considered a binding agreement for 271 purposes. The FCC also stated that it did not believe that competing LECs and IXCs would necessarily purchase each checklist item in every state. Competitors may need different checklist items, depending upon their market strategies. The FCC stated that the IXC's interpretation of Section 271(d)(3)(A)(I) could create an incentive for competitive carriers to refrain from purchasing network elements in order to delay BOC entry into the in-region, interLATA services market.

Upon consideration, we agree with the FCC that an interconnection agreement does not need to contain all 14 items of the checklist to be considered a "binding agreement." Further, we do not believe that BellSouth would automatically fail to satisfy Track A unless it has "fully implemented" each of the checklist items. We note that the FCC concluded that Ameritech satisfied Section 271(c)(1)(A), but failed to satisfy several of the checklist items in Section 271(c)(2)(B), including OSS, access to 911 and E911, and interconnection. Section 271(c)(1)(A) and Section 271(c)(2)(B) are separate requirements. A BOC could potentially satisfy the Track A requirement of Section 271(c)(1)(A) without satisfying the competitive checklist in subsection (c)(2)(B).

3. "Competing Provider"

Based on the evidence in this proceeding, we find that there are ALECs operating in Florida. These ALECs are providing a commercial alternative to local exchange business subscribers, thereby satisfying the phrase "competing provider" contained in the Act, and recently defined by the FCC in the Ameritech order. According to the FCC, the term "competing provider" in Section 271(c)(1)(A) suggests that there must be an actual commercial alternative to the BOC. The FCC pointed out that this interpretation is consistent with the Joint conference Committee's Report, which stated that "[t]he committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance." While the FCC determined that, at a minimum, a carrier must actually be in the market and operational, i.e., accepting requests for service and providing such service for a fee, it did not address whether

additional criteria must be met to consider a new entrant a "competing provider" under Track A. We agree that at a minimum an actual commercial alternative to the BOC must be operational and providing service for a fee prior to a BOC's entrance into the interLATA market.

4. Competitive Threshold

BellSouth argues that the Act does not require that a competing provider serve a specific volume of customers. Thus, BellSouth asserts, there is no question that it has satisfied the requirement that it provide access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service. FCCA witness Gillan asserts that there is no measurable competition in BellSouth's territory today because BellSouth has not implemented the tools necessary for widespread competition. Thus, witness Gillan asserts that BellSouth does not satisfy the threshold requirements of Section 271.

MCI's witness Wood asserts that the Act contemplates a competitive threshold prior to a BOC entering the interLATA market. Witness Wood states that while he is not suggesting Congress articulated a specific market share loss in local traffic prior to a BOC entering the interLATA market, he believes that Congress was well aware that competition in the local market must occur before a BOC could can enter the interLATA market. Witness Wood, however, does point out that this question could be considered part of the public interest analysis this commission can conduct and comment on in a separate recommendation to the FCC. FCTA witness Pacey also asserts that without determination of a threshold for effective competition, the benefits of local competition for consumers would be compromised. Witness Pacey contends that while she cannot specify a threshold level of competition that must exist in the local market prior to a BOC entering the interLATA market, she states that there must be a truly competitive market structure that is fully operational in the marketplace.

According to the FCC, the word "competing" within the phrase "unaffiliated competing provider" does not require any specified level of geographic penetration or market share by a competing provider. Furthermore, the FCC concluded that the plain language

of Section 271(c)(1)(A) does not mandate any specified level of geographic penetration, and thus does not support imposing a geographic scope requirement. The FCC concluded that the Senate and House each rejected language that would have imposed a requirement regarding a specified level of geographic penetration or market share by a BOC in Section 271 (c)(1)(A). The FCC did recognize, however, that "there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC, and therefore, not a "competing provider."

Upon consideration, we agree with the FCC that the plain language of Section 271(c)(1)(A) does not mandate any specified level of geographic penetration or market share. We note, however, that the Joint Conference Committee Report specifically stated that it expects the FCC to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance. Thus, we believe that competing carriers must actually be operational, with carriers accepting requests for service and providing that service for a fee. It is arguable that the provision of access and interconnection to one residential customer and one business customer satisfies the requirement of Section 271(c)(1)(A). This, however, does not appear to be the intent of the Act. The intent of the Act is that a competitive alternative should be operational and offering a competitive service to residential and business subscribers somewhere in the state. The competitor must offer a true "dialtone" alternative within the state, not merely service in one business location that has an incidental, insignificant residential presence.

While the FCC concluded that Section 271(c)(1)(A) does not mandate a specified level of geographic penetration or market share, the FCC stated that this conclusion does not preclude the FCC from considering competitive conditions or geographic penetration as a part of its public interest consideration under Section 271(d)(3)(C). We agree with the FCC's interpretation on this point.

5. Combination of Customer Classes

Section 271 (c)(1)(A) requires that competing providers offer telephone service either exclusively or predominantly over its own facilities in combination with resale. BellSouth asserts that the phrase "exclusively over their own telephone exchange service facilities," means that the competitor is not reselling retail telecommunication services of another carrier to provide local service to its customers. Witness Varner contends that a facilities-based carrier may build 100% of its own network, or the competitor may purchase certain unbundled network elements from BellSouth and combine them with facilities they have built to provide service to the end user. This interpretation is consistent with the FCC's interpretation in the Ameritech order. In that order, the FCC interpreted the phrase "own telephone exchange service facilities" to include unbundled network elements that a competing provider has obtained from a BOC.

