- loop length and line density -- vary depending on the area being studied. (Wood, T 1965-66)

In order for the rates for unbundled network elements to be cost-based, it is necessary for those rates to reflect any significant geographic cost differences that may exist. The results of the Hatfield Model presented by AT&T and MCI in the arbitration proceedings illustrate the geographic cost differences for a 2-wire local loop. While the Commission chose not to rely on the results of this model when establishing rate levels (in part because the results of the model do not produce costs which are representative of the costs of BellSouth's existing network in Florida), it can and should rely on the results of model as a clear demonstration of the significant variations in the cost of providing a 2-wire loop in different geographic areas. BellSouth apparently agrees: in the cost proceeding established by the Georgia Commission to determine the cost of network elements, BellSouth has presented the results of the Benchmark Cost Proxy Model ("BCPM"). BellSouth has used BCPM results to illustrate the cost differences associated with providing local loops in different geographic areas, and has used

the results of the model to support its geographically deaveraged pricing proposal for local loops in Georgia. (Wood, T 1966-67)

In summary, cost information which is apparently not in dispute indicates that the cost of providing some unbundled network elements, specifically local loops, varies significantly across different geographic areas. Cost-based rates, established pursuant to section 252(d)(1), can and must reflect this demonstrated cost variability. *Ameritech Order*, ¶292.

#### COMBINATIONS OF NETWORK ELEMENTS

The Commission has not finalized cost based rates for combinations of unbundled network elements. In the AT&T and MCI arbitrations with BellSouth, the Commission stated that the rates it had set for UNEs were only for individual UNEs. For both recurring and non-recurring rates, the Commission recognized that when combinations of UNEs were ordered, the appropriate rate might be less than the sum of the rates for the individual UNEs. The Commission therefore ordered that BellSouth not include duplicate charges or charges for functions or activities that MCI does not need when two or more network elements are combined in a single order. Final Order on Motions for Reconsideration and Amending Order No. PSC-96-1579-FOF-TP, Order No. PSC-97-0298-FOF-TP, pp. 27, 31; see MCI/BellSouth Interconnection Agreement, Att. I, Section 8. While MCI requested negotiations with BellSouth to

set certain combination rates, BellSouth has refused to negotiate and no combination rates have been set by this Commission.

(Gulino, T 3137)

As described at pages 27-29 of the Commission's Order on Reconsideration, the double-recovery of certain costs, as well as charges for services not needed, is possible (in both recurring and nonrecurring rates) if network elements are purchased in combination. While acknowledging this possibility, the Commission elected not to determine rates for each possible combination of network elements, but instead to direct the parties to work together to establish the applicable rates in those cases in which multiple network elements are being purchased. If the parties could not agree on the applicable charges, the Commission stated that it would settle the dispute. Of course, in order to conduct meaningful capital budgeting and to make informed decisions regarding market entry, potential competitors will need to know what they will be paying to BellSouth for network elements when purchased in conjunction with other elements. (Wood, T 1960-61) For those combinations of elements requested by competing carriers, compliance with section 252(d)(1) requires that either 1) agreement between BellSouth and competing carriers is reached, the agreed-upon rate for element combinations is included in an Interconnection Agreement approved by the Commission, and the Commission determines that such rates



are cost-based within the meaning of the Act, or 2) the Commission must resolve the dispute and establish cost-based rates for the requested combinations that avoid double-recovery of costs and charges for functions or activities which are not needed. One of these two possible outcomes must be reached before the uncertainty for new entrants will be eliminated and the requirements of 252(d)(1) will be met. Id. Resolution of these issues is important because robust competition depends upon the availability of logical combinations of elements and ALECs, including MCI, are likely to order combinations of unbundled elements from BellSouth as soon as they are truly available. (Gillan, T 1777-79; Gulino, T 3139)

As described above, the final rates for combinations -- rates which remove from the stand-alone UNE rates the duplications and charges for services not needed -- have not yet been set. That alone causes BellSouth to fail to meet Checklist Item 2. However, as described in AT&T's Motion to Compel Compliance in Docket No. 960833-TP and Docket No. 960846-TP filed June 9, 1997, BellSouth has even refused to comply with the rates and terms for combinations that this Commission has set. (Wood, T 1953-54) Similarly, when MCI ordered an unbundled loop and port combination in Florida, BellSouth treated it as resale. See Ex. 113 (Martinez Depo. Ex. 4 which consists of an MCI order for an unbundled loop and port combination and a BellSouth bill treating

the order as resale).

This Commission determined that MCI and AT&T should be allowed to combine unbundled network elements in any manner, "including recreating existing BellSouth service." Order No. PSC 96-1579-FOF-TP, p. 38.<sup>9</sup> The Act itself provides that "An incumbent local exchange company shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Section 251(c)(3); see Ameritech Order, ¶160 ("Ameritech also must be able to provide combinations of network elements, including the combination of all network elements, which some parties refer to as the "UNE Platform" or the "Platform"). Treating combinations of network elements as resale is also in direct violation of the MCI/BellSouth Interconnection Agreement. Section 2.4 of Attachment III clearly states that: "BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit MCI to provide Telecommunications Services to its subscribers." Similarly, Section 2.2.16.1 of Attachment VIII provides: "MCI may order and BellSouth shall provision unbundled Network Elements either individually or in any combination on a single form." As described above, this

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<sup>9</sup> The Order stated that since "the FCC's Rules and order permit AT&T and MCI to combine unbundled network elements in any manner they choose, including recreating existing BellSouth services, that they may do so for now." In its

Commission clearly determined how the rates would be set for these combinations and it was not resale: Duplications and charges for services not needed would be removed from the stand-alone UNE rates, i.e., forward-looking cost-based rates.

BellSouth now states that it will charge an ALEC the resale rate for unbundled loop/port combinations<sup>10</sup> unless the ALEC pays BellSouth an undetermined "glue" charge or if the ALEC connects the UNEs at the ALEC's collocation. (Scheye T 626) BellSouth further states that migration of an existing customer using the existing loop and port is resale.<sup>11</sup> (Scheye, T 623) BellSouth even goes so far as to state that, in violation of basic common sense and FCC Rule 51.315(b), it will rip apart UNEs that are already combined just so that they can charge the ALECs to recombine them or increase the ALECs' costs by forcing the ALECs to recombine them. (Scheye, T 622-626) As the FCC pointed out in its Ameritech Order: "We further determined that incumbent LECs may not separate network elements that the incumbent LEC currently combines. The Eighth Circuit recently upheld these

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Order on Reconsideration, the Commission again provides a detailed discussion of the issues (pages 3-7) and decides at page 7 not to reconsider the issue.

<sup>10</sup> Strangely, BellSouth argues that a loop and port combination should be billed as resale even though a loop and port combination alone is not even a "service that the carrier provides at retail to subscribers who are not telecommunications carriers." 251(c)(4)(A). Retail customers cannot just buy a loop and a port. BellSouth's basic service includes other UNEs such as operator services, DA, and vertical services.

<sup>11</sup> Section 2.2.2.3 of Attachment VIII authorizes MCIm to migrate existing BellSouth customers to MCIm to be served through unbundled Network Elements reusing existing BellSouth facilities. Since Section 2.2.2.1 and 2.2.2.2 of Attachment VIII refer to migration for resale, clearly migration to UNEs is not the same as migration to resale.

determinations." *Ameritech Order*, ¶333; see also *Ameritech Order* ¶336, and Shared Transport Order (Third Order on Reconsideration, Docket 96-98), ¶44 ("[S]uch dismantling of network elements, absent an affirmative request, would increase the costs of requesting carriers and delay their entry into the local market, without serving any apparent public benefit). BellSouth's position is also in direct violation of the MCI/BellSouth Interconnection Agreement, Att. VIII, §2.2.15.<sup>12</sup> Glue charges, of course, have never been authorized by this Commission and are in violation of the MCI/BellSouth Interconnection Agreement. Section 2.6 of Attachment III of that Agreement provides that: "With respect to Network Elements . . . charges in Attachment I are inclusive and no other charges apply, including but not limited to any other consideration for connecting any Network Element(s) with other Network Element(s)." (Emphasis added).

