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

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DEC 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	CC Docket No. 98-121
BellSouth Long Distance, Inc. for Provisions	)	
of In-Region, InterLATA Services	)	
In Louisiana	)	

AT&T CORP. OPPOSITION TO BELLSOUTH
PETITION FOR RECONSIDERATION AND CLARIFICATION

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SUMMARY

BellSouth asks the Commission to "clarify" or reconsider several key rulings in the Commission's order denying BellSouth's second application for in-region, interLATA authority for Louisiana ("Order"). BellSouth, however, makes no arguments and presents no facts that were not before the Commission when it issued the Order. Nor does BellSouth contend that its proposed modifications are required to encourage the prospects of local competition in Louisiana or the rest of BellSouth's nine-state region. Instead, BellSouth raises nothing but legal and technical objections to complying with the Act's mandate. None of its contentions has merit, and BellSouth's petition accordingly should be denied.

BellSouth contends that PCS service provides an actual competitive alternative to BellSouth's local exchange service. As set forth in Section I, however, the Commission and the commenters demonstrated that BellSouth's proof was flawed and in all events did not prove BellSouth's contention.

With respect to its OSS, BellSouth argues that average installation interval data and flow-through data for complex services have no relevance to its provision of nondiscriminatory access to CLECs. It also contends that its maintenance and repair interfaces comply with the Act's requirements. Section II demonstrates that the Commission's holdings on these issues were based on the facts and grounded in the requirements of the Act.

Incredibly, BellSouth asserts that the Commission has misconstrued its position on providing CLECs access to recombine unbundled network elements. As Section III establishes, BellSouth is engaged in semantic gamesmanship. The plain fact is that

BellSouth believes that all forms of access other than collocation are technically infeasible, inconsistent with the 8th Circuit's Iowa Utilities Board decision, or violate "other applicable legal rules."

Section IV rebuts BellSouth's position that providing CLECs loaded, but not yet activated, vertical features in its switch would provide CLECs access to a "superior network" in violation of Iowa Utilities Board. Such access merely provides CLECs the ability to use all of the features of the network that is in place today. Section IV also refutes BellSouth's claim that it has in place a legally binding surrogate that would provide CLECs with the same financial outcome as reciprocal compensation.

Section V shows that the Commission was correct in its determination that BellSouth had not demonstrated that its dedicated trunking requirement for rebranding or unbranding of operator and directory assistance services provided by BellSouth resulted in nondiscriminatory access.

BellSouth argues that the Commission does not have pricing authority over interim number portability. As set forth in Section VI, BellSouth's position conflicts with the plain language of the Act, which grants the Commission explicit authority to regulate the recovery of number portability costs. Moreover, this authority has been specifically confirmed by the 8th Circuit.

Section VII rebuts BellSouth's tired argument that it need not comply with the disclosure requirements of Section 272 until after it receives 271 authorization. This position has repeatedly been rejected by the Commission, and should be rejected here.

Finally, Section VIII refutes BellSouth's contention that any exercise by the Commission of its public interest authority conflicts with the Act. The Act plainly requires a separate and independent public interest determination by the Commission, and BellSouth's attempt to read this requirement out of the statute should be rejected.

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PETITION FOR RECONSIDERATION AND CLARIFICATION

In accordance with the Commission's Public Notice issued November 19, 1998, Report No. 2307, and published in the Federal Register on November 30, 1998, AT&T Corp. ("AT&T") hereby opposes the petition filed on November 12, 1998 by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance ("BellSouth") for reconsideration and clarification of the Commission's Memorandum Opinion and Order ("Order") in the above-entitled proceeding.

In the Order, the Commission spelled out in great detail what BellSouth had to do in order to comply with the Act's competitive checklist so that consumers might one day enjoy the benefits of local competition. BellSouth, however, has not set forth in its petition any proposed changes or clarifications to the Order designed to enhance the prospects of such competition, nor has BellSouth explained how granting its petition would advance the goal of local competition. Instead, BellSouth raises nothing but purported legal and technical obstacles that BellSouth contends should excuse it from compliance with the Act. Yet, BellSouth has not introduced any evidence or argument

that was not considered and properly rejected by the Commission in the Order. The Commission therefore should deny BellSouth's petition.