BellSouth asserts that a combination of facilities-based providers satisfies the requirements of Track A. Witness Varner contends that one competitor with a binding agreement may provide facilities-based service to residential customers and another may provide facilities-based service to business customers. BellSouth asserts that the Act does not state that a single provider to both residential and business customers is required. We agree. ACSI's witness Falvey and FCCA's witness Gillan both testify that BellSouth could qualify for Track A if one competitor with an agreement provides facilities-based service to residential customers and another provides facilities-based service to business customers. Witness Gillan contends what really matters is that both business and residential customers be served on an equal basis with BellSouth.

In the Ameritech order, the FCC concluded that when a BOC relies on more than one competing provider to satisfy Section 271(c)(1)(A), each provider does not need to provide service to both residential and business customers. Thus, Section 271(c)(1)(A) is met if multiple carriers collectively serve residential and business customers. If a BOC, however, is relying on a single provider, it would have to be competing to serve both business and residential customers. We agree with the FCC's interpretation of the Act and believe that Section 271(c)(1)(A) is

met if unaffiliated facilities-based carriers collectively serve residential and business customers.

BellSouth also asserts that the Act does not require a provider to serve both customer classes over their own facilities. BellSouth contends that the Act is satisfied as long as the competitor can reach one class of customers wholly through resale, provided that the competitor's service as a whole is predominantly facilities-based. Witness Varner asserts that this is consistent with Congress's objective of increasing the level of competition in both the local and long distance markets, while ensuring that at least one facilities-based competitor is offering service to both residential and business customers. In the Ameritech decision, the FCC did not determine whether it is sufficient under Section 271(c)(1)(A) for a competing provider to provide local service to residential subscribers via resale, as long as it provides facilities-based service to business subscribers.

Several of the parties in this proceeding assert that Section 271(c)(1)(A) is not satisfied if a competing provider serves one class of customers through its own facilities and the other class of customers entirely through resale. We agree. We believe the Act requires facilities-based competition for both residential and business subscribers. The Joint Conference Committee Report states that facilities-based local exchange service must be available to both residential and business subscribers. Exchange access service to business customers only is not sufficient. Furthermore, the Joint Conference Committee report concludes that resale would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test. Accordingly, we believe the Act requires that facilities-based competition exist for both residential and business subscribers.

D. Conclusion

The evidence presented in this proceeding demonstrates that several ALECs operating in Florida, including TCG, Sprint, and ICI, are accepting requests for telephone exchange service from business customers for a fee. These carriers serve business subscribers either exclusively over their own facilities or predominantly over their own facilities in combination with resale. A large number of

confidential filings in this proceeding regarding the number of ALEC subscribers and subscriber lines, provide evidence that confirms that the ALECs in Florida are serving approximately 27,000 business subscriber access lines in BellSouth's territory. Accordingly, we find that BellSouth is providing access and interconnection to its network facilities for the network facilities of such competing providers pursuant to Section 271(c)(1)(A), for business subscribers.

In contrast, the evidence in this proceeding does not demonstrate that BellSouth is providing access and interconnection to its network facilities for the network facilities of such competing providers pursuant to Section 271(c)(1)(A), for residential subscribers. While BellSouth contends that TCG and MediaOne are providing local exchange service to residential customers, there is not sufficient record evidence to support such a finding. We note that while TCG provides service to at least one STS provider that, in turn, resells it to residential subscribers, there is no evidence in the record to confirm that one or more residential subscribers actually receive service.

We do not believe that BellSouth may rely on its agreement with MediaOne to fulfill the requirement of Section 271(c)(1)(A) with respect to residential subscribers at this time. As discussed earlier, based on the evidence in this proceeding, we are unable to determine whether MediaOne's residential offering is a test, or whether MediaOne intends to expand its service offering to additional residential subscribers. We do not believe that the provision of local exchange service on a test basis is sufficient to satisfy this portion of Section 271(c)(1)(A). We believe that the Act requires that a competing provider must be accepting requests from subscribers and service must be provided for a fee. In addition, MediaOne's agreement with BellSouth was negotiated pursuant to state law rather than Section 252 of the Act. There is no Commission order approving it pursuant to Section 252; thus it is unclear whether this agreement is a binding agreement upon which BellSouth may rely in order to satisfy Section 271(c)(1)(A). We encourage BellSouth to file the MediaOne agreement so that it can be reviewed under Section 252.

In summary, we find that BellSouth is providing access and interconnection to competing providers of business service either

exclusively over their own facilities or predominantly over their own facilities in combination with resale. Competing carriers are providing a commercial alternative to business subscribers in Florida. It appears that competing providers are accepting requests from business subscribers and are charging these subscribers a fee. Thus, this portion of Section 271(c)(1)(a)pertaining to business service is satisfied. The record does not support a finding that BellSouth is providing access and interconnection to competing providers of residential service.

