

not diluted in the TGP report because BellSouth separately tabulates blockage affecting competitive LEC customers for shared trunks and competitive LEC dedicated trunks and then adds the figures to determine the total blockage experienced by competitive LEC customers, rather than mixing the results for smaller, dedicated trunks with larger, shared trunk groups.⁷⁹⁴ Moreover, the report appears to represent an improvement over its previous reporting methods for trunk blockage.⁷⁹⁵ BellSouth explains the TGP report is more informative because it depicts the actual impact of end-to-end service on customers by incorporating more relevant trunks and factoring the amount of time that blocking occurs.⁷⁹⁶ Thus, the TGP report seems to provide a more appropriate foundation for analyzing BellSouth's performance by comparing the blocking rates experienced by competitive LEC and retail customers, while the TGSR only compares the number of blocked competitive LEC and retail trunks.⁷⁹⁷ Furthermore, the old TGSR treated all trunks with equal weight, even though blockage on small trunk groups would have a "substantially different impact on customers than a similar percentage of blockages on a larger trunk group."⁷⁹⁸ Finally, we note that both the Georgia and the Louisiana Commissions approved the TGP report measure and that according to these Commissions, competitive LECs had a full opportunity to participate in the review of the TGP report.⁷⁹⁹

204. *Interconnection Timeliness.* We also conclude that BellSouth's performance data indicate that BellSouth is providing nondiscriminatory interconnection in a timely manner. In reaching this conclusion we review BellSouth's performance for missed installation appointments and average installation intervals. Specifically, we find that in Georgia and Louisiana for the relevant months BellSouth met or exceeded parity with the retail analogue for the missed installation appointments measure without exception.⁸⁰⁰ Further, BellSouth met or

⁷⁹⁴ See BellSouth GALA I Milner Reply Aff. at paras. 15-16 (explaining that the TGP report does not count BellSouth traffic against competitive LECs, instead it calculates competitive LEC blockage on shared trunk groups by estimating the competitive LEC portion of the trunk groups based on data from past trunk reports). In other terms, for the TGP metric, the blocking rates on competitive LEC trunks and shared trunks are added, not averaged together. Therefore, if the blocking rate was 1% on the competitive LEC dedicated trunk, and the estimated blocking rate of the competitive LEC calls due to blockage on the shared trunk was .5%, the total competitive LEC blocking rate for the TGP metric would be 1.5%.

⁷⁹⁵ BellSouth GALA I Milner Reply Aff. at paras. 11-14.

⁷⁹⁶ BellSouth GALA I Varner Ga. Aff. at 45-46; BellSouth GALA I Milner Reply Aff. at paras. 19-20. BellSouth explains that the TGSR did not include BellSouth-administered high-usage trunk groups to competitive LECs that carry 77% of the total traffic load. BellSouth asserts that the trunks from BellSouth to competitive LEC trunk groups reported in the TGSR carry only 23% of total BellSouth to competitive LEC traffic. BellSouth GALA I Milner Reply Aff. at para. 20, Ex. WKM-3

⁷⁹⁷ *Id.* at para. 19.

⁷⁹⁸ BellSouth GALA I Application App. A, Vol. 5, Tab O, Affidavit of W. Keith Milner (BellSouth GALA I Milner Aff.) at para.12.

⁷⁹⁹ See Georgia GALA I Commission Comments at 39-42; Georgia GALA I Commission Reply at 6-7 (asserting that AT&T failed to take advantage of opportunities to question the adequacy of the Trunk Group Blockage Report before the Georgia Commission); Louisiana GALA I Commission Comments at 2-6.

⁸⁰⁰ See Georgia/Louisiana C.2.5 (Missed Installation Appointments- Interconnection).

exceeded parity with the relevant retail analogue in Louisiana from October through February for the order completion interval measure without exception.⁸⁰¹ Although BellSouth missed the relevant retail analogue for the order completion interval metric on several occasions in Georgia during the relevant period, a close examination of BellSouth's performance reveals that this is a volatile metric.⁸⁰² Indeed, although BellSouth missed parity for three out of the five months we review, we note that BellSouth provisioned competitive LEC trunks in a more timely fashion than it did for itself in November, and in the most recent month, February, BellSouth achieved parity of performance.⁸⁰³ Given this, and the fact that BellSouth's performance for missed installation appointments is acceptable, we find that BellSouth provisions competitive LEC trunks in a nondiscriminatory manner.⁸⁰⁴

205. *Collocation.* We conclude that BellSouth provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs.⁸⁰⁵ In reaching this conclusion, we note that BellSouth states that it permits the collocation of equipment as required in the *Collocation Remand Order*.⁸⁰⁶ Furthermore, we find that BellSouth has met all of the applicable performance metrics for collocation for the relevant months in both Georgia and Louisiana.⁸⁰⁷

206. We are not persuaded by Mpower that BellSouth fails to demonstrate compliance with this checklist item because BellSouth should provide shorter intervals where collocation necessitates less than the full complement of activities necessary for BellSouth to provision a full collocation application.⁸⁰⁸ BellSouth contends that the 90-day interval for augments only applies to caged arrangements in Georgia and that all other augment intervals in Georgia and Louisiana

⁸⁰¹ See Louisiana C.2.1 (Order Completion Interval - Interconnection).

