

delays it causes, we conclude that BellSouth is not providing competing carriers with nondiscriminatory access to OSS functions.¹³⁹

40. In sum, we reiterate our finding in the *BellSouth South Carolina Order* that BellSouth has failed to establish that it is providing competitors with information about their orders in a nondiscriminatory manner. BellSouth has not provided sufficient data on (1) the timeliness of its delivery of order rejection notices or firm order confirmation notices to competing carriers, or (2) the amount of time it takes to provide the equivalent information to its retail operations. We identified the lack of such data as a deficiency in BellSouth's South Carolina application, and we find the lack of such data to be a deficiency here.¹⁴⁰ Competing carriers, however, have added another month's worth of data showing that BellSouth is still not providing such notices in a timely manner.¹⁴¹ With respect to order jeopardy notices, the record indicates that BellSouth fails to notify carriers promptly when the due date cannot be met due to delays caused by BellSouth.¹⁴²

(iii) Average Installation Intervals

41. We conclude here, as we did in our *BellSouth South Carolina Order*, that BellSouth has failed to supply us with the data required to determine whether a competing carrier is able to provide service to its customers, using BellSouth's resold service, in substantially the same time and manner that BellSouth provides service to its own retail customers.¹⁴³ As we stated in the *BellSouth South Carolina Order*, to demonstrate nondiscriminatory access, BellSouth must establish that the ordering/provisioning intervals are at parity.¹⁴⁴ A critical measurement in determining whether a BOC has been providing

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

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

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

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

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

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

competing carriers with nondiscriminatory access to its operational support systems is average installation intervals.¹⁴⁵ As we stated in the *BellSouth South Carolina Order*, the most meaningful average installation interval measure is the average time it takes from when BellSouth first receives an order from a competing carrier to when BellSouth provisions the service for that order.¹⁴⁶ Without data on average installation intervals comparing a BOC's retail performance with the performance provided to competing carriers, the Commission is unable to conclude that a BOC is providing nondiscriminatory access to OSS functions for the ordering and provisioning of resale.¹⁴⁷ Parity is especially important with respect to average installation intervals for both resale and retail services because competing carriers will be at a competitive disadvantage if their customers have to wait a longer period for their service to be installed.

42. BellSouth, however, has not provided data showing average installation intervals as we defined them in the *BellSouth South Carolina Order*.¹⁴⁸ Instead, attempting to demonstrate parity in its provision of resale services, BellSouth provided other performance measurements.¹⁴⁹ The first measure, "percentage of provisioning appointments met," shows how often BellSouth met the due date it assigned to itself and how often BellSouth met the due dates it assigned to new entrants.¹⁵⁰ The second measure, "issue to original due date intervals," presents data on the number of days between the date the order was issued, *i.e.*, the day it was processed by the Service Order Control System,¹⁵¹ and the original due date.¹⁵²

¹⁴⁵ *Ameritech Michigan Order* at para. 168.

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

¹⁴⁷ *Id.* at para. 167.

¹⁴⁸ *Id.* at para. 137.

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

¹⁵⁰ *Id.* at para. 45; Ex. WNS-9.

¹⁵¹ BellSouth uses several systems to process competing carriers' orders received through the EDI interface. Orders are initially reviewed by the local exchange ordering system for correctness and completeness. Orders supported by mechanized processing are then sent to the local exchange service order generator system which translates the EDI order into a format that can be accepted by the Service Order Control System or SOCS. Although the local exchange ordering system and local exchange service order generator system are used exclusively for processing orders from competing carriers, SOCS processes both orders from competing carriers and BellSouth's retail operations. See BellSouth Stacy OSS Aff. at paras. 52, 75-76. SOCS then generates a valid service order, and creates a firm order confirmation notice that is sent to competing carriers via the EDI interface. *Id.* at 75. If one of these systems encounters an error in the processing of a competing carrier's order,

BellSouth claims that "the use of both sets of data accurately portrays the provisioning service parity comparison for [competing carrier] end users and [BellSouth Telecommunications, Inc.] retail end users."¹⁵³ BellSouth claims that these measures provide "more meaningful information regarding BellSouth's performance than average service order intervals [because] service order intervals reflect end user preferences and sales campaign nuances whereas the interval data, combined with the [percentage of] Provisioning Appointments Met measurement, reflect BellSouth's actual service performance."¹⁵⁴