IV. COMPLIANCE WITH SECTION 271(c)(1)(B)

A. Introduction

In order for BellSouth to meet the requirements of Section 271(c)(1)(B), it must show that "no such provider" has requested the access and interconnection described in Section 271(c)(1)(A) before the date which is 3 months before the date the company makes its application under Section 271(d)(1). BellSouth must also show that a SGAT that the company generally offers to provide access and interconnection has been approved or permitted to take effect by the state commission under Section 252(f). Specifically, Section 252(f)(2) requires that the SGAT meet two criteria: 1)it must comply with Section 252(d), which requires nondiscriminatory cost based prices, and regulations for interconnection, network elements, transport and termination of traffic, and wholesale rates; and 2)it must further comply with Section 251, which defines duties of interconnection, unbundled access, and resale.

All of the intervenors agree that BellSouth is not eligible to seek interLATA authority in Florida under Track B. They also agree that Track A is the only avenue available to BellSouth, since potential facilities-based competitors have requested access and interconnection from BellSouth in Florida. BellSouth contends that if it is not eligible to file a 271 application with the FCC pursuant to Track A, it should remain eligible for Track B. Track B enables a BOC to apply for entrance into the long distance market based on an approved SGAT. BellSouth asserts that this commission's role is to consult with the FCC once BellSouth has filed a 271 application to verify the existence of either a state

approved interconnection agreement(s) or a SGAT that satisfies the competitive checklist.

BellSouth argues that its proposed SGAT provides each of the functions, capabilities, and services that the Act requires in order for all ALECs to enter the local exchange market. BellSouth contends that the features, functions and services in its proposed SGAT are identical to the items in the 14 point checklist contained in Section 271 of the Act. Thus, BellSouth believes that if the SGAT satisfies Section 251 and 252(d), then it also meets the competitive checklist in Section 271(c)(2)(B).

B. Has an Unaffiliated Competing Provider of Telephone Exchange Service Requested Access and Interconnection with Bellsouth?

As stated in Section 271(c)(1)(B), a BOC can only satisfy these requirements of Track B if no competing provider had requested the access and interconnection described in Track A by December 8, 1996, which is ten months after the Act took effect. BellSouth admits, and the parties agree, that numerous carriers requested access and interconnection with BellSouth within ten months after the effective date of the Act.

Upon consideration, we agree that the record in this proceeding demonstrates that BellSouth has received "qualifying requests" for access and interconnection as defined by the FCC. According to the FCC, if a BOC has received a "qualifying request," it may not proceed under Track B. The FCC defined "qualifying request" as a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of Section 271(c)(1)(A). Furthermore, such a request does not have to be made by an <u>operational</u> competing provider; the FCC concluded "the qualifying request may be submitted by a <u>potential</u> provider of telephone exchange service to residential and business subscribers." (Emphasis supplied)

BellSouth contends that if it is not eligible to file a 271 application with the FCC pursuant to Track A, it should remain eligible for Track B. BellSouth contends that Track A requires that competitors' "network facilities" be sufficient to make the competitor "exclusively" or "predominantly" facilities-based.

BellSouth believes that this provision of Track A is attributable to the belief of Congress that cable companies would emerge quickly as facilities-based local market competitors. Unlike Track B, Track A requires no waiting period. BellSouth argues that it is clear from the Act that Congress intended that Track A would be available if facilities-based providers are already in the market. Thus, BellSouth contends that in order to determine if it is eligible for Track B, a factual record is required to determine if any of the companies with which it has entered into interconnection agreements were providing local service over their own facilities at the time of their request. Furthermore, BellSouth does not believe that there is evidence in the record to suggest that this is the case; thus, if BellSouth has not met Track A, BellSouth believes that it is eligible for Track B.

While BellSouth believes that the Act is clear on this issue, BellSouth points out that the FCC interpreted this language to mean that a facilities-based provider is not necessarily required in order to make a BOC ineligible for Track B. Witness Varner contends that the FCC's decision establishes a "Black Hole" between the Track A and Track B provisions of the Act. BellSouth asserts that it does not believe that Congress ever intended for the FCC to create a situation where competitors could effectively decide when customers could enjoy the benefits of competition in the long distance market through in-region BOC entry.

While BellSouth does not agree with the FCC's conclusion in the SBC case that a request by a new entrant that has the "potential" to be a facilities-based provider is enough to make Track B unavailable, BellSouth asserts that the FCC also made it clear that not every request for interconnection is a "qualifying request." In fact, the FCC realized the potential for a BOC to be foreclosed from Track B while at the same time not meeting the requirements of Track A. Thus, the FCC concluded that if a BOC is foreclosed from Track B in a particular state, it would reevaluate the case if relevant facts demonstrate that no potential competitors were taking reasonable steps toward implementing a request in a way that would satisfy Track A.

BellSouth asserts that two of the largest ALECs in Florida, AT&T and MCI, were unable to provide any forthcoming information regarding their plans to enter the market and in what manner.

Specifically, BellSouth relies on the testimony of FCCA's witness Gillan who asserted that he had no information as to the specifics of the market entry plan of any of the carriers whom he represented, and MCI's witness Gulino, who was unable to provide information regarding when MCI plans to serve residential customers. Thus, BellSouth believes that there may be ALECs in this proceeding that have made requests that do not qualify under Track A because of the lack of any indication that they will be providing service to residential or business customers in the future.