⁸⁰² See Georgia C.2.1 (Order Completion Interval - Interconnection) (demonstrating that BellSouth missed parity with the retail analogue by 11.4 days in October, 10.72 days in December and 9.55 days in January).

⁸⁰³ See Georgia C.2.1 (Order Completion Interval - Interconnection). In November, BellSouth provisioned competitive LEC trunks on an average of only 24.35 days, whereas it provisioned its own trunks in 27.43 days. In February, BellSouth provisioned competitive LEC trunks in 21.82 days and its own trunks in 19.91 days. *Id.*

⁸⁰⁴ See Georgia/Louisiana C.2.5 (Missed Installation Appointments- Interconnection).

⁸⁰⁵ Georgia Commission GALA I Comments at 42-44; Louisiana GALA I Commission Comments at 20-22; BellSouth GALA I Ga. Ruscilli/Cox Aff. at 6-7, Ex. 4-10, 37-38, Attach. I, K.

⁸⁰⁶ BellSouth GALA I Application at 33.

⁸⁰⁷ See Georgia/Louisiana E.1 (Collocation).

⁸⁰⁸ Mpower GALA I Comments at 31 (asserting that competitive LECs are "forced to purchase facilities that they do not need because of the 90 day interval for collocation augments regardless of the amount of facilities added."). *Id.* For example, Mpower also contends that it cannot order power for its collocation space in the 60-amp to 225-amp range and that BellSouth requires competitive LECs to purchase more power than they need for collocation space. See pricing discussion, section IV.A.1, *infra*.

are shorter.⁸⁰⁹ Moreover, our collocation rules at this time do not establish separate intervals for augments. Rather, our rules require a 90-day interval for physical collocation, including augments, unless the relevant state has set its own standard, or the parties have agreed to an alternative.⁸¹⁰ Because our rules do not mandate a shorter interval for augments, we reject Mpower's claim.

207. *Interconnection Terms.* We reject Nextel and Triton's assertion that BellSouth fails to satisfy its section 271 obligations under checklist items 1 and 9 because these parties raise issues the Commission currently is considering in ongoing rulemaking proceedings.⁸¹¹ Nextel and Triton assert that BellSouth announced a policy of refusing to activate NPA/NXX codes in its switches if the rating point for the code is located outside of BellSouth's service area.⁸¹² Nextel and Triton assert that this policy violates their rights to interconnect "at any technically feasible point" within BellSouth's network and deprives CMRS carriers of their right to choose a single point of interconnection in a LATA.⁸¹³ In addition, Nextel and Triton argue that our rules "provide that landline-CMRS traffic must be treated as local traffic - not access traffic - whenever it is contained within a single MTA."⁸¹⁴

208. We reject Nextel's and Triton's complaint for several reasons. First, we note that BellSouth rescinded its policy that gave rise to these parties' complaint.⁸¹⁵ Second, as the Commission stated in prior section 271 orders,⁸¹⁶ while the Commission will consider, in a section 271 proceeding, whether a BOC permits a requesting LEC to physically interconnect at a single point of interconnection (POI), it will not attempt to settle new and unresolved disputes about the precise content of an incumbent LEC's obligations to its competitors - disputes that do

⁸⁰⁹ The maximum interval for augments for cageless collocation in Georgia as well as caged and cageless collocation in Louisiana is 60 days. BellSouth also points out that Mpower provides no evidence or support for its claim that 90 days is too long. BellSouth GALA I Application Reply App., Vol 1, Tab E, Affidavit of Wayne Gray (BellSouth GALA I Gray Reply Aff.) at paras. 9-10, 42-43, 46; Georgia Commission GALA I Comments at 42-43.

⁸¹⁰ See *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, 96-98, Order and Notice of Proposed Rulemaking, 15 FCC Rcd. at 17820-22, paras. 25-27.

⁸¹¹ See Nextel GALA II Reply Comments at 11-13; Triton April 5 *Ex Parte* Letter at 1.

⁸¹² On March 20, 2002, BellSouth clarified its interconnection policy and indicated that it would continue to activate these codes, but that it will seek compensation in state proceedings for routing calls to a CMRS provider with an NPA/NXX code if the rating point for the NPA/NXX is located outside of BellSouth's landline franchise area. See BellSouth March 20 *Ex Parte* Letter at 3.