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

the order is sent to one of BellSouth's service centers for manual processing. As noted above, the service centers will either correct the order and resubmit it for completion, or manually return an error notice to the ordering carrier via facsimile or telephone. *Id.* at para. 75. In response to error notices, competing carriers can provide additional information to the service center representative, or submit a corrected order through the EDI interface. Finally, when an order is completed, SOCS creates an order completion notice that is sent to the ordering carrier via the EDI interface. *Id.*

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

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

¹⁵⁴ *Id.*

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

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

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

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

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

44. We find here, as in the *BellSouth South Carolina Order*, that a far more meaningful measure of parity is one that measures the interval from when BellSouth first receives an order to when service is installed.¹⁶¹ From a customer's perspective, what is important is the average length of time it takes from when the customer first contacts the carrier for service to when that service is provided.¹⁶² This period of time is a crucial point of comparison between the incumbent's performance and the competing carrier's performance. Therefore, the most meaningful data would measure the interval from when BellSouth first receives an order to when service is actually installed,¹⁶³ regardless of whether or not the order electronically flows through BellSouth's operational support systems.¹⁶⁴ This interval can then be compared with the average time from when BellSouth's own service representatives first submit an order for service to when BellSouth completes provision of the service for its retail customers. Unlike the data BellSouth provides, which measure intervals

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

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

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

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

¹⁶² *Id.*

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

¹⁶⁴ See *supra* note 98 and accompanying text.

that begin when orders are processed by SOCS.¹⁶⁵ such a measure would expose any delays in the processing of orders. As we stated in the *BellSouth South Carolina Order*, we expect BellSouth to provide such a measure in future applications.¹⁶⁶

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

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

b. Pre-Ordering Functions

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

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

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

¹⁶⁷ *Id.* at para. 138.

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

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

¹⁷⁰ BellSouth Stacy OSS Aff. at para. 5.

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

¹⁷² BellSouth Louisiana Application at 27.

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

(i) **Lack of Equivalent Access in General**

49. We conclude here, as we did in our *BellSouth South Carolina Order*, that BellSouth's current pre-ordering system does not provide competing carriers with equivalent access to operational support systems for pre-ordering.¹⁷⁴ BellSouth provides competing carriers with two separate systems for pre-ordering and ordering: LENS for pre-ordering and EDI for ordering.¹⁷⁵ BellSouth does not integrate these two systems for competing carriers, nor has BellSouth provided competing carriers with the technical specifications necessary to integrate BellSouth's pre-ordering interface with competing carriers' operational support systems and the EDI ordering interface.¹⁷⁶ As a result, competing carriers cannot readily connect electronically the LENS interface to either their operations support systems or to BellSouth's EDI interface for ordering, notwithstanding their desire to do so.¹⁷⁷ Without this ability, competing carriers must first retrieve information from the LENS pre-ordering

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

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

¹⁷⁵ BellSouth Stacy OSS Aff. at paras. 6, 53; LCI Comments at 2; Intermedia Comments at 5; see BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 131, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Recommendation (Aug. 14, 1997) (*ALJ 271 Recommendation*) at 26-27. We note that LENS can be used for ordering as well as pre-ordering. BellSouth Stacy OSS Aff. at para. 57; BellSouth Reply Comments at 44. BellSouth notes, however, that, "[t]he primary function of LENS is *pre-ordering*. Nondiscriminatory access for ordering is supplied by the industry-standard Electronic Data Interchange (EDI) and Exchange Access Control and Tracking (EXACT) interfaces." BellSouth Stacy Aff. at para. 46 (emphasis in original). Because BellSouth claims to be offering nondiscriminatory access for ordering through EDI, it is that method of ordering we consider here.

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

¹⁷⁷ *Id.* at para. 155.

interface and then manually re-key the information into their own operational support systems and the EDI ordering interface. By contrast, BellSouth's retail operations use an integrated pre-ordering/ordering system, which eliminates the need for re-keying information.¹⁷⁸ We therefore concluded that LENS did not provide competing carriers with equivalent access to OSS functions for pre-ordering,¹⁷⁹ and that this lack of parity had a significant impact on a competing carrier's ability to compete effectively in the local exchange market and to provide service to customers in a timely and efficient manner.¹⁸⁰ We based this decision on a number of reasons.