As described above, BellSouth, in violation of the Act, this Commission's orders, and the Commission approved MCI/BellSouth Interconnection Agreement, has gone to great lengths to make it nearly impossible for MCI and other ALECs to serve customers

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<sup>12</sup> Section 2.2.16.1 provides: "MCI may order and BellSouth shall provision unbundled Network Elements either individually or in any combination on a single form. Network Elements ordered as combined shall be provisioned as combined by BellSouth unless MCI specifies that the Network Elements ordered in combination be provisioned separately. Orders of combined Network Elements shall be subject to the provisions of section 2.3 of Attachment III." Emphasis added. Similarly, section 2.2.15.3 of Attachment VIII provides: "When MCI orders Network Elements or Combinations that are currently interconnected and functional, Network Elements and Combinations shall remain connected and functional without any disconnection or disruption of

using unbundled network elements. Clearly, it has not met Checklist Item 2.

## OPERATION SUPPORT SYSTEMS (OSS)

### Legal Framework

BellSouth's duty to provide access to unbundled network elements (UNEs) [Issue 3] and its duty to provide resale services [Issue 15] both include the duty to provide nondiscriminatory access to Operation Support Systems (OSS) functions. *Ameritech Order ¶131*. The required OSS must support pre-ordering, ordering, provisioning, maintenance and repair, and billing functions. *FCC Rules §51.319(f)*. The adequacy of BellSouth's OSS is a critical ingredient in determining BellSouth's compliance with other checklist items as well. In order to demonstrate that it is "providing" specific items listed in the checklist (e.g. unbundled loops, unbundled local switching, and resale services), BellSouth must prove that it is providing nondiscriminatory access to the systems, information and personnel that support those elements or services. *Ameritech Order ¶132*. Because nondiscriminatory access to OSS functions is a fundamental part of so many items of checklist compliance, MCI will discuss that issue at length in this section of its Brief.<sup>13</sup>

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functionality.

<sup>13</sup> Although this discussion will not be repeated later, it is also

The Commission must consider whether BellSouth provides ALECs with access to OSS that is sufficient to support each of the three modes of competitive entry -- interconnection, unbundled network elements, and resale. *Ameritech Order ¶133*. For OSS functions provided to ALECs that are analogous to the functions that BellSouth uses to support its own retail offerings -- such as pre-ordering, ordering and provisioning for resale services and repair and maintenance for both resale services and UNEs -- the test is whether the access is at parity with BellSouth in terms of "quality, accuracy and timeliness." *Ameritech Order ¶139, 140*. For OSS functions that purportedly have no retail analogue, the test is whether the OSS access it provides to an ALEC offers "an efficient competitor a meaningful opportunity to compete." *Ameritech Order ¶141*. For the reasons discussed below, the OSS that BellSouth offers to its competitors fails these tests.

### Pre-Ordering

BellSouth offers ALECs a proprietary, non-industry standard interface, known as the Local Exchange Navigation System (LENS), for access to pre-ordering functions such as address validation, customer record inspection, telephone number assignment,

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relevant to the checklist items relating to interconnection (Issue 2), unbundled loops (Issue 5), unbundled local transport (Issue 6), unbundled local switching (Issue 7), 911, E911 and directory assistance services (Issue 8), white pages directory listings (Issue 9), local number portability (Issue

determining the availability of services, features and functions, and due date calculation. (Calhoun, T 1218, 1434-35; Ex. 42 @ GC-28) As discussed below, LENS is not an integrated system. The systems that BellSouth uses to perform comparable functions for its own retail services are the Regional Navigation System (RNS) for residential services, and the Direct Order Entry System (DOE) for business services. (Calhoun, T 1231-32)

BellSouth has failed to carry its burden of proof that LENS provides nondiscriminatory access to pre-ordering functions when compared to RNS/DOE. In fact, the record affirmatively shows that LENS does **not** provide pre-ordering information to ALECs with the same "quality, timeliness, and accuracy" as the systems BellSouth uses for itself. (Bradbury, T 2820-36, 2840-51; Martinez, T 3234-3247)

- An ALEC seeking to obtain all required pre-ordering information for a new customer installation must validate the address three separate times (Calhoun, T 1300; Bradbury, T 2912), compared to a single address validation in RNS/DOE. (Calhoun, T 1287-88) This is not parity in terms of timeliness.
- An ALEC does not have access to customer payment history information (Calhoun, T 1272)<sup>14</sup>, even though the Commission-

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12), and resold services (Issue 15).

<sup>14</sup> BellSouth claims that this information will be available in LENS on October 8, 1997. (Calhoun, T 1273) A paper promise of a future enhancement to

approved interconnection agreement between MCI and BellSouth requires such access (Ex. 14, Att. VIII, §2.1.5) and a BellSouth representative has access to such information. This is not parity in terms of quality.

- An ALEC must visit a separate telephone number assignment screen in every case, whereas BellSouth must visit a separate screen only if the customer rejects the number assigned by the system at the time of address validation. (See Calhoun, T 1276-77; Martinez, T 3342) An ALEC also has no way to view a list of the NXXs available to serve a specific address, whereas this information is readily available to a BellSouth representative using RNS or DOE. (Calhoun, T 1282-83, 1447-48; Bradbury, T 2910) This is not parity in terms of timeliness or quality. Further, when an ALEC does reach the telephone number assignment screen, it cannot reserve more than six numbers, and even those numbers are not guaranteed to be available to its prospective customer. (Calhoun, T 1281, 1352-54, 1403-04; Martinez, T 3240-41; Bradbury, T 2845)
- An ALEC must move repeatedly through a random list of available long companies to obtain the information necessary to implement a customer's choice of preferred interexchange carrier. (Calhoun, T 1288-92) RNS and DOE permit a BellSouth

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LENS is not the same as a demonstrated capability to provide such feature in a nondiscriminatory manner today, and is insufficient for BellSouth to carry its burden of proof. *Ameritech Order*, ¶55.



representative to access a particular carrier's information simply by typing in the name (or first few characters of the name) of the desired carrier. (Calhoun, T 1293) This is not parity in terms of timeliness or quality. (Bradbury, T 2912) BellSouth's position that it is required by the FCC to display a random list of carriers in the first instance is a red herring, since nothing in the FCC's requirements prohibits easy access to information about a customer-specified carrier. Further, BellSouth's suggestion that an ALEC will need to know only the carrier codes of those carriers with whom it has a preexisting business relationship is disingenuous. (Calhoun, T 1290-91) Under §251(b)(3) of the Act, an ALEC has the obligation to provide dialing parity, including the obligation to allow a customer to choose his or her preferred interexchange carrier.

- An ALEC must manually scroll through a list of services, features and functions to determine which ones are available in the end office serving the customer's address. (Calhoun, T 1295-96) RNS/DOE permit a BellSouth representative to access information about a particular service or feature simply by typing in the name (or the first few characters of the name) of the desired feature. (Calhoun, T 1299) This is not parity in terms of quality and timeliness.
- An ALEC cannot use LENS to access information as to whether a

particular address is located within a county or municipality for purposes of determining whether the customer will be subject to local taxes. RNS/DOE not only provide access to this information, but also use it to automatically populate the order form. (Bradbury, T 2931) This is not parity in terms of quality.

- The due date interval calculator in LENS uses a cumbersome presentation screen which requires the ALEC to manually calculate a due date taking into account several separate pieces of information -- typical installation intervals, normal working days, and days the particular end office may be closed -- presented by the system. (Calhoun, T 1308-12; Ex. 42 @ GC-20, p.20) In contrast, RNS provides an immediate picture of the first available due date. (Calhoun, T 1312-1314; Ex. 41 @ GC-12) This is not parity in terms of quality or timeliness.
- The due date calculation feature in the LENS firm order mode returns incorrect dates for customer conversions that do not require a premises visit. (Calhoun, T 1327; Ex. 48) This is not parity in terms of quality.
- BellSouth has failed to show that LENS accesses its legacy systems in the same timeframe as those systems are accessed by RNS/DOE. While BellSouth presented some preliminary results of the time for a request to travel between the "navigator" used by ALECs and BellSouth's legacy systems (Ex. 52, p.183),

BellSouth provided *no* comparable data on its own navigator-to-legacy system response time. (Stacy, T 1582-83) More importantly, because LENS forces a user to make more requests to accomplish the same task (e.g. multiple address validations), and returns less data in response to some requests (e.g. no credit history from customer record), BellSouth's measurement would not demonstrate parity even if the navigator-to-legacy system response times were identical. As the FCC has stated:

...we would not deem an incumbent LEC to be providing nondiscriminatory access if limits on the processing of information between the interface and the legacy systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

*Ameritech Order ¶135.*

- The shortcomings in LENS are perhaps nowhere better demonstrated than by the fact that LENS has been undergoing almost weekly updates (Stacy Depo. Ex. 52, pp.128-30), yet a lengthy list of significant fixes and enhancements remains to be made. (Ex. 53) While BellSouth should be encouraged to make improvements to LENS, there is a difference between making enhancements to a system that already meets the nondiscrimination requirement, and making enhancements that are necessary to ensure nondiscrimination. *Ameritech Order*

¶153. In this case, many of BellSouth's planned enhancements are necessary to overcome deficiencies in the existing interface.