⁸¹³ See Nextel GALA II Reply Comments at 12; Triton April 5 *Ex Parte* Letter at 3.

⁸¹⁴ See Nextel GALA II Reply Comments at 12; Triton April 5 *Ex Parte* Letter at 3 (citing 47 C.F.R. § 51.701(b)(2)).

⁸¹⁵ See BellSouth March 20 *Ex Parte* Letter at 3.

⁸¹⁶ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17419, para. 100.

not involve *per se* violations of self-executing requirements of the Act.⁸¹⁷ We find that Nextel and Triton largely raise unresolved intercarrier compensation issues. Indeed, the issues raised by Nextel and Triton in this application are open issues before Commission in the *Inter-carrier Compensation* proceeding.⁸¹⁸ Based on the time constraints and specialized nature of the section 271 process, we believe that these issues would be more appropriately resolved in a different proceeding. Accordingly, we do not find that BellSouth's policies violate its interconnection obligations under checklist item 1.⁸¹⁹

209. *Other issues.* Commenters also raise some additional issues that are more appropriately addressed in other fora or proceedings. Specifically, CBeyond claims that BellSouth fails to comply with its interconnection agreement obligations⁸²⁰ and XO maintains that BellSouth seeks to "unilaterally change terms or otherwise impose conditions on XO that are more restrictive than BellSouth will follow."⁸²¹ As the Commission found in previous proceedings, given the time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligations to its competitors.⁸²² Rather than being indicative of BellSouth's ability to provide interconnection, these claims are fact-specific disputes between independent competitive LECs and BellSouth regarding its statutory obligations. We find, therefore, that a rulemaking proceeding or complaint brought before the Commission pursuant to section 208 is the more appropriate place for such allegations to be examined.

1. Pricing of Interconnection

210. Checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."⁸²³ Section 251(c)(2) requires incumbent

⁸¹⁷ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246-47, para. 19.

⁸¹⁸ See *Developing A Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, (rel. April 27, 2001)(*Inter-carrier Compensation NPRM*) at para. 112. We note that both Nextel and Triton filed comments in that proceeding. In addition, we recognize that Sprint recently notified the Commission that it intends to file a Petition for Declaratory Ruling relating to the issues raised by Nextel and Triton and requests that the Commission refrain from attempting to resolve their claims in this proceeding. See Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 at 1-2 (filed May 8, 2002).

⁸¹⁹ We note that BellSouth must comply with any rule adopted in the *Inter-carrier Compensation* proceeding in order to remain in compliance with section 271.

⁸²⁰ See CBeyond GALA I Comments at 7-11.

⁸²¹ XO GALA I Reply Comments at 4.

⁸²² *Verizon Pennsylvania Order*, 16 FCC Rcd at 17475, para. 101; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230; *SWBT Texas Order*, 15 FCC Rcd at 18366-67, paras. 22-27.

⁸²³ 47 U.S.C. § 271(c)(2)(B)(i).

LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁸²⁴ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.⁸²⁵ The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation at rates that are based on TELRIC.⁸²⁶

211. Based on the evidence in the record, we find that BellSouth offers interconnection in Georgia and Louisiana to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1. Both the Georgia and Louisiana Commissions conclude that BellSouth currently provides collocation under approved interconnection agreements, SGATs and tariffs, consistent with Commission and their respective state commission orders.⁸²⁷

212. Mpower is the principal commenter that criticizes collocation pricing.⁸²⁸ It contends that BellSouth's collocation power rates are unreasonable because competitive LECs desiring power in the 60 to 225 amp range must buy 225 amps of power, even if it is not needed.⁸²⁹ BellSouth denies this contention and states competitive LECs have long been able to order power from BellSouth's Battery Distribution Fuse Board (BDFB) in amounts based on industry standard fuse sizes ranging from 10 to 60 amps, or any combinations of them, up to a total of 225 amps.⁸³⁰ Additionally, BellSouth worked over the course of the last six months with

⁸²⁴ *Id.* § 251(c)(2).

⁸²⁵ *Id.* § 252(d)(1).

⁸²⁶ See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

⁸²⁷ Georgia Commission GALA I Comments at 45; Louisiana Commission GALA I Comments at 23.