50. First, because many "pre-ordering" activities generally occur in the context of actually negotiating a service order, and thus there is no strict delineation between pre-ordering and ordering, an integrated pre-ordering/ordering system is much more efficient.¹⁸¹ Without an integrated system, a new entrant is forced to enter information manually to use the EDI interface for ordering and to import the data into its operations support systems.¹⁸² In comparison to BellSouth's integrated ordering and pre-ordering system, entering information manually can lead to significant delays while the customer is on the line, assuming that a carrier wants to complete the order while speaking to the customer.¹⁸³ Moreover, whether a carrier completes the order while the customer is on the line, as BellSouth's customer service representatives generally do, or enters the information at a later time, such manual entry of data requires a greater amount of time than BellSouth's retail operation requires.¹⁸⁴ As a

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

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

¹⁸⁰ *Id.* at para. 156.

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

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

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

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

result, the need to reenter information would require a new entrant to expend more resources than BellSouth to conduct the same number of pre-ordering transactions.¹⁸⁵

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

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

53. BellSouth suggests three methods for overcoming the problem of transferring data from LENS to competing carriers' operational support systems and the EDI-ordering

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

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

¹⁸⁷ See *supra* Section IV.A.2.a.i.

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

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

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

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

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

54. BellSouth's other method for electronically connecting its pre-ordering interface with competing carriers' operational support system, Computer Gateway Interface or CGI, is also deficient because BellSouth has failed to provide the necessary technical specifications to develop such an interface. BellSouth claims that competing carriers can integrate LENS and EDI by developing CGI.¹⁹⁵ To develop CGI, however, a competing carrier would need detailed technical specifications of BellSouth's interface, and BellSouth has failed to provide the necessary technical specifications.¹⁹⁶ We previously found that a BOC has an obligation

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

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

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

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

¹⁹⁶ AT&T Comments at 45; AT&T Bradbury Aff. at para. 36; Att. 3, Testimony of Gloria Calhoun, BellSouth, Alabama Commission Docket No. 25835, Aug. 19, 1997 Hr'g (Alabama Commission Aug. 19, 1997 Hr'g), Tr. at 686-87; DOJ Louisiana Evaluation, Ex. 4 at A-10 n.16. In its pleadings, BellSouth claims that it has provided CGI specifications to requesting competing carriers. BellSouth Stacy OSS Aff. at para. 44; BellSouth Reply Comments at 45 (citing BellSouth Stacy OSS Reply Aff. at paras. 36-40); BellSouth Stacy OSS Reply Aff. at para. 39. MCI claims, however, that it has requested and not received updated technical specifications necessary to develop CGI. MCI King Supp. Decl. at para. 5; MCI King Decl. at paras. 48-50. BellSouth admits that it is in the process of updating its CGI specifications and that it had not provided the updated specifications at the time it filed its application. BellSouth Stacy OSS Aff. at para. 44; BellSouth Stacy

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

55. Therefore, we agree with commenters that BellSouth has not met the competitive checklist because it has failed to demonstrate that competing carriers are able to use or develop a machine-to-machine interface or CGI that is substantially similar to what BellSouth's representatives use.¹⁹⁹ Moreover, BellSouth's other methods of electronically transferring information, "cut and paste" and HTML parsing, are inadequate. Therefore, as we found in the *BellSouth South Carolina Order*, we conclude that competing carriers cannot readily transfer information electronically from LENS to their operations support systems and deploy an integrated pre-ordering and ordering system.²⁰⁰

OSS Reply Aff. at para. 39. Nevertheless, BellSouth indicates that competing carriers could begin developing CGI by using the currently available, *i.e.*, out-of-date, specifications. *Id.* By failing to provide updated and complete CGI specifications, however, BellSouth has failed to provide competing carriers with the specifications necessary to instruct competing carriers on how to modify or design their systems in a manner that will enable them to communicate with BellSouth's legacy systems and any interfaces utilized by BellSouth for such access. *Ameritech Michigan Order* at para. 137; *BellSouth South Carolina Order* at paras. 160-61.

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

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

¹⁹⁹ MCI King Supp. Decl. at para. 5.

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

(ii) Lack of Equivalent Access to Due Dates

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

57. BellSouth states that this same process is used for its retail operations, *i.e.*, it does not provide actual due dates for its service representatives until the order is processed through SOCS.²⁰⁵ This fact, however, does not lead to parity in the access to due dates, because, as explained above, competing carriers are experiencing significant delays in the processing of their orders.²⁰⁶ As a result of these delays, by the time competing carriers' EDI orders are processed, the original due date, *i.e.*, the one the competing carrier determined using the information provided by LENS, might have passed or the relevant central office and work center may no longer be accepting orders for the date the new entrant promised to its customer. New entrants therefore cannot be confident that the due date actually provided after the order is processed will be the same date that the new entrants promised their customers at the pre-ordering stage based on the information obtained from LENS.²⁰⁷ By contrast, BellSouth's retail service representatives can be confident of the due dates they quote

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

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

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

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

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

²⁰⁶ *See supra* Section IV.A.2.a.i.