In summary, the pre-ordering function in LENS is cumbersome and incomplete in comparison to the access to pre-ordering information that BellSouth provides to itself. The pre-ordering OSS available to ALECs clearly fails the test of parity in terms of "quality, accuracy, and timeliness."

### Ordering

BellSouth relies on a combination of methods for ordering resold services and UNEs, including: Electronic Data Interchange (EDI) for 34 "simple" resold services and four "customer oriented" UNEs; EXACT for "infrastructure" UNEs; and paper orders for other simple resold services, customer oriented UNEs, and all "complex" resold services.<sup>15</sup> (Calhoun, T 1218-19; Ex. 42 @ GC-28) BellSouth itself uses RNS for ordering almost all residential services and DOE for ordering any service which has a valid USOC and is in BellSouth's billing system. (Calhoun, T 1231-32, 1250)

BellSouth has failed to carry its burden of proof that the combination of EDI, EXACT and paper processes provides nondiscriminatory access to ordering functions when compared to RNS/DOE. In fact, the record affirmatively shows that these

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<sup>15</sup> BellSouth also provides ordering for some resold services through LENS; however, BellSouth states that it does **not** rely on LENS ordering to meet

systems do **not** provide the ALECs with access to ordering functionality for resold services with the same "quality, timeliness, and accuracy" as the systems BellSouth uses for itself, or to ordering functionality for UNEs in a manner that provides "an efficient competitor with a reasonable opportunity to compete." (Bradbury, T 2862-67; Martinez, T 3248-58)

- Even though the pre-ordering and ordering process are typically completed as part of a single customer contact, BellSouth does not provide ALECs with a single integrated system for the pre-ordering and ordering functions. Instead, the ALEC is required to use LENS to obtain pre-ordering information for subsequent input into a separate ordering system. (See Calhoun, T 1343-44; Bradbury, T 2999-3000) Pre-ordering information obtained from LENS does not automatically carry-forward into the ordering systems, but must be reentered by the ALEC either manually or via a system the ALEC has devised to provide partial integration. (Bradbury, T 2863, 2866-67; see Calhoun, T 1254-55) In contrast, RNS and DOE each operate as a fully integrated pre-ordering/ordering system. (Calhoun, T 1420) Information obtained at one step in the process is automatically carried-forward to subsequent stages of the process. (Calhoun, T 1439) This is not parity. (Bradbury, T 2915-16)

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its requirement of nondiscriminatory access. (Calhoun, T 1219-20)

- Although BellSouth claims that the ALECs should accept responsibility for integration of its non-standard pre-ordering interface with the various ordering systems, BellSouth has not provided ALECs with sufficient technical documentation regarding LENS to enable ALECs to do so. While BellSouth at one time was working to develop a Common Gateway Interface (CGI) specification that would provide ALECs with the necessary information, that effort ceased in April, 1997.<sup>16</sup> (Bradbury, T 2955-57, 2964-66) No further work has been done by BellSouth either to complete the technical documentation nor to perform the system development work that would be required on BellSouth's side of the CGI interface. (Calhoun, T 1335-36; see Martinez, T 3236, 3305) BellSouth thus fails to comply with the obligation "to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with the BOC's legacy systems and any interfaces utilized by the BOC for such access." *Ameritech Order ¶137*.
- BellSouth also fails to keep its basic LENS documentation up to date. The LENS User Guide was last updated on June 17, 1997, although the software has undergone almost weekly

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<sup>16</sup> MCI's May, 1997 request for the technical documentation for LENS went unanswered until July, 1997, when the April documentation was provided. Further promised updates have not been furnished to MCI. (Martinez, T 3305)

updates since that time. (Calhoun, T 1333-35) BellSouth has no organized document control mechanism for keeping LENS users apprised of updates (Martinez, T 3279); instead it relies on quarterly ALEC conferences and communications from the ALEC's account team to provide such information.<sup>17</sup> (Stacy Depo., Ex. 52, pp.160-61) This process is inadequate, as evidenced by the fact that there were three changes to the LENS User Guide between March and June, and in each case MCI learned of the change from sources other than BellSouth. (Martinez, T 3237)

- As BellSouth admits, the development of a customized EDI interface is a time-consuming and expensive undertaking. (Calhoun, T 1190) To date, only AT&T has undertaken to develop such an interface. (Calhoun, T 1358) Those efforts have been hampered, however, by BellSouth's frequent, unannounced, unilateral changes to the LEO implementation guide with which describes the system with which EDI must interact. (Bradbury, T 2917-18) To attempt to meet its obligation of providing nondiscriminatory access to ordering functions to carriers who are too small to undertake this substantial development effort, BellSouth has worked with a third party developer to offer an personal-computer based EDI interface known as EDI-PC. (Calhoun, T 1190-91) That

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<sup>17</sup> BellSouth now makes the LENS User Guide available on a WEB page, but the June 17, 1997 version available there still does not reflect the myriad of changes since that date.

interface, however, fails to pass the test of nondiscrimination.

- EDI-PC provides only limited real-time edits. While EDI-PC does ensure that some mandatory fields are completed and does perform some format checking before an order is submitted, these features are limited, and there is no real-time checking for compliance with business rules. (Calhoun, T 1265-66) This means there is a significant likelihood that an ALEC customer service representative can submit an order that will be "rejected" by the downstream systems. (See Bradbury, T 2910-11) All such rejects are returned to the LCSC, which either continues to process the order manually, or returns the order by fax to the ALEC to be reworked and resubmitted. (Calhoun, T 1255-57, 1269-70) In either case, there is significant manual intervention. (Calhoun, T 1317-18) This is in contrast to RNS and DOE, both of which contain extensive real-time edits which make it virtually impossible for a BellSouth representative to submit a flawed order. (Calhoun, T 1267; Ex. 43, p.401; Martinez, 3333-34) In other words, while a BellSouth representative discovers and corrects errors when he or she is on line with the customer, an ALEC representative discovers errors only after an order has been submitted and subsequently



rejected. (Bradbury, T 3004-3005) This is not parity.

- When an ALEC wishes to submit an order to "convert as specified" (i.e., to switch a customer from BellSouth to the ALEC and at the same time either add or subtract features from the customer's service), it must place an order which details all features which will remain on the customer's line following the conversion. (Calhoun, T 1261) For example, if a customer has three custom calling features and wishes to add a fourth in connection with his or her change in carrier, the ALEC must affirmatively order all four features. In contrast, when a BellSouth customer wishes to add or delete a feature, it is as simple as the customer service representative clicking on a "yes" or "no" box next to the feature being added or deleted. (Calhoun, T 1263-64) This is not parity.
- An ALEC can use the industry-standard EDI interface to place orders for only 34 resold services and four UNEs. Of these, only orders for 30 of the resold services "flow-through" BellSouth's down-stream systems to generate a mechanized order. (Calhoun, T 1232-34; Ex. 41 @ GC-19) Orders for the remaining resold services<sup>18</sup> and for the three UNEs accommodated by EDI<sup>19</sup> do not generate a mechanized order, but instead drop-

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<sup>18</sup> PBX trunks, multi-line hunt groups, Synchronet services, and basic rate ISDN. (Calhoun, T 1234)

<sup>19</sup> BellSouth states that EDI supports ordering unbundled loops,

out to the Local Carrier Service Center (LCSC) for manual processing. (Calhoun, T 1237, 1316) In these cases, EDI does not operate as an electronic ordering interface, but simply as a glorified fax machine. Orders for other resold services and other customer-oriented UNEs must be submitted on paper, and are processed manually by the LCSC. (Calhoun, T 1244-45) In contrast, RNS and DOE together provide a BellSouth customer service representative the ability to enter orders for all BellSouth services, and to have those orders flow-through the downstream systems for mechanized generation. (Calhoun, T 1250; Ex. 43, pp.382R, 383-86; Bradbury, T 2859; see Ex. 99 @ JB-8) This disparity violates the requirement that "[f]or those functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers." *Ameritech Order ¶137*.