As discussed earlier, however, MCI, TCG, ICI, and Sprint assert that they are facilities-based ALECs that are currently providing local exchange service to business subscribers in Florida, either entirely over their own facilities or in combination with unbundled elements purchased from BellSouth. In addition, several competitors assert they intend to serve residential customers in Florida through their own facilities or in combination with unbundled elements purchased from BellSouth in the future. In fact, MCI, AT&T and MediaOne are currently serving residential customers on a test basis in Florida.

As of May 30, 1997, BellSouth had entered into 55 local interconnection agreements in Florida which for the most part have been approved by this Commission. In addition, BellSouth has entered into arbitrated interconnection agreements in Florida with MCI, MFS, AT&T, and Sprint that have been approved by this Commission pursuant to Section 252 of the Act. Based on the record in this proceeding, there are at least four carriers who currently serve business subscribers exclusively over their telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with resale. In addition, there are at least three carriers that have provided testimony in this proceeding regarding their intent to provide service to residential customers over their own facilities. Upon review, the evidence presented here demonstrates that businesses are currently being provided local exchange service and that there are competing carriers in Florida that intend to provide local exchange service to residential customers.

There are two instances where Section 271(c)(1)(B) may remain open to a BOC even if a "qualifying request" has been received.

They are: where a state Commission determines that competitors negotiated in bad faith; or where competitors have violated an implementation schedule set forth in an interconnection agreement. AT&T and MCI assert that BellSouth did not provide any evidence to demonstrate that a new entrant negotiated in bad faith or violated any implementation schedule. We concur. Witness Varner stated that other than some implied intent to offer service when entering into an agreement, there are no implementation schedules in any of the interconnection agreements entered into by BellSouth with competing carriers. BellSouth did not specifically allege, however, that any competing providers have failed to comply with an implementation schedule based on an implied intent. Furthermore, witness Varner stated that he does not believe that any ALEC in Florida has negotiated in bad faith.

Based on the foregoing, we find that BellSouth has received requests from potential competitors for access and interconnection to BellSouth's network that, if implemented, will satisfy the requirements of Section 271(c)(1)(A).

C. Has a Statement of Terms and Conditions That BellSouth Generally Offers to Provide Access and Interconnection Been Approved or Permitted to Take Effect under Section 252(f)?

We have not approved a SGAT that BellSouth generally offers to provide access and interconnection, or allowed one to take effect pursuant to Section 252(f). BellSouth filed a draft SGAT as an exhibit to witness Scheye's testimony. BellSouth contends that given the wording of this issue, and the circumstances surrounding the development of the wording, the literal answer to this issue would be "No." The intervenors all agree that while BellSouth submitted a SGAT to the Commission for approval, the SGAT has neither been approved nor permitted to take effect.

Upon review, BellSouth's SGAT has not been approved or permitted to take effect for the reasons stated in our analysis of the checklist items contained herein.

V. SECTION 271(c)(1)(A), SECTION 271(c)(1)(B), and the SGAT

All the parties, including BellSouth, agree that BellSouth cannot 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)). We agree. As discussed in detail above, more than one unaffiliated competing provider in Florida has requested access and interconnection with BellSouth. BellSouth, therefore, is precluded from seeking interLATA authority under Track B. Further, the provisions of sections 271(c)(1)(A) and 271(c)(1)(B) are mutually exclusive. Accordingly, BellSouth cannot meet the requirements of Section 271(c)(1) through a combination of track A and track B.

Although BellSouth agrees that it cannot combine tracks A and B, it goes on to argue that it can use the SGAT to demonstrate that checklist items are available even if it elects to file a track A application with the FCC. BellSouth states that although the FCC declined to reach this issue in the SBC Oklahoma case, the Department of Justice endorsed using a SGAT to meet check list obligations under track A under certain circumstances.

BellSouth argues that the plain language of Section 271(c) supports the use of the SGAT in connection with Track A. BellSouth states that 271(c)(1) sets forth the requirements that a BOC must meet to satisfy Track A or Track B. According to BellSouth the next separate subsection, 271(c)(2), requires that access and interconnection that the BOC is "providing", meet the competitive checklist. BellSouth concludes that there is nothing in the language of Section 271 to suggest that the SGAT cannot be used to demonstrate the availability of checklist items that have been "provided" to an interconnector, that is, made available, but not actually furnished.

BellSouth asserts that the intervenors have argued that Ameritech prevents this result. In the FCC Ameritech proceeding, BellSouth states, AT&T and other intervenors contended that in order for an item to be "provided" pursuant to Track A, it had to actually be furnished (i.e., used) by an ALEC. BellSouth states that the FCC rejected the argument of AT&T and the other IXCs, and accepted the contention of Ameritech. Ameritech, however, did not have a State approved SGAT, and therefore did not propose the issue of a State approved SGAT as a means to demonstrate that the items were being made available in a concrete, legally binding manner.

BellSouth points out that the FCC stated in dictum that merely to "offer" an item was not enough, since the offer might not be

backed up by the ability to provide the item. BellSouth states that certain intervenors have argued that this dictum means that a State approved SGAT cannot be used to demonstrate the availability of a particular item if the BOC is filing an application under Track A. This contention, BellSouth argues, is belied by the facts: (1) Ameritech did not have a State approved SGAT, (2) Ameritech did not suggest to the FCC that it consider whether a State approved SGAT can constitute the sort of concrete binding obligation that will demonstrate availability. Moreover, BellSouth argues, the FCC did not make any reference whatsoever to a "state approved SGAT", "state approved agreement", or a state approved "offer". BellSouth asserts that the contention by certain intervenors that this is the meaning of the Ameritech decision is not supported by the language of that decision. Further, BellSouth argues, the contention is illogical.