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

customers at the pre-ordering stage, because BellSouth does not experience the same delays in processing orders that competing carriers currently experience.²⁰⁸

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

B. Resale of Contract Service Arrangements

1. Background

59. Section 271(c)(2)(B)(xiv) of the competitive checklist requires that telecommunications services be "available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3)."²⁰⁹ In its *BellSouth South Carolina Order*, this Commission determined that BellSouth failed to comply with checklist item (xiv) by, *inter alia*, refusing to offer contract service arrangements at a wholesale discount.²¹⁰ Contract service arrangements are contractual agreements made between a carrier and a specific, typically high-volume, customer, tailored to that customer's individual needs. Contract service arrangements may include volume and term arrangements, special service arrangements, customized telecommunications service agreements, and master service agreements.²¹¹

60. The Commission's rules on resale restrictions state that, "[e]xcept as provided in § 51.613 of this part, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC."²¹² Section 51.613 provides in pertinent part that, "[w]ith respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves

²⁰⁸ See *supra* Section IV.A.2.a.i.

²⁰⁹ 47 U.S.C. § 271(c)(2)(B)(xiv).

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

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

²¹² 47 C.F.R. § 51.605(b).

to the state commission that the restriction is reasonable and nondiscriminatory."²¹³ The United States Court of Appeals for the Eighth Circuit specifically upheld the Commission's findings that determinations on resale restrictions are within the Commission's jurisdiction and also upheld the Commission's resale restriction rules as a reasonable interpretation of the 1996 Act.²¹⁴

61. As in South Carolina, BellSouth does not make contract service arrangements available at a wholesale discount in Louisiana through either its interconnection agreements or its SGAT (Statement of Generally Available Terms and Conditions).²¹⁵ For example, in its arbitrated interconnection agreement with AT&T, BellSouth states that it will not offer for resale at a wholesale discount contract service arrangements it has entered into after the effective date of the *AT&T Arbitration Order*²¹⁶ (i.e., after January 28, 1997).²¹⁷ Pursuant to

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

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

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

Id. at 819.

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

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

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

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

62. The Department of Justice notes that BellSouth's restrictions on the resale of contract service arrangements are analogous to restrictions the Commission has determined violate the Act and the Commission's regulations.²²² Likewise, new entrants generally argue that BellSouth's refusal to offer contract service arrangements for resale at the general wholesale discount violates section 251(c)(4) of the Act, the Commission's rules, and the *Local Competition Order*.²²³

2. Discussion

63. The Commission recently addressed BellSouth's refusal to offer contract service arrangements for resale at a wholesale discount in its review of BellSouth's South Carolina application and concluded that BellSouth did not satisfy the competitive checklist because it

16, 1996, *In re: Regulations for Competition in the Local Telecommunications Market*, General Order at 8 (decided Mar. 19, 1997, issued April 1, 1997).

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

²¹⁹ BellSouth SGAT § XIV.B.1.

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

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

²²² DOJ Louisiana Evaluation at 30, n.60.

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

did not offer contract service arrangements at a wholesale rate.²²⁴ In this Order, we reaffirm our reasoning in the *BellSouth South Carolina Order* and again conclude that BellSouth does not comply with item (xiv) of the competitive checklist because it refuses to offer at a wholesale discount contract service arrangements entered into after January 28, 1997 in Louisiana.²²⁵

a. No General Exemption for Contract Service Arrangements

64. We conclude, based on facts nearly identical to those presented in the *BellSouth South Carolina Order*,²²⁶ that BellSouth has created, through its interconnection agreements and its SGAT in Louisiana, a general exemption from the requirement that incumbent LECs offer their promotional or discounted offerings, including contract service arrangements, at a wholesale discount. In the *Local Competition Order*, the Commission concluded that resale restrictions are presumptively unreasonable and that an incumbent LEC can rebut this presumption, but only if the restrictions are "narrowly tailored."²²⁷ Moreover, the Commission specifically concluded that the Act does not permit a general exemption from the requirement that promotional or discounted offerings, including contract service arrangements, be made available at a wholesale discount.²²⁸ As we stated in the *BellSouth South Carolina Order*, neither the Act nor the Commission's resale rules contemplate that a state commission can generally exempt all contract service arrangements from the Act's requirement that retail offerings be available for resale at a discount from the retail price.²²⁹ For the reasons discussed below, we find that BellSouth's refusal to offer contract service arrangements at a