⁸²⁸ AT&T contends "that BellSouth charges almost a 50 percent higher rate for the same type of collocation space in Georgia as compared to Louisiana." See AT&T GALA I Reply Comments at 42. AT&T, however, does not support its contention by challenging any specific collocation rates on any basis as being non-TELRIC. Without more, AT&T does not provide evidence here sufficient to establish a violation of TELRIC pricing or checklist item 1. Furthermore, it is difficult to discern if AT&T refers to the modified and restructured collocation rates in Georgia's latest SGAT which reduced non-recurring rates. See GALA I Application Appendix C, Vol. 13, Tab 68, BST's Revised Statement of Generally Available Terms and Conditions for Interconnection, Unbundling and Resale, Letter from Bennett L. Ross, General Counsel-Georgia, BellSouth, to Reece McAlister, Executive Secretary, Georgia Public Service Commission at 2 (filed Aug. 27, 2001). BellSouth asserts its "restructured collocation rates . . . are interim and subject to true-up based upon a final order in Docket No. 14361-U, [and] are supported by a TELRIC-compliant cost study. . . ." *Id.* To the extent AT&T still has any concerns, it will be able to address them in the pending state proceeding where the Georgia Commission is revisiting collocation charges.

⁸²⁹ Mpower GALA I Comments at 29.

⁸³⁰ BellSouth GALA I Application Reply Appendix, Vol. 1, Tab E, Reply Affidavit of A. Wayne Gray at para. 11 (BellSouth GALA I Gray Reply Aff.) ("The fuse sizes available to CLECs are the standard sizes manufactured by fuse vendors that are commonly available at electrical supply stores. . . . For example, if Mpower wants 100 amps of (continued....)")

electrical vendors to implement new power options greater than 60 amps on single redundant power feeds at the BellSouth BDFB.⁸³¹ These options are now available to competitive LECs. BellSouth now offers fuses in 70, 80, 90 and 100 amp options by retrofitting its BDFB's to support larger fuse sizes and still comply with National Electric Code (NEC) standards.⁸³² BellSouth states that fuses larger than 100 amps would violate NEC and could create safety and loss of service problems.⁸³³ BellSouth further responds to Mpower that there are no additional costs for equipment, materials, and work that will be required to offer these new power options.⁸³⁴ Mpower has not challenged BellSouth's description of the new power options that are available or the technical requirements cited.⁸³⁵

213. Mpower also contends that it is unreasonable for BellSouth to refuse to provide a single feed power demand of less than 225 amps directly from the main power distribution board.⁸³⁶ In response, BellSouth contends that it does not provide this feed because doing so would cause safety and fire concerns, violate electrical code requirements and could result in customer service outages.⁸³⁷ BellSouth uses an industry standard size current breaker protection (Continued from previous page)

power delivered to its collocation space today, then it can run two (2) power cables to BellSouth's BDFB and connect it with two industry standard fuse sizes that equal 100 amps (i.e., a 40-amp fuse and a 60-amp fuse." BellSouth also states that "[i]t is extremely uncommon for a single piece of equipment ever to need more than 60 amps," and BellSouth designed its collocation power offering for competitive LECs based on the same power architecture that it used for its own equipment as well as what was accepted as the industry standard. BellSouth GALA I Reply at 96 n.79; BellSouth GALA I Gray Reply Aff. at para. 12.

⁸³¹ BellSouth GALA I Gray Reply Aff. at para. 23. These changes were made in response to requests from competitive LECs in the BellSouth/CLEC Collocation User Group forum and several state section 271 proceedings. *Id.*

⁸³² *Id.*

⁸³³ *Id.* at para. 24.

⁸³⁴ *Id.* at para. 40 (responding to Mpower GALA I Comments at 30) ("CLECs will pay the same power rate for each amp of fused power, no matter whether the CLEC orders 10 amps or 100 amps. The calculation is the same. The number of load amps is multiplied by the multiplier of 1.5 (to bring it up to fused amps) and then this result is multiplied by the per fused amp power rate (the same power rate is used for each increment).").

⁸³⁵ Following BellSouth's reply to Mpower's contentions, the Commission held an *ex parte* meeting on Nov. 15, 2001, with Mpower to address OSS issues at which time we asked Mpower to also inform the Commission of any continuing collocation pricing concerns, but to date no further pricing matters were raised. *See* Letter from Patrick J. Donovan, Counsel to Mpower, to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket No. 01-277 (Nov. 16, 2001).

⁸³⁶ Mpower GALA I Comments at 29; *but see* BellSouth GALA I Gray Reply Aff. at para. 24. BellSouth states that it can offer competitive LECs "the ability to order DC power capacity up to 100 amps from a BellSouth BDFB using a single redundant power feed," that competitive LECs "still have the option of ordering 225 amps of DC power directly from the main power board...or of combining the available increments (10, 15, 30, 45, 60, 70, 80, 90 and 100 amp fuses) to achieve the total amount of power they need. Therefore, BellSouth contends that it offers the competitive LECs sufficient power capabilities, under various scenarios, to effectively power their collocation space." *Id.*

⁸³⁷ BellSouth GALA I Gray Reply Aff. at paras. 21-22.

device of 225 amps at the main power board.⁸³⁸ This precludes a single power feed of less than 225 amps from this source (although smaller power feeds are available from the BDFB). BellSouth also presents evidence that the 225-amp circuit breaker standard was developed three years before the Act was even passed, based on a study after a devastating Chicago central office fire.⁸³⁹ In addition, BellSouth asserts that anything less than 225 amp protection at the main power board would violate National Electric Code requirements designed to limit electrical system failures that, in this case, could result in customer service outages.⁸⁴⁰ Accordingly, we believe BellSouth presents reasonable evidence here, and we are not persuaded by Mpower's contention otherwise.