- Because of BellSouth's legal position that it is not required to offer combinations of UNEs, even when such elements are already combined in its network today and FCC Rule §51.315(b) (which remains in effect following the 8th Circuit's decision) prohibits BellSouth from separating such elements except upon an ALEC's request, BellSouth has put no mechanism in place for ALECs to order combinations of UNEs. (Martinez, T 3305; see

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unbundled local switching, and interim local number portability (iLNP). (Calhoun, T 1234-35) This ordering capability has not been tested in practice, since no carrier in BellSouth's nine state region has placed any UNE

Calhoun, T 1339-40) Thus BellSouth cannot document that "it is able to provide OSS functions to support the provision of network elements, *including combinations of network elements.*" *Ameritech Order ¶128* (emphasis added).

### Provisioning

BellSouth has failed to demonstrate that it provides the provisioning function to ALECs at parity with itself. In particular:

- Due dates obtained through LENS for "conversions as specified" result in installation intervals that are longer than what BellSouth provides for its own retail customers. (Calhoun, T 1324-27; Ex. 47)
- BellSouth's standard intervals of three days for provisioning of two-wire analog ports and five days for provisioning "switching functionality" (Ex. 51 @ WNS-D) violate the principle that "for the provisioning of unbundled local switching that involves only software changes, customers should be changed over in the same interval as LECs currently change over end users between interexchange carriers." *Ameritech Order ¶141.*
- The volume of orders that require manual intervention -- either because only manual ordering is available or because

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orders via EDI. (Calhoun, T 1356-57; Ex. 43, p.404)

rejects fall-out for manual processing -- means that even if timeframes from completed order to completed installation were the same for BellSouth and ALECs (and BellSouth has no measurements to demonstrate that they are), the provisioning intervals from customer contact to completed installation for ALECs would not be at parity with what BellSouth provides its retail customers. BellSouth's manual processing of complex service offering includes basic services such as Centrex and private lines. Further, the manual processing that occurs is done by the account teams which makes BellSouth integrally involved in ALEC orders. As a point of comparison, while Ameritech's process was far less manual than BellSouth's, the FCC denied Ameritech application because of its delays in rejects and manual processing. *Ameritech Order*, ¶186-99.

### **Repair And Maintenance**

BellSouth provides an industry-standard T1M1 repair interface for services and elements that are identified by a circuit number, and a non-industry standard TAFI repair interface for services and elements that are identified by a telephone number. (Calhoun, T 1224-25, 1229; Ex. 42 @ GC-28) BellSouth asserts that TAFI is preferable to an industry standard interface because it is an "intelligent system." Unlike the industry standard, however, TAFI does not provide ALECs with "machine-to-machine" functionality. (Calhoun, T 1225-26) This means that an

ALEC cannot use its own repair and maintenance system to pass troubles to TAFI on an automated basis, but instead must have a customer service representative interact manually with the BellSouth system. (Calhoun, T 1227-28) This requirement for manual intervention imposes unnecessary inefficiencies on ALECs who are forced to use TAFI in BellSouth's region, when they may be able to use an industry standard interface (or be forced to use other non-standard interfaces) in other regions. (Calhoun, T 1227-28)

### **Billing**

There are three aspects of billing that the Commission should consider in determining BellSouth's checklist compliance.

1. Can BellSouth render accurate bills for the resold services and UNEs that it provides to ALECs? The answer is "no."

First, the record shows that despite claims of successful end-to-end testing which was designed to demonstrate the ability to render accurate bills (Milner, T 843), BellSouth has continued to render inaccurate bills for even simple resold services. This includes applying the wrong wholesale discount to recurring charges and failing to discount non-recurring charges. (Milner, T 908-12; Ex. 36 @ Sked. C)

Second, throughout the discovery process and the first few days of the hearing, BellSouth admitted that it was unable to render mechanized bills for usage sensitive charges for local

interconnection, unbundled local switching, and unbundled shared local transport. (See, e.g. Milner, T 771, 782, 845-46) During Mr. Scheye's final appearance on the stand, BellSouth claimed for the first time that BellSouth had completed development of the necessary billing capability in mid-August. (Scheye, T 1709; Ex. 31) Since no bills have yet been rendered using the new system (Scheye, T 1709), and since BellSouth's track record for accurate billing of even simple resold services is not good, this new untested capability must be regarded as just another "paper promise."

Third, BellSouth's own test results show that it cannot apply different business and residential resale discounts to charges for ALEC-branded DA service. (Milner, T 905-06) Even the projected "fix" due at the end of 1997 will not properly address the problem; while BellSouth claims that the overall bill total will be correct, it admits that the supporting detail will still be incorrect and will not reconcile with the bill total. (Milner, T 906-08; Ex. 37, pp.12-13)

2. Does BellSouth provide ALECs who purchase unbundled local switching with the access usage information necessary to permit ALECs to bill access charges to interexchange carriers? The answer is "no." AT&T has specifically requested such data, but BellSouth has refused to provide it. (Hamman, T 2713-14) Although Mr. Scheye studiously attempted to avoid answering the

question, it is clear that BellSouth does not intend to provide the necessary access usage data to ALECs who purchase unbundled local switching, at least not without further negotiations and an additional charge for such data. (See Scheye, T 557-62, 564-67, 1712-22) This position appears to be based on BellSouth's contention that such billing information is not part of the unbundled local switching network element, despite the clear language of the Act which defines "network element" to include "features, functions, and capabilities that are provided by means of [unbundled local switching], including. . .information sufficient for billing and collection. . ." 47 U.S.C. §153(45) BellSouth's apparent willingness to consider providing this information for a separate charge following further negotiations (see Scheye, T 567, 1716-18) is insufficient to comply with its legal requirement to provide non-discriminatory access to unbundled local switching.

3. Does BellSouth provide ALECs with complete usage data on services that they resell? The answer is "no." Although BellSouth does provide billing data for some items, such as DA, it does not provide local usage data on flat rate resold services. This data is required if ALECs are to be able to properly advise their customers on the most cost-effective mix of services. (Martinez, T 3260-61)

## System Capability

BellSouth has also failed to demonstrate by operational evidence that the OSS systems provided to competing carriers are "actually handling current demand and [] able to handle reasonably foreseeable demand volumes." *Ameritech Order ¶138*. BellSouth failed to provide any of the data required by the FCC to show parity. See, e.g., Ameritech Order ¶212. The only data BST provided is due dates met -- a standard rejected as inadequate in the FCC.

The record shows that BellSouth has handled only modest volumes of resale orders, small volumes of unbundled loop orders, and insignificant volumes of orders for other unbundled network elements, both in Florida and on a regionwide basis.<sup>20</sup> Even with these low volumes, BellSouth has been unable to meet its target of providing firm order commitments (FOCs) within 48 hours of submission of orders. For example, during the first two weeks in August, only 79% of orders were FOC'd in under 48 hours, 21% were over that time limit. (Ex. 22, July 15th Update, page 6) Similarly, AT&T orders **not** FOC'd within 24 hours ranged from 38% to 54% at various times during August. (Ex. 100, p.3) These figures are distressing, since MCI's Interconnection Agreement

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<sup>20</sup> Although BellSouth has provided data as of several different dates, it appears that there are only approximately 22,000 resold services (flat or measured rate business, residential, or PBX trunks) in Florida and 40,000 regionwide (Ex. 32, Sked. WKM-3); 1,392 unbundled loops in Florida and 3,575 regionwide (Ex. 20); and much smaller numbers of other UNEs, for example, 27



calls for FOCs to be received 99% of the time: (i) within 4 hours for electronic orders, and (ii) within 24 hours for manual orders. (Ex. 14, Att. VIII, §2.5.3)

BellSouth claims to have the capacity to handle 5,000 electronic orders a day on a regionwide basis (Ex. 41 @ GC-27), with 25% of these orders expected to originate from Florida. (Ex. 10, p.8) Yet this capacity is based on internal estimates and testing, not on actual operational experience, since BellSouth to date has processed a total of less than 10,000 orders through LENS and EDI. (Bradbury, T 2918-19)

With regard to manual orders, an outside consultant's analysis of BellSouth's LCSC operations reports that the LCSC has a "theoretical capacity" to handle 3,325 local service requests per day, based on each representative processing just over four local service requests (LSRs) per hour. However, by the end of August the actual processing rate was only 1.98 LSRs per hour, for a demonstrated capacity of only 1,625 LSRs per day. (Ex. 22) Since the LCSC must process both manual orders and "rejected" electronic orders, this operation appears to be inadequately sized to serve commercial levels of demand.