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

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

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

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

²²⁸ *Id.* at 15970. The Commission made clear in the *Local Competition Order* that section 251(c)(4) "makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings" and that, therefore, "no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs." *Id.* The United States Court of Appeals for the Eighth Circuit held that determinations on resale restrictions are within the Commission's jurisdiction, and that our resale restriction rules are a reasonable interpretation of the terms of the 1996 Act. *Iowa Utils. Bd. v. FCC*, 120 F.3d at 818-19.

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

wholesale discount is not narrowly tailored and therefore constitutes an impermissible general exemption of contract service arrangements from the wholesale discount requirement.²³⁰

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

66. As in our *BellSouth South Carolina Order*,²³⁵ we also reject BellSouth's contention that application of the wholesale discount to contract service arrangements would greatly overstate the costs avoided by BellSouth because BellSouth does not bear ordinary marketing costs for contract service arrangements, which are individually negotiated arrangements.²³⁶ Neither BellSouth nor the Louisiana Commission has offered any evidence that the general wholesale discount rate would overstate the avoided costs of contract service

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

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

²³² BellSouth Louisiana Reply at 67.

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

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

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

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

arrangements, as BellSouth contends.²³⁷ Moreover, as we stated in the *BellSouth South Carolina Order*, the state commission need not apply the general wholesale discount rate, in this case 20.72 percent, to the resale of contract service arrangements, and may instead apply a single discount rate based on the costs avoidable by offering contract service arrangements at wholesale.²³⁸ Because similar marketing, billing, and other costs would be avoided for all contract service arrangements, it would be feasible, and sufficiently accurate, to calculate a single wholesale discount rate to be applied to all contract service arrangements.²³⁹ Such a wholesale discount for contract service arrangements encourages efficient competition because a reseller may compete with an incumbent LEC and facilities-based competitive LECs only to the extent that the reseller can perform marketing and billing services more efficiently and therefore at lower cost.²⁴⁰

67. We are not persuaded by BellSouth's assertion that, if it is required to offer contract service arrangements to resellers at a wholesale discount, it will lose business customers and their contribution to BellSouth's total cost recovery, thus disrupting the balance between residential and business rates and affecting BellSouth's ability to meet the goal of "maximizing access by low-income consumers to telecommunications services."²⁴¹ We specifically rejected BellSouth's identical claims that it would lose profit as a result of wholesale-priced, resale-based competition in the *BellSouth South Carolina Order*.²⁴² In that Order, we concluded that claims of lost contributions to high-cost subsidies do not justify an exception from either the resale requirements or the requirement to offer unbundled network elements of sections 251 and 271.²⁴³ We further determine that, because the wholesale discount is limited to avoidable costs, BellSouth should lose no more contribution from resold contract service arrangements made available to resellers at an appropriate wholesale discount than it would lose from the resale of tariffed offerings at the general wholesale discount.

68. We also take this opportunity to reiterate the important policy concerns that make restrictions on resale undesirable. In the *BellSouth South Carolina Order*, we expressed

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

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

²³⁹ *Id.*

²⁴⁰ *Contra* BellSouth Louisiana Reply at 69.

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

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

²⁴³ *Id.*

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

69. We remain concerned that, as discussed in the *BellSouth South Carolina Order*, BellSouth might seek to convert customers to contract service arrangements in order to "evade" the Louisiana Commission's wholesale discount.²⁴⁶ In the *Local Competition Order*, the Commission concluded that the presumption against resale restrictions is necessary specifically for promotional or discounted offerings, such as contract service arrangements, in order to prevent incumbent LECs from "avoid[ing] the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."²⁴⁷ We concluded in the *BellSouth South Carolina Order* that BellSouth "appears to be attempting to avoid its statutory resale obligation in South Carolina by shifting its customers to contract service arrangements."²⁴⁸ AT&T contends that, unlike in South Carolina, it is "impossible" to determine whether BellSouth is attempting to evade the resale requirement in Louisiana because BellSouth is not required to disclose contract service arrangements that it has entered into with customers in Louisiana unless the customer "requests and/or consents to the disclosure."²⁴⁹ AT&T contends, however, that, in other states

²⁴⁴ *Id.* at paras. 223-24.