214. Mpower contends further that BellSouth collocation power rates are unreasonable because BellSouth's charge is based on fused amps, rather than load amps, and thus results in charging for power capacity that competitive LECs cannot use.⁸⁴¹ BellSouth responds that its rates for power include a two-thirds multiplier that takes into account the difference between fused amps for protection and load amps as requested by the competitive LEC.⁸⁴² It further asserts that the Georgia Commission has already considered this pricing issue and ruled in favor of BellSouth's current method of power assessment.⁸⁴³

215. We conclude that BellSouth has responded sufficiently in a detailed and reasonable manner to Mpower's contentions, and that Mpower offered no additional evidence or arguments in response to BellSouth's reply comments.⁸⁴⁴ We note that in its arguments, Mpower relies on contentions made by NewSouth in an earlier North Carolina proceeding regarding competitive LECs having to purchase more power than they need.⁸⁴⁵ We question the evidentiary value and relevance of this past NewSouth testimony, in particular because NewSouth now supports BellSouth's 271 application and has not made the same allegations here. In its

⁸³⁸ *Id.* at para. 21.

⁸³⁹ *Id.*

⁸⁴⁰ *Id.* at para. 22.

⁸⁴¹ Mpower GALA I Comments at 29.

⁸⁴² BellSouth GALA I Reply at 96-97 ("Thus, 60 fused amps times the power rate (which already includes the two-thirds multiplier) results in a charge for only 40 load amps – in effect, a per-load amp charge because the power load should generally be two-thirds the capacity of the fuse that protects the power feed.").

⁸⁴³ BellSouth GALA I Gray Reply Aff. at para. 19 (citing Georgia MCI Arbitration Order, Docket No. 11901-U (March 7, 2001)). We note that Mpower raises further arguments based on changes Verizon made to its collocation power tariff in connection with the Massachusetts section 271 proceeding. Mpower GALA I Comments at 30; BellSouth GALA I Gray Reply Aff. at para. 33. Mpower's analysis fails to address the structural difference between Verizon's rates and BellSouth's rate and thus its argument is not an appropriate comparison to the issue before us.

⁸⁴⁴ *See supra* n.835.

⁸⁴⁵ Based on NewSouth testimony, Mpower argues that BellSouth cannot support power requirements in the 60-225 amp range, while SBC offers power in increments of 20, 30, 50, 100 and 200 amps, and that reconfiguration of competitive LEC power arrangements to achieve desired power options is cost prohibitive.

comments in this proceeding, NewSouth concludes that BellSouth's performance, "including collocation, is sufficient to provide NewSouth a meaningful opportunity to compete in Georgia and Louisiana."⁸⁴⁶

216. Furthermore, the Georgia Commission is revisiting collocation fees and charges in its ongoing proceeding to update UNE rates. BellSouth filed revised interim collocation rates subject to true-up with its latest SGAT on August 27, 2001, and parties will be able to raise any collocation pricing issues, should they arise, in a timely manner. In September, 2001, the Louisiana Commission addressed collocation pricing concerns similar to those that Mpower raises here.⁸⁴⁷ "After reviewing BellSouth's justification for its requirements, the LPSC approved BellSouth's power options[]." ⁸⁴⁸ In addition, however, it ordered that any competitive LEC currently purchasing 225 amps directly from BellSouth's main power board could have the option of reconfiguring its power to purchase smaller increments from BellSouth's BDFB or of purchasing power directly from an electric utility company.⁸⁴⁹ Furthermore, the Louisiana Commission also ordered BellSouth to waive any application fees or charges to accomplish either of these alternatives.⁸⁵⁰ BellSouth also notes that "it is reviewing the possibility of offering the competitive LECs a reduction or waiver of the nonrecurring charges associated with either of the power reconfigurations [] for all of BellSouth's other states."⁸⁵¹

217. For the reasons discussed above, nothing Mpower has shown us leads us to believe that any Commission action here is warranted at this time, or that BellSouth has failed to comply with this checklist item.

⁸⁴⁶ NewSouth GALA I Comments at 7.