According to BellSouth, the purpose of this proceeding should be to determine whether BellSouth has either furnished or made available the tools needed by new entrants to compete in the local market. This, BellSouth argues, necessitates that BellSouth's offerings be scrutinized. This scrutiny can be based upon a review of the Statement or by a review of the interconnection agreements, which, in BellSouth's case, contain the same offerings as those set forth in the SGAT. BellSouth believes that the SGAT is beneficial because it provides a comprehensive listing of all BellSouth's offerings it believes to be checklist compliant in one place. BellSouth argues that the utility of the SGAT was demonstrated during the hearing by the fact that Mr. Gillan testified that he relied considerably more on a review of the SGAT than on any Agreement in considering BellSouth's offerings. Further, Mr. Gillan admitted on the stand that "as an economist," that it made no difference whether the offerings scrutinized were contained in an SGAT or in an agreement.

Finally, BellSouth argues that to the extent an SGAT such as BellSouth's incorporates the terms of arbitrated agreements, it is as concrete and legally binding as the agreements themselves. Even if BellSouth's SGAT were not drawn from contracts in actual existence, the fact of state approval, and BellSouth's reliance on that approval, would be more than adequate to make the offerings set forth in the SGAT the type of legally binding obligation that the FCC contemplated in Ameritech.

AT&T, FCCA, ICI and MCI argue that Track A applicants cannot rely on a SGAT to demonstrate checklist compliance; rather, they must rely on state approved interconnection agreements. According to AT&T, the FCC noted that a Track A applicant need not "actually furnish" each checklist item, but may, with regard to items not actually used by a competitor, demonstrate that it is presently able to furnish such items upon request pursuant to state-approved interconnection agreements. AT&T asserts that the FCC specifically found 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." Therefore, BellSouth's proffered SGAT cannot be used to establish checklist compliance because BellSouth is proceeding, and must proceed, under Track A.

FCCA argues that to the extent BellSouth continues to argue that it may proceed under Track A, but fulfill some of Track A's requirements with an SGAT from Track B, this argument has been laid to rest in the Ameritech decision. In Ameritech, the FCC found that the two tracks were separate and that an SGAT, which is relevant only to Track B, could not be used to meet the requirements of Track A. Track A can be met only through the use of state-approved interconnection agreements. FCCA quotes the following from the Ameritech Order:

> Like the Department of Justice, we emphasize that the mere fact that 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.
>
> . . .
>
> Reading the statute as a whole, we think it is clear that Congress used the term "provide" as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved interconnection agreements [Track A] and

> the phrase "generally offer" as a means of referencing those instances in which a BOC makes interconnection and access available pursuant to a statement of generally available terms and conditions. [Track B] A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnection available... ¶¶110 and 114.

The FCCA concludes that the Ameritech decision makes clear that a SGAT is a document pertinent only to a Track B case. According to the FCCA, it cannot be used to meet the requirements of Track A because it is simply a general offer, not a state-approved interconnection agreement. The FCCA argues that BellSouth's attempt to do so must be rejected.

MCI argues that 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. According to MCI, Section 271(d)(3)(A)(I) requires that a BOC pursuing Track A must "fully implement the competitive checklist in subsection (c)(2)(B)." (citing FCC 97-298, ¶105) MCI asserts that 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 "have fully implemented the competitive checklist." MCI contends that 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 interconnection 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).

MCI argues that 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.

MCI states that the FCC reiterated in its Ameritech decision 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." MCI states that 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.

The arguments above can be summarized as follows: the intervenors believe an SGAT is only pertinent to a track B application; BellSouth is ineligible for track B; therefore, BellSouth may not rely on a SGAT to demonstrate compliance with the checklist. BellSouth, on the other hand, believes it is not precluded from using an SGAT to demonstrate checklist compliance in a Track A application.

Upon review, we do not believe the FCC had the precise issue of whether a state approved SGAT can be used to supplement a Track A application and demonstrate checklist compliance before it in the Ameritech decision. It is not clear whether the language in Section 271(c) contemplates BOCs using a state approved SGAT to support a Track A application. On the other hand, when considering the Act as a whole, we believe a state approved SGAT could be considered in a Track A application in certain circumstances. We note, however, that BellSouth has received qualifying requests that if fully implemented would satisfy all 14 points of the competitive checklist. Further, it does not appear that BellSouth has met the requirements of Section 271(C)(1)(A), and BellSouth does not have a state approved SGAT. Thus, BellSouth need not demonstrate checklist compliance with a state approved SGAT at this time. Notwithstanding, we briefly address this issue below.

We believe that a state approved SGAT can be used to show that checklist items are available under Section 271(c)(2)(B) whether the BOC proceeds under Track A or Track B. This is not unlike having a tariff on file that lists what services are available. The inquiry does not end there, however, when determining whether the BOC is checklist compliant. The BOCs may not simply rely on the fact that checklist items are contained in a state approved

SGAT or in a state approved interconnection agreement. They must show that they are actually providing the checklist items or that the items are functionally available. This is consistent with the overall goal of the Act which is to open all telecommunications markets to competition.