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

²⁴⁶ *BellSouth South Carolina Order* at 224.

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

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

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

in which contract service arrangements are publicly disclosed, BellSouth has increased its reliance on contract service arrangements.²⁵⁰ Although we make no specific finding that, in Louisiana, BellSouth is attempting to avoid its statutory resale obligation by shifting its customers to contract service arrangements, we remain concerned that, because many of BellSouth's contract service arrangements apply throughout BellSouth's service territory, BellSouth may impede the development of competition in Louisiana by preventing resellers from competing for large-volume users.

b. State Jurisdiction

70. We further conclude that BellSouth's refusal to offer contract service arrangements at a wholesale discount is not a local pricing matter within the exclusive jurisdiction of the state commission.²⁵¹ We rejected this contention in the *BellSouth South Carolina Order*, noting that the United States Court of Appeals for the Eighth Circuit upheld the Commission's conclusions in the *Local Competition Order* regarding the scope of the resale requirement as it applies to promotions and discounts, including contract service arrangements.²⁵² In upholding the Commission's determination, the court stated that the Commission's rules requiring the resale of promotions and discounts concern the "overall scope of the incumbent LECs' resale obligation" rather than "the specific methodology for state commissions to use in determining the actual wholesale rates."²⁵³ Moreover, as we stated in the *BellSouth South Carolina Order*, allowing incumbent LECs to set the wholesale discount for services subject to the resale requirement at a discount of zero would wholly invalidate such a wholesale pricing obligation. We note that the Louisiana Commission appears to have treated the resale restriction as a matter separate from its establishment of the general wholesale discount and did not conduct an analysis to determine that the appropriate

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

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

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

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

wholesale discount for contract service arrangements should be zero.²⁵⁴ We are thus unconvinced by BellSouth's claim that the Louisiana Commission properly determined that no wholesale discount should be applied to contract service arrangements.

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

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

72. Given our conclusion that BellSouth does not meet the competitive checklist, we need not and do not decide in this Order whether, for purposes of section 271(c)(1)(A), the PCS carriers listed above are "competing providers of telephone exchange service" in the State of Louisiana. Nevertheless, we do wish to provide BellSouth and others with as much guidance as possible, consistent with the limitations of the 90-day deadline and the large number of section 271-related issues on which various parties have presented contrasting interpretations and arguments. In this regard, we note that the exclusion in the final sentence of subparagraph 271(c)(1)(A) excludes only cellular carriers, and not PCS carriers, from being considered "facilities-based competitors." The final sentence states: "For the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations (47 C.F.R. 22.901 et seq.)²⁵⁷ shall not be considered to be telephone exchange services." The rules governing PCS services are contained in part 24 of the Commission's

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

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

²⁵⁶ BellSouth Louisiana Application at 8-9.

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

rules.²⁵⁸ This statutory exclusion is specific and precise. We find that Congress did not intend such a specific reference to a single subpart of our rules to apply to a service that is subject to a different subpart of a different part of our rules.²⁵⁹ We, therefore, conclude that section 271 does not preclude the Commission from considering the presence of a PCS provider in a particular state as a "facilities-based competitor."

73. We also emphasize, however, that an applicant must demonstrate that a PCS provider on which the applicant seeks to rely to proceed under section 271(c)(1)(A) offers service that both satisfies the statutory definition of "telephone exchange service" in section 3(47)(A) and competes with the telephone exchange service offered by the applicant in the relevant state. In previous orders, the Commission has stated that the use of the term "competing provider" in section 271(c)(1)(A) suggests that there must be "an actual commercial alternative to the BOC."²⁶⁰ We also note that, in other contexts, the Commission recently concluded that PCS providers appear to be positioning their service offerings to become competitive with wireline service, but they are still in the process of making the transition "from a complementary telecommunications service to a competitive equivalent to wireline services."²⁶¹

²⁵⁸ 47 C.F.R. Part 24.

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

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

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

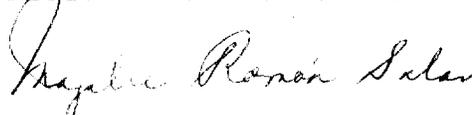
VI. CONCLUSION

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

VII. ORDERING CLAUSE

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

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX

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

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