I. PCS SERVICE DOES NOT PROVIDE AN ACTUAL COMPETITIVE ALTERNATIVE TO WIRELINE SERVICE IN LOUISIANA.

As the applicant for in-region, interLATA authority, BellSouth bears the ultimate burden of establishing its compliance with section 271. Order ¶ 51. BellSouth contends that it demonstrated PCS was an actual competitive alternative to wireline local exchange service in Louisiana. However, as several commenters showed, the evidence submitted by BellSouth -- an analysis of PCS pricing (Banerjee Aff.) and two PCS studies (the M/A/R/C Study and Louisiana PCS Study)[1] – used faulty methodologies and analysis. For example, the M/A/R/C study was unreliable because of the following undisputed facts, among others: the survey respondents were self-selected (Order ¶ 37); BellSouth failed to provide a statistical analysis of the study data, including confidence intervals or other statistical measures to allow statistical inferences (Order ¶ 38); and the study failed to determine whether those who had kept their PCS service had subsequently subscribed to local exchange service as well (Order ¶ 39).

Dr. Banerjee's analysis (the NERA Study) was also flawed. As the Commission correctly found, this study overstated the prices paid by BellSouth's wireline customers, *e.g.*, by using a price for BellSouth's service that is more than double the actual price of

BellSouth's basic local service. Order ¶ 41. Moreover, Sprint presented evidence that "fewer than one-half of 1 percent of BellSouth's wireline customers in New Orleans currently have a calling pattern and use of vertical services that could be purchased more cheaply from a PCS provider." Id. ¶ 42. Thus, PCS service would not be an actual competitive alternative for 99% of BellSouth's wireline local exchange customers, even if it were available in their locality.

BellSouth argues, however, that any consideration by the Commission of whether PCS would be an actual competitive alternative for more than a *de minimis* class of customers violates the Commission's holding in the Ameritech Michigan Order that a new entrant does not have to "serve a specific market share."[2] As a preliminary matter, however, the Commission noted in that order 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." Id. More fundamentally, the issue here is not whether a service that would be a competitive alternative to most, if not all, telephone users is rolled out on a limited geographic scope. Here, the Commission was presented with a service that, because of its current characteristics, would not be an actual competitive alternative for 99% of local exchange users even if it were offered to

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[1] Although BellSouth attached the Louisiana PCS Study to its application, it was not cited or addressed in either BellSouth's brief or any supporting affidavit. For this reason alone, the Commission properly could refuse to consider it. See Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act, FCC 97-330 (rel. Sept. 19, 1997) pp. 4-5, 6 (the Brief in Support shall contain "all legal and factual arguments" supporting the application).

100% of them. The Commission correctly determined that such an offering did not meet Track A's competitive provider requirement.

For all of the above, reasons, the Commission properly found that PCS service was not an actual competitive alternative for BellSouth's local exchange service.[3]

II. THE COMMISSION PROPERLY APPLIED THE CHECKLIST REQUIREMENTS TO BELLSOUTH'S OSS.

A. Average Installation Intervals

BellSouth asks the Commission to "clarify" that "it will not draw any conclusions regarding a BOC's OSS" from average installation data or other similar provisioning measurements. BellSouth forgets that it has the burden of establishing that it is providing nondiscriminatory access to its OSS in compliance with the Act. As the Commission has made clear, provision of OSS encompasses pre-ordering, ordering and provisioning, as well as maintenance and repair and billing. Ameritech Michigan Order ¶ 130. Clearly, one measure of whether a BOC's end-to-end OSS complies with the Act is a comparison of its average installation interval with that experienced by its competitors. A larger provisioning interval for the BOC's competitors would indicate discriminatory access to its OSS, absent compelling evidence by the BOC justifying the discrepancy. BellSouth's

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2 Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd. 20543, 20585, ¶ 77 (1997) ("Ameritech Michigan Order").

request that the Commission disregard relevant evidence regarding BellSouth's ability to comply with the competitive checklist should be rejected.