**ISSUE 3(a): Has BellSouth developed performance standards and measurements? If so, are they being met?**

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unbundled switching services regionwide, only 7 of which are in Florida. (Ex. 20)

\*\*MCI

No. BellSouth has not developed sufficient performance measurements to determine whether it is providing checklist items in a nondiscriminatory manner. While BellSouth has agreed to some performance measurements in its various interconnection agreements, it has not established the standards which would demonstrate parity between itself and ALECs. The limited performance data to date shows that BellSouth is not providing access to OSS functions, UNEs, or resold services in a nondiscriminatory manner.\*\*

In considering whether BellSouth has established adequate performance measurements and standards to demonstrate compliance with its obligation to provide nondiscriminatory access to UNEs, resold services, OSS functions, and other checklist items, the Commission should undertake at least four related inquiries. First, has BellSouth established performance measurements designed to demonstrate that it is providing elements and services in a nondiscriminatory manner -- i.e., is it measuring the right things, determining results using appropriate calculation methodologies, and reporting its results in an appropriate level of detail? Second, has BellSouth established performance standards or benchmarks that, if achieved, are sufficient to demonstrate parity -- i.e., does BellSouth know what level of performance is required? Third, what performance has BellSouth actually achieved -- i.e., has it submitted sufficient operational data to demonstrate nondiscrimination and

provision of service on reasonable terms? Fourth, what mechanisms are in place to enforce future compliance with the standards -- i.e., what assurance is there that adequate performance, once achieved, will continue? The record in this case demonstrates that BellSouth fails on all four counts.

### **Performance Measurements**

BellSouth proposes to measure its performance using a number of simplistic ratios and measures that were agreed to in the Interconnection Agreement between BellSouth and AT&T. (Stacy, T 1559; Ex. 51 @ WNS-A) The major measurements that BellSouth proposes to make are described on Schedule WNS-A and summarized on Schedule WNS-B of Exhibit 52. These include (1) percentage of rejects returned in less than one hour; (2) percentage of firm order confirmations returned in various intervals; (3) percentage of installation appointments met; (4) percentage of troubles within 30 days of installation; (5) percentage of maintenance appointments met; (6) average maintenance duration; (7) percentages of repeat troubles within 30 days; and (8) maintenance repair bureau average answer time. While these measurements provide a starting point for measuring contract compliance, they are not sufficient to demonstrate parity between services provided to ALECs and services BellSouth provides to itself. (Pfau, T 2178-79, 2205-06) The FCC has specifically recognized that:

...evidence showing that a BOC is satisfying the performance standards contained in its interconnection agreements does not necessarily demonstrate compliance with the statutory standard. If a BOC chooses to rely solely on compliance with performance standards required by an interconnection agreement, the [FCC] must also find that those performance standards embody the statutorily-mandated nondiscrimination standard. *Ameritech Order ¶142.*

There are a number of other measurements that would have to be made to determine whether BellSouth in fact is meeting its obligation of nondiscrimination. These include, but are not limited to, measurements such as (a) average installation interval for resold services compared to average installation interval for analogous retail services; (b) average installation interval for loops; (c) average installation interval for unbundled local switching compared to average PIC change interval (see *Ameritech Order ¶141*); (d) percentage of orders that require manual intervention for ALECs compared to percentage for BellSouth's own orders; (e) percentage of orders rejected; (f) percentage of orders that go into "jeopardy" status; and (g) timeliness of completion notification. Yet BellSouth does not propose to measure any of these parameters. (Stacy, T 1560-1565)

Further, even where BellSouth is making a measurement of performance toward ALECs -- such as timeliness of firm order confirmations -- it is **not** measuring the retail analogue (see *Ameritech Order ¶187 at note 479*) to determine whether that

performance is at a parity with what it provides itself. (Stacy, T 1571) Similarly, while BellSouth has presented preliminary data on the timeliness with which the "navigator" used by LENS and EDI communicates with BellSouth's legacy systems, it has not provided comparative performance data on communication between its own navigator and the same legacy systems. (Stacy, T 1582-83; Ex. 52, p.183)

In a word, BellSouth's proposed performance measurements are simply inadequate to the task of determining its compliance with the nondiscrimination and reasonableness requirements of the Act.

#### **Performance Standards Or Benchmarks**

BellSouth in general does not propose specific performance standards or benchmarks even for the limited number of parameters it proposes to measure. Instead, BellSouth proposes to use a method known as "statistical process control" (SPC) to establish "average" performance based on historical data and to establish upper and lower "control limits" which bound the range within which 99.7% of historical performance has occurred. (Stacy, T 1576-77) BellSouth proposes that its performance be deemed satisfactory unless (a) performance for an ALEC or ALECs falls below the lower control limit, or (b) performance for a single ALEC, or for ALECs as a group, falls below BellSouth's own performance for three or more consecutive months. (Stacy, T 1579)

This proposed methodology is insufficient for several reasons. First, sufficient historical data does not exist for most parameters to establish upper and lower control limits at this time. (Pfau, T 2236; Ex. 51 @ WNS-B) Second, while the SPC methodology may be appropriate for evaluating whether a single process is in-control or out-of-control, it is not suitable for comparing the results of one process to another. The results for BellSouth and an ALEC, or for two ALECs, could be significantly different even though both fell between the upper and lower control limits. (See Pfau, T 2243) Third, depending on the parameter involved and the degree of difference between BellSouth and ALEC results, three months is too long to wait to investigate different levels of performance. (Pfau, T 2184-85, 2239-40)

In summary, even for the limited parameters that BellSouth proposes to measure, it has failed to propose standards necessary to determine, where there is an analogue, that performance toward ALECs is at a parity with BellSouth's own performance or, where there is no analogue, that performance is at a level that gives an efficient ALEC a meaningful opportunity to compete.

### **Performance Achieved**

There is little empirical data in the record to determine whether BellSouth has met its nondiscrimination obligation with respect to the limited number of UNEs and resold services provided to date. Most of the available data is found on

Schedules WNS-E (revised) and WNS-F (revised) of Exhibit 51 and on AT&T's Exhibit 100.

What data there is sheds significant doubt on BellSouth's claims of nondiscrimination. For example, in July (the most recent month for which data is reported) ALECs purchasing unbundled loops in Florida had only 87.% percent of their orders filled by the committed due date; experienced a 7.7% new circuit failure rate; and had 20% repeat troubles within 30 days. (Ex. 51 @ WNS-E, p.2) BellSouth offers no BellSouth experience, agreed standards, or even unilaterally proposed standards against which this performance can be measured. However, it clearly falls short of the standards in the MCI/BellSouth Interconnection Agreement, which call for UNE committed due dates to be met at least 98% of the time, and a new circuit failure rate of 1% or less, beginning December, 1997. (Ex. 14, Att. VIII, §2.5.3)

AT&T's data shows that during the month of August, the percentage of new orders not completed on the due date ranged from 27% to 67%, with missed due dates for the subset of migration orders ranging from 26% to 58%. (Ex. 100, pp. 7, 9) One does not need a formal benchmark to judge that this level of performance is totally inadequate.

#### **Enforcement Of Performance Obligations**

Even more disturbing is BellSouth's failure to propose any mechanism to enforce its performance obligations. (See, Scheye, T

1584-85) The SGAT contains no credit mechanism for substandard performance and no other method for enforcing its contractual obligations. (See, Ex. 125) Similarly, the MCI/BST Interconnection Agreement is silent on an enforcement or credit mechanism because the Commission declined to arbitrate this issue (see Order No. PSC-96-0531-FOF-TP, pp. 73-75) and BellSouth refused to negotiate such a provision absent a Commission mandate.

In these circumstances, even if BellSouth had proposed performance measures and standards which are sufficient to demonstrate nondiscrimination (which it has not), the lack of any mechanism to ensure that such standards are met would cast grave doubt on the extent of BellSouth's commitment to perform.