⁸⁴⁷ Louisiana Commission GALA I Comments at 22-23 n.10 (citing Docket No. U-22252(E) at 3-4). *See also* Louisiana Commission Staff Final Recommendation in Docket No. U-22252(E) at 33 ("Given that BellSouth allows CLECs to purchase power in increments of as little as 10 amps, Staff recommends that the Commission find BellSouth's collocation power options to be appropriate. It is unclear why a CLEC would elect to obtain power directly from BellSouth's main power board at a minimum of 225 amps, if the CLEC's equipment will actually use substantially less power.").

⁸⁴⁸ Louisiana Commission GALA I Comments at 22-23 n.10. ("Several CLECs apparently have installed their own BDFB in their collocation space, and order power directly from BellSouth. These CLECs complained about the charges that result from BellSouth's requirement in such an arrangement for a standard 225 amp power feed."). *See also* Louisiana Commission Staff Final Recommendation in Docket No. U-22252(E) at 33 ("BellSouth claims, and Staff agrees, that the use of the standard 225 amp power feed is necessary to comply with specific National Electric Safety Code requirements. . . .").

⁸⁴⁹ Louisiana Commission GALA I Comments at 3-4.

⁸⁵⁰ *Id.*; *see also* Louisiana Commission Staff Final Recommendation at 33, 34.

⁸⁵¹ BellSouth GALA I Gray Reply Aff. at para. 28.

B. Checklist Item 4 – Unbundled Local Loops

218. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide, “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”⁸⁵² Based on the evidence in the record, we conclude, as did the Georgia and Louisiana Commissions,⁸⁵³ that BellSouth demonstrates that it provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of BellSouth’s performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, high capacity loops, and digital loops, and our review of BellSouth’s processes for line sharing and line splitting. As of October 2001, competitors have acquired and placed into use more than 80,000 loops in Georgia, and 19,000 loops in Louisiana.⁸⁵⁴

219. Consistent with our prior section 271 orders, we do not address every aspect of BellSouth’s loop performance where our review of the record satisfies us that BellSouth’s performance is in compliance with the parity and benchmark measures established in Georgia and Louisiana.⁸⁵⁵ Instead, we focus our discussion on those areas where the record indicates minor discrepancies in performance between BellSouth and its competitors in Georgia and Louisiana. As in past section 271 proceedings, in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete.⁸⁵⁶ Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.⁸⁵⁷

220. *Hot Cut Activity.* Like the Georgia and Louisiana Commissions,⁸⁵⁸ we find that BellSouth is providing voice grade loops through hot cuts in Georgia and Louisiana in

⁸⁵² 47 U.S.C. § 271(c)(2)(B)(iv). The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. Dark fiber and loop conditioning equipment are among the features, functions, and capabilities of the loop. *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67 n.301. For a discussion of the requirements of checklist item 4, see Appendix D at paras. 48-52, *infra*.

⁸⁵³ Georgia Commission GALA I Comments at 166; Louisiana Commission GALA II Comments at 1-2.

⁸⁵⁴ BellSouth GALA II Stockdale Aff., Exh. ES-5 and ES-6 (*citing confidential information*). As of February 2002, BellSouth had provisioned over 70,000 stand-alone loops (including DSL loops), 8,934 digital loops, and 3,145 high capacity loops. See Milner GALA I Aff. at para. 115; Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth, to Marlene R. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed April 17, 2002) (BellSouth Apr. 17 *Ex Parte* Letter). In Louisiana, BellSouth had provisioned over 15,000 stand-alone loops (including DSL Loops), 3,500 digital loops, and 3,154 high capacity loops. *Id.*

⁸⁵⁵ See, e.g., *Verizon Connecticut Order*, 16 FCC Rcd at 14151-52, para. 9.

⁸⁵⁶ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

⁸⁵⁷ See *id.*

⁸⁵⁸ Georgia Commission GALA I Comments at 161; Louisiana Commission GALA I Comments at 57.

accordance with the requirements of checklist item 4. BellSouth provides hot cuts in Georgia and Louisiana within a reasonable time interval,⁸⁵⁹ at an acceptable level of quality, with minimal service disruption, and with a minimum number of troubles following installation.⁸⁶⁰

221. We reject the argument made by AT&T that BellSouth fails to meet the “standards” the Commission developed in the *Bell Atlantic New York Order*.⁸⁶¹ AT&T claims that when using the loop cutover calculation measures analyzed by the Commission in the *Bell Atlantic New York Order*, BellSouth’s on-time performance for completing hot cuts is deficient.⁸⁶² In the Texas proceedings, AT&T similarly argued that SWBT could not establish checklist compliance because the Texas performance metrics differed from those employed in New York.⁸⁶³ As the Commission noted in the *SWBT Texas Order*, “[w]ith each application we are presented with a different set of circumstances: new and differently designed performance measurements, state proceedings with different histories, new processes by which BOCs perform necessary functions for competing carriers, and new competing carrier concerns.”⁸⁶⁴ In fact, this Commission has recognized that “individual states and BOCs may define performance measures in different ways.”⁸⁶⁵ As a result, although our hot cut inquiry examines the same criteria as our inquiry in prior section 271 applications, we necessarily base our conclusion on the evidence presented in this application.⁸⁶⁶ In particular, as noted above, we evaluate BellSouth’s hot cut process, and the timeliness and quality of the hot cuts it provides to competing carriers, and find that BellSouth’s hot cut performance for the five-month period, October through February, met or exceeded the checklist requirements.