B. Flow-Through Measurements and Complex Services.

BellSouth also objects to the Commission's suggestion that BellSouth's failure to provide flow-through data for "complex services" was inappropriate. According to BellSouth, such information is not needed because CLEC complex orders receive the same manual handling as BellSouth retail complex orders. Yet, BellSouth ignores the fact that all complex orders are at some point electronically entered into BellSouth's ordering system.[4] It is precisely because BellSouth will be entering orders for itself and for its competitors that flow-through data is essential to show that the orders are processed on a nondiscriminatory basis with respect to timeliness, accuracy, and successful provisioning. BellSouth's request for clarification therefore should be denied.

C. Maintenance and Repair Interfaces.

The Order properly found BellSouth's maintenance and repair interfaces deficient in at least three major respects: (1) the TAFI interface available to CLECs had limited applicability and was not integratable with a CLEC's OSS; (2) the T1/M1 and EC-CPM

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[3] BellSouth also contends that the Commission improperly disregarded AT&T's marketing of AT&T Digital One Rate service. However, the Commission properly held that BellSouth had not submitted any evidence that its local exchange customers were likely to discontinue their BellSouth wireline service to switch to this PCS plan. ¶ 43. Further, the plan's pricing structure limited its desirability as a substitute for local exchange service. Id.

interfaces worked only for "designed" services and systems; and (3) the ECTA interface did not provide functional parity with that available to BellSouth. BellSouth asks the Commission to reconsider the conclusions with respect to TAFI and ECTA because of purported errors in the Order's analysis. None of BellSouth's supposed errors requires the Commission to change its decision.

With respect to TAFI, BellSouth objects that it never conceded that it derived "superior integration capabilities" from TAFI than did CLECs. That may be true, but it is also irrelevant. Regardless of whether BellSouth explicitly made such a concession, it did not, and does not, dispute that its internal version of TAFI "is integrated with BellSouth's other back office systems," while the TAFI interface offered to CLECs cannot be integrated with their back office systems. Order ¶ 151.[5]

BellSouth objects to the Order's conclusions with respect to ECTA on the apparent ground that ECTA's limited functionalities are based on industry standards. BellSouth Pet. at 8. Yet, the Commission has made clear on numerous occasions and again in this Order that "compliance with industry standards may not meet the statutory requirement of providing nondiscriminatory access to OSS functions" – "[i]n other words, a BOC must provide nondiscriminatory access to its OSS functions irrespective of the

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[4] See Funderburg Aff. ¶¶ 50, 70 (designed and non-designed complex resale service orders are inputted by a BellSouth service representative into DOE or SONGS, which "flow the order to SOCS, which distributes it to other BellSouth provisioning systems"); Shivanandan Aff. ¶¶ 8, 18 (design services are ordered through DOE or SONGS); Bradbury Aff. ¶¶ 197-99.

[5] Nor does BellSouth dispute that CLECs cannot use TAFI for all types of services. Order ¶ 150.

existence of, or whether it complies with, industry standards." Order ¶ 137.[6]

Finally, BellSouth claims that ECTA's limited functionalities were consented to by AT&T and MCI. This is patently untrue. AT&T has been seeking precisely what the Commission has indicated would satisfy BellSouth's obligations under the Act, *i.e.*, TAFI functionality over an electronic bonding interface, since early 1996. In response to these repeated requests, BellSouth represented to the Georgia Public Service Commission on June 21, 1996 that it would implement TAFI functionality over the industry's "existing gateway,"[7] *i.e.*, the T1M1 interface, and this is precisely what the PSC ordered BellSouth to provide by March 31, 1997.[8] Thus, contrary to its position, requiring BellSouth to provide this capability would not discourage BOC's from cooperating with CLECs, but rather would encourage them to respond to CLEC requests, rather than to ignore them as BellSouth has done here.