We do not believe, however, that a state approved SGAT should be the primary avenue for demonstrating checklist compliance in a track A application. The main objective of Section 271(c)(1)(A), appears to be facilities-based competition; whereas, Section 271(c)(1)(B), is available absent a facilities-based competitor. Therefore, track A applicants should first demonstrate checklist compliance through state approved interconnection agreements. One example in which a state approved SGAT would be appropriate is where there may be numerous interconnection agreements and facilities-based competition exists, but none of the interconnection agreements contain Directory Assistance (DA). In this instance, a BOC should be able to demonstrate that DA is available through a state approved SGAT. Of course the BOC would also have to demonstrate that DA is functionally available.

The end result of the intervenors' interpretation appears to be that BOCs could conceivably have operational competitors in their region, but not be granted interLATA authority simply because a checklist item was not contained in an interconnection agreement. This result appears to be at odds with the overall goal of the Act. It is possible that a BOC could never gain interLATA authority under this scenario even though actual competition existed and all of the checklist items were functionally available.

Although we believe BellSouth should be able to use a state approved SGAT to show that checklist items are available, as we explained above, BellSouth is not eligible to do so at this time.

VI. CHECKLIST COMPLIANCE

A. Interconnection in Accordance with Sections 251(c)(2) and 252(d)(1), Pursuant to Section 271(c)(2)(B)(i)

1. Introduction

Section 271(c)(2)(B)(i) sets forth the first checklist item regarding the provision of facilities-based interconnection. Interconnection is the transmission and routing of telephone exchange service and exchange access between the ALEC's network and RBOC's network. Section 271(c)(2)(B)(i) states that interconnection must be provided, or generally offered, in accordance with Sections 251(c)(2) and 252(d)(1) of the Act.

Section 251(c)(2) outlines specifically what constitutes the provision of facilities-based interconnection. Also, this section sets forth three additional criteria that must be met. First, the RBOC must provide interconnection at any technically feasible point within its network. Next, the quality of the interconnection must be at least equal to that which the RBOC provides itself, an affiliate, a subsidiary, or any other party to which it provides interconnection. Finally, interconnection must be provided at rates, terms and conditions that are "just, reasonable, and non-discriminatory," as specified in the carrier agreements, as well as in Sections 251 and 252 of the Act.

Although collocation is not a separate checklist item, it is included as one of the six requirements, along with interconnection, unbundled access, and resale, in Section 251(c). The collocation requirement consists of the duty to provide for physical collocation of ALEC equipment that is necessary for interconnection or access to UNEs at the RBOC premises, under rates, terms and conditions that are just, reasonable, and nondiscriminatory. While physical collocation is the standard requirement, the Act allows for virtual collocation if the RBOC demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. Since Section 251(c)(2) requires that interconnection be provided at any technically feasible point in the network, a carrier's request for collocation must be satisfied, and operating pursuant to Section 252(c)(6) and individual carrier agreements, before the checklist items for either interconnection or unbundled network elements are satisfied.

Section 252(d)(1) of the Act consists of the pricing standards for interconnection and UNEs. This section requires the state

commission to determine just and reasonable rates for interconnection and for UNEs. It also requires that the rates be based on cost, and that they be non-discriminatory. The rates may also include a reasonable profit.

In making our determination on this checklist item and the related provisions in the SGAT, we have considered the evidence and the parties' positions on BellSouth's compliance in terms of the following:

1) Whether BellSouth has implemented all the interconnection requirements pursuant to Section 271(d)(3) of the Act. That is, whether interconnection trunks are available in sufficient quantities, and whether interconnection has been provided upon request at any technically feasible point;

2) Whether the interconnection arrangements in ALEC agreements, approved pursuant to Sections 251 and 252 of the Act, have been provided in a complete and timely fashion;

3) The degree to which the ALEC is able to operate utilizing the provisions of its interconnection agreement; and

4) Whether the rates, terms and conditions for interconnection, specifically collocation, have been set in conformance to the pricing requirements of the Act. For prices proposed in the SGAT that we did not set pursuant to Section 252 (d)(2), TSLRIC studies are necessary to support those rates.

In the BellSouth/AT&T and BellSouth/MCI arbitration proceedings before this Commission, the parties agreed to withdraw the issue on the appropriate trunking arrangements for local interconnection. The parties reached an agreement on this issue. The agreement was subsequently reflected in their arbitrated agreements and approved by us as part of those agreements. We note that in our state proceedings conducted in Docket No. 950985-TP, we required BellSouth to provide: 1) interconnection, trunking and signaling arrangements at both the tandem and end office

levels; 2) the option of interconnecting via one-way or two-way trunks; and 3) mid-span meets where economically and technically feasible. See Order No. PSC-96-0045-FOF-TP.

None of the parties to this proceeding assert that collocation is not a requirement or that it should not be considered in this proceeding. We note, however, that some parties addressed this item as part of interconnection while others addressed it within the context of access to unbundled network elements. In an effort to prevent redundancy, we address collocation within this section on interconnection. Our conclusions on collocation apply, however, to both interconnection and access to UNEs. The pricing arrangements for the traffic carried over interconnection trunks is the subject of the Reciprocal Compensation checklist item. Thus, the only pricing issue addressed in this section will be with respect to collocation.