**Issue 4.** Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth has not established time periods for providing access to poles, ducts, conduits, and rights of way, thus the process for obtaining such access is subject to abuse and BellSouth cannot show that such access is nondiscriminatory.\*\*

Checklist Item 3 requires that BellSouth provide nondiscriminatory access to poles, ducts, conduits and rights of



way. A checklist item as important as this one is to the ALEC community should, at a minimum, set forth a time frame by which an ALEC can obtain a license. It is simply amazing that BellSouth can assert that it is ready to provide these items when it cannot even provide the time frame for obtaining the prerequisite license. (Martinez, T 3282)

Page 18 of Attachment D to the Draft SGAT, section 1.5.1, states "the time frames for the issuance of the license shall be established pursuant to section 1.5.4.3." Section 1.5.4.3 provides for the establishment of a joint task force to develop all procedures necessary to effectuate the provisions of this section. In addition, it provides for good faith negotiation to reduce said agreement to writing within sixty (60) calendar days from the effective date of the agreement.

After the ALEC has wasted the two months waiting to get a written agreement, the ALEC can submit the necessary forms to apply for a license. There is, however, no required time frame within which BellSouth must complete the application process. In this situation, an ALEC gains little comfort from the provision which requires BellSouth to notify the ALEC if its request is being denied on the grounds that the conduit or duct space requested is necessary for BellSouth's present needs. Attachment D, p.5, §1.2.3. Again, the ALEC lacks any recourse. (Martinez, T 3282-83)

Further, to effectively compete, ALECs must be able to obtain access to engineering information with great ease. The SGAT, at page 9, requires a bona fide request for access to engineering information. Upon receiving a request for access to records, BellSouth then has ninety (90) days to respond. It is not clear what BellSouth will require before it allows access. BellSouth could use the bona fide request process to create delay and to make obtaining this information a difficult and lengthy process. (Martinez, T 3283)

**Issue 5.** Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth has not fully implemented the provisioning of unbundled loops. BellSouth's current OSS do not support unbundled local loops for competitors on a parity with BellSouth. Limited experience to date shows that BellSouth is not provisioning local loops to competitors in a time frame that is at parity with itself.\*\*

Checklist Item 4 (Unbundled Loops) expressly requires that BellSouth provide unbundled access to local loops. §271(c)(2)(B)(iv). In addition, loops are network elements, which BellSouth is required to provide on a non-discriminatory basis. §251(c)(3); §271(c)(2)(B)(ii). This requirement mandates that BellSouth provide unbundled network elements to MCI in a manner that is equivalent to the manner in which it provides such

elements to itself, its affiliates, or other carriers. BellSouth has not met this requirement. As discussed under Issue 3 above, BellSouth's OSS systems are not nondiscriminatory in regards to unbundled loops. Further, as also described in under Issue 3, BellSouth is improperly limiting how ALECs can use unbundled loops by refusing to provide combinations of unbundled elements. Finally, as described under Issue 3(a), BellSouth has not produced performance data necessary to show that it can provision unbundled loops in compliance with the Act.

There is no reason that furnishing loops to ALECs should take more time than BellSouth takes in establishing loops for its own customers. BellSouth must be able to demonstrate that it can provision unbundled loops to ALECs at parity with itself. The SGAT contains no fixed interval for loop installation. The effect of a discriminatorily long interval is clear: customers -- particularly customers initiating new service -- are less likely to sign up with an ALEC if it will take several days to begin service when it is provided by the would-be competitor. (Gulino, T 3141)

**Issue 6.** Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to section 271(c) (2) (B) (v) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth has not fully implemented the

provisioning of unbundled local transport. BellSouth's current OSS do not support unbundled local transport for competitors on a parity with BellSouth. BellSouth does not offer the trunk ports and tandem ports which are needed to fully unbundle local transport from local switching. BellSouth also does not permit interLATA, intraLATA and local traffic to be combined on multi-jurisdictional trunks.\*\*

Checklist Item 5 (Local Transport) requires that BellSouth provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." §271(c)(2)(B)(v). As explained in the discussion under Issue 3 above, BellSouth's current OSS systems do not support unbundled local transport for competitors on a parity with BellSouth.

Further, in order to unbundle Common Transport from local switching pursuant to the requirements of the Federal Act, the switch port and the physical trunk must be priced at a flat rate. The only way to measure the service is from the switch. Thus if Common Transport is priced on a usage sensitive basis, it is necessarily being bundled with local switching. (Martinez, T 3283) As Mr. Martinez explained in detail in his testimony, the BellSouth proposed SGAT is unclear on this element and does not appear to be in compliance with the Act. (Martinez, T 3283-89) As discussed under Issue 7 below, BellSouth does not offer the trunk side Local Switching Network Element. Without a trunk side Local

Switching Network Element as an offering, of course, it is not possible to offer the Common Transport Network Element as there would be nothing to connect to. (Martinez, T 3290) Finally, while Mr. Milner was not aware of any technical limitations on providing on multijurisdictional trunking, (Ex. 33 @ Milner Depo. p. 211) BellSouth does not permit this type of transport. (Gulino, T 3117-18, 3143)

**Issue 7.** Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth is not actually providing unbundled local switching. BellSouth's current OSS do not support unbundled local switching for competitors on a parity with BellSouth. Further, BellSouth is unwilling and unable to provide usage data associated with unbundled switching.\*\*

Checklist Item 6 requires that BellSouth provide local switching unbundled from transport, local loop transmission, or other services. §271(c)(2)(B)(vi). BellSouth concedes that it is not yet furnishing any ALEC with any substantial switching functions or capabilities. (Milner, T 782) BellSouth would have this Commission believe that ALECs are not purchasing unbundled switching because of different entry strategies. In fact, unbundled switching simply has not been and is not now available.

First, BellSouth's current OSS systems do not support

unbundled local switching for competitors on a parity with BellSouth. See Discussion of OSS under Issue 3 above. Further, BellSouth is unable to provide access usage data associated with unbundled switching. Id. In addition, as discussed under Issue 3 above, because BellSouth refuses to allow ALECs to combine UNEs, because it has failed to provide physical collocation, and because of its "glue" policy, BellSouth has made it virtually impossible for ALECs to order or use unbundled local switching. Finally, what BellSouth calls unbundled switching, is not truly unbundled.

BellSouth witness Mr. Milner states that because BellSouth has a handful of unbundled switch ports in service in Florida, unbundled switching is functionally available. (Milner, T 782) However, there are two sides to the switch -- the port (or line) side and the trunk side. Only the trunk side of local switching combined with the common transport group is offered in the SGAT. Thus, BellSouth has not unbundled local switching so that both line side and trunk side are offered separately. This issue is a concern because at page 12 of the Draft SGAT, BellSouth ignores the need for trunk side termination. (Martinez, T 3290)

There are two basic elements associated with local switching: the ports (or access and egress elements) and the switching function. To effectively unbundle local switching, each of these two elements must be offered from both the line

side and the trunk side. In other words, an ALEC should have the capability to order a line side port (e.g., 2-wire analog subscriber port) in combination with the switching function. In this case, the ALEC would be provided the originating line class functions as options for their customers and would instruct the ILEC on the call routing exception functions required (e.g., route 0+/0- to the tandem for terminating on the CIC 222 trunk group and all 1+ to the CIC 852 trunk group). From the trunk side of the local switching Network Element, an ALEC should have the capability to order a Direct Tandem Trunk/Group (e.g. Intermachine Trunk - IMT - equipped for 2-stage FGD) and to instruct the ILEC on the call routing or announcement exceptions that may be required. (Martinez, T 3290-91)

In the first scenario, the ALEC is ordering a line side interface to serve its customers and would combine the Port with a local loop Network Element. In the trunk side example, the ALEC would be providing, either directly or through a third party, the tandem functionality for its end user or interexchange customers. The trunk side interface could be combined with the Common Transport Network Element offered by BellSouth or transport could be provided either by the ALEC or a third party. Without a trunk side Local Switching Network Element as an offering, of course, it is not possible to offer the Common Transport Network Element as there would be nothing to connect

to. (Martinez, T 3291)

**Issue 8.** Has BellSouth provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:

(a) 911 and E911 services;

**\*\*MCI:** No. BellSouth's current OSS do not support 911 and E911 for competitors on a parity with BellSouth.\*\*

Checklist Item 7 requires, in part, that BellSouth provide nondiscriminatory access to 911 and E911 services.

§271(c)(2)(B)(vii)(I). BellSouth's current OSS systems do not support 911 and E911 services on a parity with BellSouth. See Discussion of OSS under Issue 3 above.