III. THE COMMISSION PROPERLY CONSTRUED BELLSOUTH'S POSITION ON COLLOCATION.

In the Order, the Commission correctly stated that BellSouth could not limit CLECs to collocation "as the only method for gaining access to and recombining network

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6 See also Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, Memorandum Opinion and Order, 13 FCC Rcd. 539, 606 (1997) ("South Carolina Order"); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Order on Reconsideration, 11 FCC Rcd. 19738, 19744-45 (1996).

7 BellSouth Preliminary Report to the Georgia Public Service Commission (Jun. 21, 1996), pp. 14-15 (BellSouth is offering "the same electronic gateway that is now used by IXCs for access services," and "has investigated the possibility of adding to the existing gateway an interface to [TAFI]").

elements." Order ¶ 164. In its petition, BellSouth objects that it has not limited CLECs to collocation. Instead, BellSouth states that – although it contends collocation is the only method of access contemplated by the Act – it will negotiate other methods of access that are technically feasible and consistent with the 8th Circuit's holding and "other applicable legal rules." BellSouth Pet. at 9. As a result, it claims compliance with the Commission's Rules and section 251(c)(3).[9]

On this issue, BellSouth is engaged in semantic gamesmanship. Its professed willingness to negotiate other methods of access is meaningless in view of the qualifications made in its Petition, because BellSouth contends that all other forms of access are not technically feasible, inconsistent with the 8th Circuit's holding "and other applicable legal rules," or both. Indeed, BellSouth made abundantly clear in its application that it will not permit CLECs to combine network elements except through collocation. Thus, BellSouth affiant Varner asserted that the use of recent change to combine elements was "technically impractical" (but not technically infeasible), and, in any event, did not comply with the 8th Circuit decision. [10] BellSouth likewise dismissed as "unsupported by the Act" any proposal that CLECs or third party vendors have direct access to the main distribution frame ("MDF") or that CLECs be permitted to use pre-wired connector

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8 Order, Docket 6352U (Ga. PSC Jul. 2, 1996) (BellSouth to "complete the TAFI enhancements . . . by March 31, 1997").

9 Even accepting BellSouth's position, BellSouth could not be found compliant because the Commission specifically held that BellSouth had failed to make a *prima facie* showing that it was providing nondiscriminatory access to unbundled elements through collocation. Order ¶ 164.

10 Varner Aff. ¶ 76.

blocks on the MDF.[11] Moreover, BellSouth has consistently resisted exploring any alternatives to collocation with AT&T.[12]

BellSouth also argues that the Commission should have accepted the collocation provisioning intervals to which BellSouth purportedly committed itself because they were "comparable" to intervals established by other incumbent LECs. The Commission properly rejected this attempt to bootstrap the collocation intervals other monopolists impose on CLECs into an industry standard that satisfies the Act. Order ¶ 72. As the Commission found, BellSouth submitted no evidence that its proposed collocation intervals provided efficient competitors a meaningful opportunity to compete. In fact, as the Commission noted, the proposed 120-day and 180-day physical collocation intervals[13] were greater than the 90-day provisioning interval ordered by the Florida Public Service Commission.

IV. THE COMMISSION DID NOT MISSTATE BELLSOUTH'S OBLIGATIONS REGARDING UNBUNDLED LOCAL SWITCHING.

A. Vertical Features.

BellSouth contends that requiring it to provide CLECs all vertical features loaded in the software of its switch, even if BellSouth does not offer those vertical features on a retail basis, somehow would require an incumbent LEC to provide CLECs access to "a yet unbuilt superior [network]" in violation of the 8th Circuit's decision. This is completely

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[11] Id. ¶ 77.

[12] Falcone Aff. ¶¶ 153-55.

[13] In fact, these intervals begin only after BellSouth has 30 days to respond to a physical collocation inquiry, and after the CLEC then submits a "complete and accurate" firm order. Tipton Aff. ¶¶ 21, 24.

wrong.