Also, in the BellSouth/AT&T and BellSouth/MCI arbitration proceeding, we approved the use of BellSouth's Telecommunications Handbook for Collocation in the interim, until permanent cost-based rates are set for physical collocation. For virtual collocation, we required the use of the rates, terms and conditions in BellSouth's intrastate Access Tariff until permanent rates are set. We ordered BellSouth to file a TSLRIC study. In addition, we required the ALECs to bear the costs of conversion from virtual to physical collocation.

We approved provisioning periods for collocation of 3 months for physical collocation and 2 months for virtual collocation. BellSouth must demonstrate to us, on a case-by-case basis, if these time periods are not sufficient. In addition, in Docket No. 960846-TP, we specifically allowed MCI to interconnect with other collocators who are interconnected with BellSouth in the same central office; to purchase unbundled dedicated transport from BellSouth between the collocation facility and MCI's network; to collocate subscriber loop electronics in a BellSouth central office; and to select virtual over physical collocation, where space and other considerations permit.

We also note that we continue to believe that TSLRIC is the preferable pricing methodology. In the arbitration proceedings before us, we determined that the "scorched node" approach inherent

in the FCC's TELRIC methodology is inappropriate for pricing because it does not adequately reflect either the ILEC's current or prospective cost structure. While the "scorched node" approach incorporates cost components based on the current location of existing LEC wire centers, all other cost components reflect a theoretical construct based on future technology. In Order No. PSC-96-1579-FOF-TP, we endorsed the TSLRIC based forward-looking approach because it considers the current architecture and future replacement technology. Thus, to the extent permanent rates have been set by this Commission, we continue to believe that they comply with the requirements of Section 252(d)(1) of the Act, and we approve BellSouth's use of those rates for purposes of checklist compliance. For those items for which only interim rates have been set thus far, we have required TSLRIC studies to be filed in the arbitration dockets in order to establish permanent rates.

Our analysis of BellSouth's 271 application and its SGAT regarding interconnection is set forth below.

At the hearing, BellSouth's witness Milner asserted that BellSouth has complied with the requirements of the Act in that interconnection services are functionally available. In addition, BellSouth witness Scheye stated that procedures are in place for ordering, provisioning and maintenance of its interconnection services plus technical service descriptions outlining its local interconnection trunking arrangements and switched local channel interconnection. Witness Scheye also stated that BellSouth has approximately 7828 interconnection trunks in service.

Witness Scheye also stated that Section I of BellSouth's SGAT provides for complete and efficient interconnection. Witness Scheye asserted that the SGAT provides the following: trunk termination points at BellSouth tandems and end offices; trunk directionality allowing one-way or two-way trunk groups, depending on the type of traffic; trunk termination by physical or virtual collocation or purchase of facilities by either company; intermediary local tandem switching and transport services for interconnection of ALECs to each other; interconnection billing; and the Bona Fide Request process for interconnection arrangements that are not included in the SGAT. In addition, witness Milner stated that BellSouth has successfully tested its capabilities to provide each of the interconnection services contained in its SGAT.

BellSouth witness Scheye also stated at the hearing that BellSouth will provide virtual collocation where physical is impractical for technical or space limitation reasons.

In its brief, BellSouth argues that its interconnection rates comply with Commission orders and the cost-based standards of Section 252(d)(1). BellSouth also asserts in its brief that all the transport and termination rates, including rates for intermediary handling of local traffic that were approved in Florida proceedings were included in the SGAT. BellSouth further asserts that no party presented credible evidence to rebut BellSouth's "proven ability to offer this checklist item."

None of the ALEC intervenors believe that BellSouth is in compliance with this checklist item. In its brief, ACSI states that BellSouth has not provided interconnection to it in compliance with the Act and applicable rules in Florida. As a reseller in Florida, and a small user of UNEs in other states, ACSI does not, however, further address interconnection in the context of this checklist item. ACSI's witness Falvey stated at the hearing that, given ACSI's experience with BellSouth, ACSI believes that BellSouth's request is premature.

AT&T witness Hamman states that BellSouth has not provided interconnection to AT&T. He also states that AT&T has not begun operations in Florida as yet. Witness Hamman further asserted that AT&T will not come to Florida until it knows the systems in Georgia will work. In its brief, AT&T argues that a comparison between the way BellSouth treats ALECs and other ILECs may be one of the most definitive tests for discrimination. AT&T notes that BellSouth currently exchanges local traffic, and jointly provides other services with almost every ILEC in Florida pursuant to negotiated interconnection agreements. AT&T further argues in its brief that the terms and conditions in these contracts are more favorable than those in ALEC contracts. For example, AT&T states that there are no provisions in the ILEC agreements for the "endlessly time consuming bona fide requests for every detail of the joint provision of service that BellSouth imposes on the ALECs." AT&T asserts that this disparate treatment constitutes discrimination; hence, BellSouth has not complied with the requirements of the interconnection checklist item. In addition, AT&T witness Hamman stated at the hearing that despite the fact that BellSouth says it

is providing interconnection in compliance with the checklist, it has provided no evidence that such interconnection is equal in quality to that which it provides itself.