⁸⁵⁹ See Georgia/Louisiana B.2.12.1 (Coordinated Customer Conversions, Loops with INP); Georgia/Louisiana B.2.12.2 (Coordinated Customers Conversions, Loops with LNP); Georgia/Louisiana B.2.14.1-B.2.14.4 (Hot Cut Timeliness); Georgia/Louisiana B.2.15.1-B.2.15.4 (% Hot Cuts>15 Minutes Late); Georgia/Louisiana B.2.16.1-B.2.16.2 (Average Recovery Time – CCC); Georgia/Louisiana B.2.13 (% Hot Cuts>15 minutes early); Georgia/Louisiana B.2.15 (% Hot Cuts>15 minutes late). *But see* Xspedius GALA I Comments at 5-6 (asserting that BellSouth does not perform coordinate customer conversions as scheduled).

⁸⁶⁰ See Georgia/Louisiana B.2.17.1.1-B.2.17.2.2 (% Provisioning Troubles Within Seven Days – Hot Cuts). KMC claims that, when BellSouth completes the physical hot cut, BellSouth fails to perform timely switch translations and loop cutovers in a manner that prevent end users from losing service. KMC Comments at 7. We address KMC’s claim in checklist item 11, below.

⁸⁶¹ See AT&T GALA I Comments at 40-41.

⁸⁶² *Id.*

⁸⁶³ *SWBT Texas Order*, 15 FCC Rcd at 18485, para. 257.

⁸⁶⁴ *Id.*

⁸⁶⁵ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17462-63, para. 79 n.275. In many cases, such differences are the product of state proceedings where provisioning processes and performance measurements were developed and refined with input from both the BOC and competing carriers.

⁸⁶⁶ *SWBT Texas Order*, 15 FCC Rcd at 18485, para. 257.

222. We also reject Mpower's claim that BellSouth's failure to provide an adequate automated frame due time (FDT) violates BellSouth's obligation to provide reasonable and nondiscriminatory access to OSS and to unbundled loops.⁸⁶⁷ Mpower asserts that BellSouth should be required to provide an adequate automated FDT process or, at least, not separately charge for coordination of hot cuts.⁸⁶⁸ Competing carriers can now choose freely between the CHC and FDT hot cut processes in Georgia and Louisiana. In the *SWBT Texas and Kansas/Oklahoma Orders*, however, the Commission expressly chose not to rely upon SWBT's FDT showing in demonstrating compliance with checklist item 4 and relied instead on SWBT's coordinated method (for which there was no charge).⁸⁶⁹ Absent further substantiation, we cannot find that BellSouth does not provide an adequate automated FDT process. The evidence in this record demonstrates that BellSouth provisions FDT hot cuts in a timely manner and with a minimum number of troubles following installation. Concerning BellSouth's separate charge for coordinated hot cuts (CHCs), the Commission has never required BOCs to provide CHCs at no charge.⁸⁷⁰ By contrast, the Commission has found that competitive carriers have a meaningful opportunity to compete if a BOC makes available a non-automated CHC process with a charge.⁸⁷¹ We therefore believe that Mpower's challenge to the cost basis of these charges is in reality a challenge to the pricing determinations of the Georgia Commission and, to the extent that Mpower is requesting a hot cut process that BellSouth does not currently offer, we note that a section 271 application is not an appropriate forum for the resolution of such inter-carrier disputes. Given that BellSouth demonstrates that it provisions CHCs in a timely manner and at an acceptable level of quality, with a minimal service disruption and a minimum number of troubles following installation, we find that Mpower's concerns do not warrant a finding of checklist noncompliance. Thus, we do not believe that we have a sufficient basis for finding that these claims warrant checklist noncompliance.

223. *Voice Grade Loops.* Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions,⁸⁷² that BellSouth provisions voice grade loops to competitors in Georgia and Louisiana in a nondiscriminatory manner. In order to determine that

⁸⁶⁷ Mpower GALA I Comments at 6; Mpower GALA II Comments at 15.