Permitting CLECs to activate features already loaded in the switch merely provides CLECs parity with the access and use of that switch enjoyed by the incumbent, *i.e.*, the ability to activate loaded features on a prompt basis when the CLEC determines that its customers desire and are willing to pay for such features. CLECs are thus not asking for access to a superior network, they just want the ability to use all of the features of the network that is in place today. Carrying BellSouth's misguided reasoning to its extreme, an incumbent LEC arguably would have no obligation to switch an unused loop to a CLEC, because although the loop is already there and capable of being used, it is not being used at the moment. Such a result would not comport with the plain language and intent of the Act. For the same reason, the Commission should reject BellSouth's argument here.

B. Reciprocal Compensation.

In its petition, BellSouth does not contest – finally – its obligation under the Act to provide CLECs with usage data necessary to bill and collect reciprocal compensation from BellSouth and other carriers. BellSouth Pet. at 11, 12. BellSouth contends, however, that it should not be required to provide such data because it has developed a "reasonable surrogate" that treats carriers fairly and removes the need for this usage data. AT&T does not dispute that a surrogate arrangement that results in the same financial outcome to CLECs as reciprocal compensation may be permissible, at least as an interim arrangement. However, BellSouth offered no evidence that it had legally committed itself to, and implemented, a system or method that provides network element purchasers with a reasonable surrogate for the information they need to recover reciprocal compensation.

Hamman Aff. ¶ 26. Nor did BellSouth provide evidence that it had entered into arrangements with other CLECs that would permit it to insert itself into the relationship between the originating and terminating carriers for a local call. For all of these reasons, the Commission ruled correctly that BellSouth was not meeting the Act's requirement that it provide information necessary to bill for reciprocal compensation, or, alternatively, have in place other arrangements such as a reasonable surrogate. BellSouth's petition therefore should be denied.

V. THE ORDER'S REQUIREMENTS WITH RESPECT TO BRANDING ARE PROPER.

The Commission's Rules require that an incumbent LEC either rebrand or unbrand operator services and directory assistance that are provided using the incumbent LEC's facilities, personnel, and databases. 47 C.F.R. § 51.217(d); Order ¶ 246. BellSouth claims, however, that it need not rebrand nor unbrand unless the CLEC in question purchases dedicated trunks between each BellSouth end office and BellSouth's operator services and directory assistance platform. The Commission found that BellSouth had not demonstrated that this dedicated trunking requirement results in nondiscriminatory access. Moreover, MCI introduced evidence that this dedicated trunking requirement was unnecessary. Instead, BellSouth could route such calls to its OS/DA platform over existing trunk groups, separating out individual CLEC calls on the basis of the Automatic Number Identification (ANI) of the call. Henry Decl. ¶ 53.

BellSouth claims that the Milner Reply Affidavit establishes that MCI's proposed ANI solution does not work. This is simply not true. That affidavit merely states that there were some problems with the initial test of the ANI proposal that needed to be

explored in subsequent testing. Instead of pursuing a proposed solution that could eliminate the need for a "grossly inefficient and costly parallel network" (Order ¶ 247), BellSouth continues to insist on its dedicated trunking requirement so all operator services and directory assistance calls are branded "BellSouth." BellSouth's petition presents no new argument or evidence that was not considered and rejected by the Commission. The Commission should likewise reject this request.

VI. THE ACT GIVES THE COMMISSION AUTHORITY OVER INTERIM NUMBER PORTABILITY.

BellSouth argues that the Commission does not have pricing authority over interim number portability, and that the 8th Circuit has made this clear. BellSouth Pet. at 14. BellSouth is wrong. The express language of the Act gives the Commission authority to issue regulations determining how the costs of both interim and permanent number portability are to be borne. Thus, section 251(e) expressly states that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." Emphasis added. Moreover, the 8th Circuit has specifically affirmed the Commission's jurisdiction to issue such regulations. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 792, 795 & n.12, 802 n.23, 806 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998). As the court noted:

> We recognize that the Act does create such a division of labor [over pricing] between the state commissions and the FCC with respect to those areas where section 251 specifically calls for the Commission's participation.