2. Collocation

With regard to collocation, AT&T witness Hamman states that although AT&T's Agreement with BellSouth contains provisions for collocation, they are not yet implemented. Witness Hamman asserts that until the procedures set forth in the document are finalized and requests for collocation are processed, it is too soon to know whether BellSouth can meet the Act's requirements. Witness Hamman argues that until all procedures are developed, and in place, and tested, so that BellSouth can promptly provide interconnection to any requesting ALEC, BellSouth is not providing interconnection at the same level of quality that it provides to itself.

MCI witness Gulino states that MCI has four orders pending for physical collocation in Florida that were placed in April 1997. Witness Gulino further noted that BellSouth has missed the provisioning deadline on all four requests. In addition, witness Gulino states that collocation is a primary method of interconnection and a major way that carriers can compete with BellSouth. He contends that competitors need reliable and fixed time intervals for provisioning collocation in order to plan and market, but that BellSouth's proposed SGAT has no fixed intervals for provisioning collocation. In its brief, MCI argues that it is not clear that BellSouth could meet the time intervals even if the SGAT contained them since BellSouth has not met the collocation terms of its agreement with MCI.

Witness Gulino also states that there are other implementation issues relating to collocation, some of which will not arise until after collocation is actually implemented. One example is the placing of unbundled loops and ports at collocations. BellSouth witness Scheye was unable to respond to a question with respect to BellSouth's ability to place a port at a collocation, saying no witness could answer to that level of specificity. He also stated that no such requests had been made. However, in its brief, MCI notes that until physical collocations are in place, no order will be placed for loops and ports.

Witness Gulino states that another problem is that BellSouth makes the determination whether a would-be competitor will be allowed to have physical or virtual collocation. Witness Gulino argued that since the process will be controlled by BellSouth at every point, the opportunity exists for BellSouth to use it to its advantage. For example, witness Gulino states that BellSouth has proposed that ordering intervals and other important items be determined pursuant to BellSouth's Collocation Handbook, which BellSouth reserves the right to change at any time, since it is not part of an interconnection agreement or the proposed SGAT. Witness Gulino asserts that, absent any controls, BellSouth would be able to delay the deployment of MCI facilities.

Witness Gulino also argues that BellSouth's policy of requiring ALEC technicians to be escorted by BellSouth personnel at physical collocation sites adds unnecessary time and expenses to routine maintenance and repairs on collocated equipment. The witness also states that MCI should not be at the mercy of BellSouth's escort schedule. Witness Gulino also disagrees with BellSouth's position, as stated by witness Scheye, that BellSouth is under no obligation to combine UNEs at an ALEC's virtual collocation facilities to which only BellSouth employees have access.

WorldCom presented evidence that it has attempted to implement collocation according to its agreement in Miami. WorldCom indicated that it has experienced "delays, missed dates, surprise changes, and more delays."

3. Network Blockage and End Office Trunking

With respect to end office trunking, FCTA presented that BellSouth will not provide MediaOne with end office trunking. End office trunking provides Media One with a single point of failure, the access tandem, in the network. In addition, FCTA noted that MediaOne has filed a complaint against BellSouth regarding excessive outages.

TCG witness Hoffman states that BellSouth fails to provide equal quality interconnection to TCG by improperly undersizing interconnection trunks to TCG, which causes network congestion and call blocking problems. Witness Hoffman asserts that BellSouth is

too slow in augmenting the number of trunks required to handle increases in traffic flowing from BellSouth to the TCG switch. Thus, traffic destined for TCG is blocked at BellSouth's switch. Witness Hoffman asserts that TCG receives complaints from its business customers that calls from their customers are not getting through. Witness Hoffman also testified that in some instances, TCG customers have threatened to discontinue service as a result of the blocking. The witness states that TCG has met with BellSouth to address this issue, but that BellSouth has been largely unresponsive.

TCG's witness also states that, despite requests at a meeting held on May 6, 1997, BellSouth has not provided data regarding the percentage of call blockage it experiences for its internal traffic so that TCG can compare it with the amount of TCG traffic being blocked. Witness Hoffman asserts that unless BellSouth establishes that call blocking rates are the same for itself as for TCG, BellSouth cannot meet the criteria for the first checklist item.

In addition, witness Hoffman states that BellSouth's network provides for alternate routing, but that TCG traffic is restricted to a single route through BellSouth's access tandem with no overflow protections. Although in some cases, the blocking is due to incorrect translations performed in BellSouth's end office switches, the witness asserts that the lack of alternate routing exposes TCG to the risk of network failure due to a single point of blockage on BellSouth's tandem trunk. In its brief, TCG argues that such significant differences between the two network designs violates the requirements of the Act and the FCC's rules. Witness Hoffman further notes that BellSouth's call blocking level approaches zero while TCG is receiving complaints from its customers that their calls are blocked.

Witness Hoffman asserts that TCG has requested that BellSouth install end office connections for its traffic going to TCG, because this would alleviate the congestion at BellSouth's tandems to a large degree. The witness states, however, that BellSouth has refused to install them. Witness Hoffmann also states that he asked that BellSouth install end office trunking where TCG has installed it, but that BellSouth simply said it would continue to install its trunking at the tandems. The witness indicates that BellSouth would not explain why it would install end office