(b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and,

**\*\*MCI:** No. BellSouth's current OSS do not support directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers on a parity with BellSouth. In addition, BellSouth does not provide access to directory service listings in its database for independent telephone companies and ALECs.\*\*

Checklist Item 7 requires, in part, that BellSouth provide nondiscriminatory access to directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers. §271(c)(2)(B)(vii)(II). First, BellSouth's current OSS systems do not support access to directory assistance services on a parity with BellSouth. See Discussion of OSS under



Issue 3 above. In addition, the databases to which BellSouth is offering access do not contain listings for the smaller, independent LECs and the ALECs. (Martinez, T 3298-3299) Without such listings, ALEC customers will not have access to universal directory assistance listings unless the ALEC pays BellSouth to provide DA services. This inequality is directly contrary to the requirements of the Act and to FCC's Order. Section 251(b)(3) provides that all LECs have the duty to permit all competing providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings. The FCC has specifically required that any customer of a competing provider "should be able to access any listed number on a nondiscriminatory basis, notwithstanding . . . the identity of the telephone service provider for the customer whose directory listing is requested." *Second Report and Order of the FCC*, ¶135.

(c) operator call completion services?

**\*\*MCI:** BellSouth has provided access to operator call completion services. However, since BellSouth has refused to provide MCI with unbundled switching it remains to be seen whether BellSouth is capable of providing such access via unbundled switching.\*\*

As discussed above, even though MCI has ordered unbundled switching from BellSouth, BellSouth has not provided MCI with unbundled switching. Despite the lack of any authorization from this Commission, and in violation of the Act, BellSouth has

treated UNE orders for loop/port combinations as resale orders. See Discussion under Issue 3 above. Since BellSouth has not yet provided such unbundled switching, it remains to be seen whether BellSouth can provide nondiscriminatory access to operator services via its unbundled switching.

**Issue 9.** Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth's current OSS do not support white page directory listings on a parity with BellSouth.\*\*

Checklist Item 8 requires, in part, that BellSouth provide white pages directory listings for customers of other telecommunications carrier's telephone exchange service. §271(c)(2)(B)(viii). However, BellSouth's current OSS systems do not support white page directory listings on a parity with BellSouth, for example "as is" migrations of directory listings information when customers switch to new entrants. See Discussion of OSS under Issue 3 above.

**Issue 10.** Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. In situations where an ALEC does not have an NXX code, BellSouth imposes significant restrictions on an ALEC's ability to assign telephone numbers. For example, an ALEC is permitted to assign a maximum of

six telephone numbers per customer and does not receive real-time verification of the number assignment. In addition, ALECs do not have access to the ATLAS database used by BellSouth to manage available vanity numbers and the selection of such numbers, though LENS, is a cumbersome process.\*\*

Checklist Item 9 provides for nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers. §271(c)(2)(B)(ix) In situations where an ALEC does not have an NXX code, BellSouth imposes significant restrictions on an ALEC's ability to assign telephone numbers. See Discussion of OSS under Issue 3 above. Both Mr. Scheye and Mr. Milner admitted that the BellSouth testimony claiming nondiscriminatory access to numbering resources referred only to the situation where an entire NXX is assigned to an ALEC and not to the situation where individual telephone numbers are assigned out of an existing BellSouth NXX. (Scheye, T 589-90; Milner, T 874) Further, even when an entire NXX is assigned to an ALEC, BellSouth has had a hard time activating MCI's NXX codes. See Discussion under Issue 13 below. In addition, ALECs do not have access to the ATLAS database used by BellSouth to manage available vanity numbers and the selection of such numbers, through LENS, is a cumbersome process. (Martinez, T 3241)

**Issue 11. Has BellSouth provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to section**

271(c)(2)(B)(x) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth is not providing nondiscriminatory access to its advanced intelligent network (AIN) database nor to its service creation environment (SCE)/service management system (SMS). Further, BellSouth is not permitting nondiscriminatory access to its Toll Free Database for the purpose of obtaining the routing information needed for an SS7-capable carrier to complete 800/888 calls.\*\*

Checklist Item 10 requires nondiscriminatory access to databases and signaling necessary for call routing and completion. BellSouth is not providing, and the SGAT does not offer, parity of access to call-routing and completion databases.

The Act requires that BellSouth provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Put simply, Checklist Item 10 requires access to BellSouth's Advanced Intelligent Network (AIN) database and Service Creation Environment (SCE)/Service Management System (SMS). It does not appear that an ALEC could get access to BellSouth's AIN databases today, or create programs via their SCE/SMS. (Gulino, T 3146)

In addition, as Mr. Martinez explained in detail in his testimony in this matter, BellSouth is not permitting nondiscriminatory access to its Toll Free Database for the purpose of obtaining the routing information needed for an SS7-capable carrier to complete 800/888 calls. (Martinez, T 3291-95) Finally, with regard to access to Directory Service listings for

independent telephone companies and other ALECs, BellSouth simply refuses to provide the necessary data. This issue is discussed in more detail under Issue 8(b) above and Issue 13 below.

**Issue 12. Has BellSouth provided number portability pursuant to section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?**

**\*\*MCI:** No. BellSouth's current OSS do not support ILNP on a parity with BellSouth. While BellSouth is providing interim number portability, it does not have procedures and practices in place to ensure that the cut-over of a customer takes place at the scheduled time and without an interruption of service. In addition, BellSouth has not produced any evidence of testing to insure that with ported numbers the BellSouth operator will transfer to the new entrant operator interrupt and busy verification requests made on ported numbers.\*\*

First, BellSouth's current OSS systems do not support interim number portability on a parity with BellSouth. See Discussion of OSS under Issue 3 above. Further, MCI has experienced numerous problems with the scheduling of Interim Local Number Portability ("ILNP") cutovers including having customers switched over two weeks in advance of the scheduled cutover date. (Gulino, T 3156; Ex. 110 @ Late Filed Depo. Ex. 1) MCI must have the ability to schedule and postpone ILNP conversions and BellSouth must make cutovers as scheduled. MCI has also had problems with the length of time customers are disconnected during remote call forwarding cutovers. (Gulino, T 3156-57)

In addition, BellSouth has not produced any evidence of testing to insure that with ported numbers the BellSouth operator will transfer to the new entrant operator interrupt and busy verification requests made on ported numbers.

In the MCI arbitration, in connection with Interim Number Portability ("INP"), a vital requirement was to have the BellSouth operator transfer to the ALEC operator emergency interrupt and busy verification requests made on ported numbers. Throughout the arbitration, BellSouth maintained that it had to test whether it is technically feasible to do this. (Martinez, T 3296-97) The Commission agreed with MCI that these transfers must be made if possible and approved language in the MCI/BellSouth Interconnection Agreement which provided that if a query is not successful the operator shall confirm whether the number has been ported and shall direct the request to the appropriate operator. See Ex. 14, Att. VIII, §6.1.3.15. It does not appear that BellSouth has conducted the testing necessary to address this critical issue. (Martinez, T 3296-97) BellSouth should not be deemed to be making available or providing local number portability, until it meets its burden to establish that such testing has been completed and the requested transfers can be made.

**Issue 13. Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in**

accordance with the requirements of section 251(b) (3) of the Telecommunications Act of 1996, pursuant to section 271(c) (2) (B) (xii) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth has failed to activate MCI's NXX codes in a timely manner, thereby precluding MCI customers from reaching BellSouth customers. In addition, BellSouth does not provide access to directory service listings in its database for independent telephone companies and ALECs.\*\*

In Orlando, MCI attempted a launch of local service. The NXXs of MCI's customers were not opened to the BellSouth network because BellSouth failed to activate MCI's NXX codes. Thus, BellSouth local customers were unable to get through to MCI local customers. On October 30, 1996, MCI informed BellSouth of the problems associated with the MCI NXXs. The problem had left MCI's customers isolated -- without the ability to be reached by BellSouth customers. This isolation lasted until November 5, 1996. (Gulino, T 3147-48) Orlando was not a unique event. The problem has been so bad that MCI field technicians have had to engage in a statewide effort to manually test for call completion problems. (Gulino, T 3160-61; see also Ex. 110 @ Late Filed Depo. Ex. 3) This problem illustrates the unreliability of the new systems and processes required to make local competition work. It serves as a valuable illustration of the difference between making "paper" promises of nondiscriminatory interconnection, and actually carrying through on those promises to provide a nondiscriminatory competitive experience.