120 F.3d at 795 n.12. The court then referred to that portion of its opinion where it had specifically identified section 251(e) as an area where the Congress "expressly called for

the FCC's involvement." 102 F.3d at 794 & n.10.[14] In short, contrary, to BellSouth's assertion, both the Act and the 8th Circuit's decision in Iowa Utilities Board make clear that the Commission has the responsibility and the authority to issue regulations regarding the pricing of both interim and permanent number portability.

VII. THE ACT REQUIRES BOCS TO COMPLY WITH SECTION 272(b)(5) PRIOR TO SECTION 271 AUTHORIZATION.

BellSouth asks the Commission to reconsider its repeated holdings that the Act requires BOCs to disclose transactions with their section 272 affiliates prior to section 271 authorization.[15] BellSouth's position conflicts with the plain language of the Act and Commission precedent.

Section 272(b)(5) requires that "all transactions" between a BOC's section 272 affiliate and the BOC be conducted on an arm's length basis "with any such transaction reduced to writing and available for public inspection." Thus, as the Commission correctly held in the Ameritech Michigan Order, BOCs are obligated to comply with the requirements of section 272 as of the date of the Act's enactment. 12 FCC Rcd. at 20736, ¶ 371. Therefore, a BOC must make available for public inspection all transactions between it and its section 272 affiliate that occurred after February 8, 1996. Id.

BellSouth argues, however, that it should not be required to comply with the Act because the disclosure requirements confirmed by the Commission in the Order purportedly are inconsistent with those required under the Accounting Safeguards Order

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[14] See also 120 F.3d at 802 n.23 (identifying §§ 251(b)(2) (number portability) and 251(e) (which includes the costs of number portability) as areas where the FCC is specifically authorized to issue regulations.

[15] Order ¶¶ 334-37; Ameritech Michigan Order, 12 FCC Rcd. at 20736, ¶ 371.

and Non-Accounting Safeguards Order. BellSouth ignores the Commission's specific holding that the details described in the Order are required in order to comply with the Accounting Safeguards Order. Order ¶ 371. BellSouth has consistently ignored the Commission's prior holdings in this regard, and continues to do so here. Its petition should be rejected.

VIII. THE COMMISSION'S EXERCISE OF ITS PUBLIC INTEREST AUTHORITY DOES NOT CONFLICT WITH THE ACT.

BellSouth's argument that the Commission's discussion of the public interest standard should be vacated (Pet., pp. 18-19) is based on obvious misunderstandings of both the law and the Commission's Order. The Commission plainly does not violate the prohibition in Section 271(d)(4) against extending the competitive checklist by stating that it will consider whether a BOC has agreed to performance reporting requirements and self-executing enforcement mechanisms as a part of its public interest inquiry.

First, it is clear from the language of the statute that the "public interest" requirement in Section 271(d)(3)(C) is a separate and independent prerequisite for interLATA authorization from the requirement in Section 271(d)(3)(A) that a BOC show that it has fully implemented the competitive checklist. See, e.g., Order, ¶ 361; Ameritech Michigan Order, ¶ 389. Furthermore, as the Commission pointed out in its Ameritech Michigan Order, Congress specifically rejected BellSouth's position that the public interest requirement must be deemed to be satisfied by full implementation of the competitive checklist. See Ameritech Michigan Order, ¶ 389 & n.1004. In addition, by permitting the Department of Justice, and thus the Commission, to use "any standard," including the

standard contained in section VIII(C) of the AT&T Consent Decree,[16] to evaluate a BOC's application, Congress clearly authorized the Commission to consider factors, such as the extent of local competition and whether local markets are irreversibly open, that are not part of the fourteen-point checklist. 47 U.S.C. § 271(d)(2)(A); H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 149 (1996).

