such cases, the CLEC, and not BellSouth, will collect the corresponding interstate access charges, regardless of whether the CLEC has purchased a dedicated trunk or shared transport. See Varner Aff. ¶ 108.

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

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

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

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

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

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

concluded that BellSouth provides local switching in accordance with checklist item (6). Id. ¶ 46.

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

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

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

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

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

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

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

BellSouth will use selective routing to provide branded directory assistance capabilities for facilities-based CLECs and resellers. Varner Aff. ¶ 131; Statement § VII.B.3. CLECs' subscriber listings will be included in BellSouth's DA databases at no charge and will be maintained in the same manner and within the same intervals as BellSouth end user listings. Varner Aff. ¶ 132; Statement § VII.B.1.

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

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

Rates for facilities and services furnished to CLECs under checklist item (vii) have been approved by the SCPSC and are further discussed in the Affidavit of Alphonso Varner. Compliance Order at 46-47; Varner Aff. ¶¶ 140-146; see Statement Attach. A at 3-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(requiring equal quality, subject to the same conditions, and with the same provisioning time intervals).

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

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

C. Performance Measurements

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

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

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

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

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

For local interconnection trunking, the initial performance measurements are:

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

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

demonstrate that BellSouth provides a high level of service that will allow CLECs to compete effectively. Id. ¶¶ 25-27.

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

Based upon its experience with the interim and AT&T measurements and its negotiations with other CLECs, BellSouth has established a set of permanent performance measurements for resale services, interconnection trunking, and UNEs. The permanent measurements generally parallel those developed with AT&T, but the permanent measurements split the resold services into more categories (dispatch and non-dispatch), split the UNEs into two categories (loop and non-loop) and add measures for order reject percentages and timeliness of Firm Order

Confirmations. Id. ¶ 43. In the case of UNEs, the data will reflect only the CLEC activity, since BellSouth does not provide unbundled elements to itself. In addition, BellSouth collects traffic measurements on trunk groups interconnected with CLECs as well as on other trunk groups in its network. Id. ¶ 68. Trunk blockage data area available to interested parties every two weeks. Id. BellSouth's trunk blockage measurements are discussed fully in the Stacy Performance Affidavit at ¶¶ 68-74. BellSouth is collecting data for all categories of permanent measurements, and initial data is available for most resale measurements (id. ¶¶ 44-51 & Ex. WNS-9), unbundled loops (id. ¶ 26 & Ex. WNS-3), and local interconnection trunking (id. ¶¶ 25-27 & Ex. WNS-2 and WNS-9, pp. 29-32). These measurements, like the interim measurements discussed above, confirm that resold services, unbundled loops, and local interconnection trunking are available to CLECs on a non-discriminatory basis.

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

III. BELLSOUTH SATISFIES THE REQUIREMENTS OF SECTION 272

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

competitors. As described below, BellSouth is submitting with this application extensive evidence that its entry into long distance will satisfy each of the requirements of section 272 and the Commission's implementing regulations.

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

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

BST and BSLD will also comply with the requirements, set out in sections 272(b)(2) and 272(b)(3), that they maintain separate books and separate officers, directors, and employees.

Jarvis Aff. ¶¶ 11-12; Cochran Aff. ¶¶ 11-17. In accordance with section 272(b)(4), BSLD's creditors do not and will not have recourse to BST's assets. Jarvis Aff. ¶ 13; Cochran Aff. ¶ 18.

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

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

Nonetheless, in order to provide the Commission with what it may deem "relevant" information, BellSouth includes with its application a description of all transactions between BST and BSLD to date as well as a description of future services that may be provided pursuant to written agreements. Jarvis Aff. ¶¶ 14(b)-(c). These transactions have been carried out on an

arms-length basis and in accordance with the Commission's affiliate transaction and cost-accounting rules. Cochran Aff. ¶¶ 19-23.

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

telecommunications carrier's performance or ability to provide service, or will affect BST's interoperability with other telecommunications carriers. Id. ¶ 211.

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

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

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

(reporting of, inter alia, information about trunk blockage, total switch downtime, and consumer satisfaction); Revisions of ARMIS Quarterly Report, 11 FCC Rcd at 22515, ¶ 20 (reporting of installation and repair intervals).[20]

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

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

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

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

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

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

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

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

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

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

¶ 292. If the statute's express joint marketing authorization is to mean anything, a BOC cannot be denied the opportunity to bring its affiliate's services to the customer's attention in a preferential fashion. See Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 115 S. Ct. 2407, 2426 (1995) ("statutes should be read . . . to give independent effect to all their provisions"); see also Weinberger v. Hynson, Westscott and Dunning, Inc., 412 U.S. 609, 631-32 (1973) ("It is well established that our task in interpreting separate provisions of a single Act is to give the Act 'the most harmonious, comprehensive meaning possible'").[23]

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

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

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

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

The damage done by continuing to exclude the Bell companies from in-region, interLATA services is staggering. As the attached affidavit of Professor Jerry Hausman of MIT

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

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

details, delaying Bell company interLATA entry has cost U.S. residential consumers $7 billion per year, effectively imposing an annual tax on each long distance customer. Hausman Aff. ¶¶ 5, 21-23, 24 (App. A at Tab 5). This public burden cannot be justified by a desire to promote local competition. The 1996 Act already opens local markets, and any additional benefit from applying some higher standard would be much less than the costs of continuing to curtail interLATA competition. Id. ¶¶ 11, 24-25; see also Michigan Order ¶¶ 387, 390 (suggesting higher standards). As Professor Hausman explains, "[t]he consumer welfare gains from increased competition in long distance will more than outweigh the incremental gain from the last steps to regulatory perfection that the [Michigan Order] demands." Hausman Aff. ¶ 25.

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