In addition, the directory listing databases to which BellSouth is offering access do not contain listings for the smaller, independent LECs and the ALECs. See Discussion under Issue 8(b) above. Thus, an MCI local customer would need to be transferred by MCI to BellSouth's Directory Assistance or dial a special code to by-pass MCI and get the BellSouth Directory Assistance group to obtain the telephone numbers of end users served by other ALECs or independent telephone companies. This is hardly dialing parity and certainly creates a situation where MCI's local service is less attractive than BellSouth's.

(Martinez, T 3298-3299)

**Issue 14.** Has BellSouth provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?

**\*\*MCI:** No. BellSouth does not provide reciprocal compensation in the case in which an ALEC uses an end office switch to complete calls throughout a geographic area that, in BellSouth's network, would be served by an tandem switch.\*\*

In order for §271(c)(2)(B)(xiii) to be met, at a minimum, terms and conditions for the mutual and reciprocal recovery of costs of call transport and termination must be established that do not provide a competitive advantage to either carrier. If the recovery of costs associated with the termination of a call that



originates on a competitor's network is truly mutual and reciprocal, neither carrier will obtain a competitive advantage or disadvantage from the arrangement. Such an outcome can be assured if the compensation arrangement focuses on the *function* being performed -- the termination of a call -- rather than on the simple labeling of the point of interconnection or other extraneous variables. If the characteristics of each carrier's network rather than the function being performed is considered when determining compensation, it will be impossible for two carriers with different network configurations to engage in a compensation arrangement that is truly mutual and reciprocal. Such a function-based compensation arrangement must be in place before requirements of Item 13 of the §271 competitive checklist can be met. Yet such a mechanism is not offered either in the SGAT or in BellSouth's various interconnection agreements.

In addition, on page 3 of the Draft SGAT, BellSouth provides an incorrect definition of Intermediary Tandem Switching. Intermediary tandem switching is switching a call from a tandem to another tandem for the purpose of completing a call. The only intermediary tandem switching BellSouth could be offering in the SGAT is from their local tandem to their access tandem. Thus, BellSouth seeks to charge two tandem switching fees -- which may explain why BellSouth continues to deny ALECs a local tandem connection -- to perform the same function the ALECs would

perform using one switch. (Martinez, 3273-74)

Issue 15. Has BellSouth provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

\*\*MCI: No. BellSouth's operations support systems do not provide competing carriers with nondiscriminatory access to the preordering, ordering, provisioning, maintenance and repair, and billing functionalities for resold services. Such systems are not equal in quality to BellSouth's own systems. In addition, BellSouth has refused to provide voice mail service for resale on an unbranded basis, despite the fact that such resale is required by the MCI/BellSouth Interconnection Agreement. Further, BellSouth proposed SGAT would impose restrictions on resale which are not in compliance with the Act.\*\*

BellSouth is not in compliance with the resale provisions of the §271 competitive checklist and §251 of the Act. As described in detail under Issue 3 above, BellSouth's OSS systems do not provide nondiscriminatory access to the preordering, ordering, provisioning, maintenance and repair, and billing functionalities for resold services.

In addition, BellSouth has refused to provide voice mail service for resale on an unbranded basis to MCI, despite the fact that such resale is required by the MCI/BellSouth Interconnection Agreement. (Ex. 111 @ JSG-3, MCI's Answer to Interrogatory 40; Ex. 14, Att. II, §2.3.10.1 ("MCI shall have the right to resell

BellSouth Voice Mail services"), Part A, §25.1 ("In all cases in which BellSouth has control over handling of services MCI may provide using services provided by BellSouth under this Agreement," BellSouth shall either brand as MCI services or provide as unbranded as MCI may specify). Similarly, while page 22 of the Draft SGAT indicates that BellSouth will leave behind generic cards with ALEC customers, in trials where MCI is providing resold BellSouth service to MCI employees, the BellSouth representative left behind BellSouth -- not generic or MCI -- cards. (Martinez, T 3299)

The proposed SGAT would impose restrictions on resale which are not in compliance with the Act. Under BellSouth's plan, for example, an ALEC must provide proof of authorization upon request to effect a transfer. While MCI certainly will maintain such records, it is inappropriate for the SGAT to create a situation where BST can demand such proof without justification.

BellSouth's proposal sets themselves up as the telephone "police", which is hardly a competitively neutral solution.

(Martinez, T 3299-3300) The proposed SGAT also states that BellSouth will charge \$19.41 per line for unauthorized transfer of a customer. The appropriate charge should be much less. Any changes would be simply a name change in CRIS, and BellSouth has given no cost justification for such a high charge. BellSouth's proposal again sets itself up as the telephone "police", which is

a recipe for disaster. (Martinez, T 3300) Again at pages 24 and 25 of the Draft SGAT, BellSouth would have itself act as the judge and jury for customer problems. As is the case with too many customer issues in the SGAT, BellSouth creates procedures which ALECs must follow; if they do not, BellSouth can automatically discontinue service. The problem with this approach is that there is no dispute resolution process to serve as a check on BellSouth's activities and to ensure that ALECs have the opportunity to be fully heard on the particular issue. According to the Draft SGAT at page 31, BellSouth has the right at any time to audit services purchased by an ALEC for resale. Obviously, such an audit is an opportunity for BellSouth to learn more about an ALEC's market and inhibit its ability to compete. The Commission should not allow such an opportunity to exist at BellSouth's whim. (Martinez, T 3302)

- (a) Has BellSouth developed performance standards and measurements? If so, are they being met?

**\*\*MCI:** No. BellSouth has not developed sufficient performance measurements to determine whether it is providing checklist items in a nondiscriminatory manner. While BellSouth has agreed to some performance measurements in its various interconnection agreements, it has not established the standards which would demonstrate parity between itself and ALECs. The limited performance data to date shows that BellSouth is not providing access to OSS functions, UNEs, or resold services in a nondiscriminatory manner.\*\*

As discussed in detail under Issue 3(a) above, BellSouth has not developed sufficient performance measures and has not accumulated sufficient performance data to demonstrate parity in the provision of resold services.

**Issue 16.** By what date does BellSouth propose to provide intraLATA toll dialing parity throughout Florida pursuant to section 271(e)(2)(A) of the Telecommunications Act of 1996?

**\*\*MCI:** The current provisions for cost recovery for implementation of intraLATA 1+ dialing are not competitively neutral. Until such a mechanism is in place, it is not possible to determine when BellSouth will be providing intraLATA toll dialing parity in compliance with the Act.\*\*

The current provisions for cost recovery for implementation of intraLATA 1+ dialing are not competitively neutral since they require that all costs be borne by long distance providers. This Commission has asked its Staff to reexamine the mechanism currently in place. That reexamination is still pending. The current recovery mechanism is not competitively neutral, in part, because while IXCs must pay BellSouth's costs to implement intraLATA 1+ dialing, ALECs, such as MCI, must pay their own way. Until a competitively neutral mechanism is in place, it is not possible to determine when BellSouth will be providing intraLATA toll dialing parity in compliance with the Act. (See Ex. 111 @ JSG-3, MCI's Answer to Interrogatory 98(a)).

**Issue 17.** If the answer to issues 2-15 is "yes," have those

requirements been met in a single agreement or through a combination of agreements?

**\*\*MCI:** The answer to Issues 2-15 is not "yes." BellSouth has failed in numerous significant ways to meet the requirements of the fourteen item competitive checklist.\*\*

See the discussion of issues 2 to 15, above.

**Issue 18.** Should this docket be closed?


**\*\*MCI:** No, this docket should remain open to enable the parties to conduct further discovery in anticipation of a future BellSouth refiling.\*\*

The evidence presented in this matter supports MCI's contention that BellSouth's 271 bid is, at best, premature. As should be apparent from the record in this matter, BellSouth's systems and policies are in a constant state of flux. During the hearing, BellSouth's witnesses frequently contradicted their earlier testimony with claims of "newly learned" evidence or claims of events which occurred after discovery in this matter was closed. BellSouth even revised its Draft SGAT the week before the hearing in this matter and did not file its "Final" SGATs until after the hearing was over.

Because the facts in this matter are ever-changing and since it appears that BellSouth will continue to pursue its premature bid, this docket should remain open to enable the parties to conduct further discovery.

RESPECTFULLY SUBMITTED this 23rd day of September, 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery (\*) or by U.S. Mail to the following parties this 23rd day of September, 1997.

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