Second, BellSouth's contention that the Commission unlawfully added additional checklist requirements is directly contrary to the clear words of the Order, which imposes no performance reporting or enforcement requirement on BOCs. Rather, consistent with its "broad discretion to identify and weigh all relevant factors" that is inherent in the public interest standard (Order ¶ 362), the Commission simply stated that it would consider evidence that a BOC had agreed to performance reporting and enforcement mechanisms as one of a "variety of factors" in making its public interest determination. Id., ¶¶ 362-64. Further, the Commission specifically stressed that "the presence or absence of any one factor would not dictate the outcome of the public interest inquiry," and that, unlike the requirements of the competitive checklist, no factor was a "precondition" to BOC entry. Id., ¶ 362 & n.1136.

Finally, there is no merit to BellSouth's claim that the Commission's public interest discussion is inconsistent with the decision of the 8th Circuit in Iowa Utils. Board, because it somehow infringes upon the authority of the states to enforce interconnection agreements under Section 252. First, as noted above, this portion of the Order does not impose any requirements on the BOCs at all. Second, even if performance reporting or enforcement mechanisms had been required, the Commission did not state that they would

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[16] Section VIII(C) of the AT&T Consent Decree provided that the line of business restrictions imposed on the BOCs could be removed only upon a showing that "there is no substantial possibility that [the BOC] could use its monopoly power to impede competition in the market it seeks to enter." United States v. AT&T, 552 F.Supp. 131, 231 (D.D.C. 1982).

have to be a part of any negotiated interconnection agreement subject to state commission review under Section 252. Instead, such obligations could be imposed either by the Commission or by the state commissions through rulemaking, or by the Commission as conditions of entry under Sections 271(d)(6) and 303(r). See, e.g., Ameritech Michigan Order, ¶¶ 399-401.[17]

The Order is also not inconsistent with the 8th Circuit's ruling that only the states have the authority to "enforce" interconnection agreements. See 120 F.3d at 803-04. In the first place, in rejecting an application under Section 271, the Commission is not enforcing any interconnection agreement. A Section 271 denial does not require BellSouth to take any action under its interconnection agreements. Rather, the Commission is simply discharging its statutory mandate in Section 271(d)(3)(C) to determine whether "the requested authorization is consistent with the public interest." BellSouth's radical reading of the 8th Circuit's opinion, on the other hand, would effectively preclude the Commission from considering evidence concerning, for example, whether a BOC is in compliance with its statutory obligation to provide nondiscriminatory access to unbundled network elements in passing on a Section 271 application. Second, in sharp contrast to the 8th Circuit's decision that the Commission has no authority under Section 251 to issue pricing rules, the 8th Circuit specifically upheld the Commission's authority under Section 251 to issue rules and regulations defining and implementing the statutory obligation of incumbent LECs to provide CLECs with nondiscriminatory access

[17] See also Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, CC Docket No. 98-56 (released April 17, 1998), ¶¶ 23-24.

to all services and unbundled network elements, including operations support systems.[18] The 8th Circuit's decision, therefore, would not preclude the Commission from requiring performance measurements and enforcement mechanisms to ensure compliance with the BOC's statutory nondiscriminatory access obligations.

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[18] See, e.g., 47 C.F.R. §§ 51.305(a)(3 & 5) (nondiscriminatory interconnection), 51.307(a), 51.311(b), 51.313 (a & b) (nondiscriminatory access to unbundled network elements), 51.319(f) (nondiscriminatory access to operations support systems), 51.613 (nondiscriminatory restrictions on resale). Although the 8th Circuit did not specifically discuss each of these rules, the court upheld all of the Commission's rules except for certain other enumerated rules not relevant here. *See* 120 F.3d at 807-10, 818-19 nn.38 & 39.

CONCLUSION

For all of the reasons set forth above, BellSouth's petition for reconsideration and clarification should be denied.

Respectfully submitted,
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Dated: December 15, 1998

CERTIFICATE OF SERVICE

I, Julie Rygiel do hereby certify that on this 15th day of December, 1998, a copy of the foregoing AT&T Corp. Opposition to BellSouth Petition for Reconsideration and Clarification was served by U.S. first class mail, postage prepaid, to the parties shown on the attached Service List.

Julie Rygiel

Julie Rygiel

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