⁸⁶⁸ Mpower GALA II Comments at 16. Mpower states that BellSouth's automated FDT is very unsatisfactory and compares unfavorably with the process of the other BOCs because BellSouth will only specify a business day on which the automated transfer will occur, which could result in customers being without service for several hours or more if the transfer fails. *Id.* at 15. According to Mpower, SBC and Verizon make a commitment to perform a transfer of service within a time frame of 60 or 90 minutes. *Id.*

⁸⁶⁹ *SWBT Texas Order*, 15 FCC Rcd at 18487, paras. 260-61; *see also SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6337, para. 201.

⁸⁷⁰ *See SWBT Texas Order*, 15 FCC Rcd at 18494-95, para. 276.

⁸⁷¹ *See id.* at 18494-95, paras. 275-77. In the *SWBT Texas Order*, the Commission found that time and material charges imposed during the CHC process were valid because of the Texas Commission's demonstrated commitment to the Commission's pricing rules. *Id.* at paras. 276-77.

⁸⁷² Georgia Commission GALA I Comments at 154; Louisiana Commission GALA I Comments at 57.

BellSouth's performance reflects parity, we review performance measures comparable to those we have relied upon in prior section 271 orders.⁸⁷³

224. In both Georgia and Louisiana, BellSouth has generally met the benchmark and parity standards for installation timeliness, installation quality, and the quality of the maintenance and repair functions.⁸⁷⁴ We recognize that BellSouth's performance with respect to a provisioning timeliness metric – the order completion interval metric – appears to be slightly out of parity in Georgia and Louisiana for several recent months.⁸⁷⁵ However, recognizing that BellSouth performed at parity with respect to the majority of the voice grade loop “order completion interval” metrics, we find that BellSouth's performance does not warrant a finding of checklist noncompliance. Should BellSouth's performance in this area deteriorate, we may pursue appropriate enforcement action. In addition, we note that BellSouth's performance under the missed installation appointment metric suggests that BellSouth has generally been timely in the provisioning of voice grade loops.⁸⁷⁶

225. We also recognize that BellSouth does not achieve parity under the missed repair appointments metric for three months during the relevant October through February period in Georgia.⁸⁷⁷ BellSouth explains that the primary reason for the disparity is the small volume of competitive LEC reports.⁸⁷⁸ BellSouth's performance data demonstrate that it did not miss any competitive LEC repair appointments in January and February.⁸⁷⁹ Given this improving trend in

⁸⁷³ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9078-79, para. 162.

⁸⁷⁴ See Georgia/Louisiana B.2.19.8.1.1-B.2.19.13.2.4 (% Provisioning Troubles within 30 Days, 2W Analog Loop); Georgia/Louisiana B.2.18.8.1.1-B.2.18.3.2.4 (% Missed Installation Appointments, 2W Analog Loop); Georgia/Louisiana B.3.2.8.1-B.3.2.9.2 (Customer Trouble Report Rate, 2W Analog Loop); Georgia/Louisiana B.3.3.8.1-B.3.3.9.2 (Maintenance Average Duration, 2W Analog Loop); Georgia/Louisiana B.3.4.8.1-B.3.4.9.2 (% Repeat Troubles within 30 Days, 2W Analog Loop).

⁸⁷⁵ See Louisiana B.2.1.8.1.1 (Order Completion Interval, 2W Analog Loop-Design/<10 circuits/Dispatch); Louisiana B.2.1.12.1.1 (Order Completion Interval, 2W Analog Loop with LNP-Design/<10 circuits/Dispatch). For B.2.1.8.1.1, BellSouth performed better for its own retail affiliate in November and December in Louisiana. For B.2.1.12.1.1, the competitive LEC average measure was 5.47 for October-February and 3.47 for BellSouth retail in Louisiana.

⁸⁷⁶ See generally Georgia/Louisiana B.2.18.8.1.1-B.2.18.13.2.4 (% Missed Installation Appointments, 2W Analog Loop); Georgia/Louisiana B.3.3.8.1-B.3.3.9.2 (Maintenance Average Duration, 2W Analog Loop).

⁸⁷⁷ For October-February, BellSouth missed an average of 6.66% of competitive LEC repair appointments, compared to an average of 1.52% for BellSouth retail in Georgia. See Georgia B.3.1.9.2 (Missed Repair Appointments, 2W Analog Loop, Non-Design/Non-Dispatch).

⁸⁷⁸ See Letter from Glenn T. Reynolds, Vice President-Federal Regulatory, BellSouth, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed March 14, 2002) (BellSouth Mar. 14 *Ex Parte* Letter). For the months of October, November, and December 2001, the competitive LEC volumes for this measure were 21, 13, and 20, respectively, with only two appointments missed each month. *Id.*

⁸⁷⁹ *Id.* In January, the reported results show zero missed appointments for the 26 competitive LEC appointments scheduled in Georgia, exceeding the retail analogue with 0.00% for competitive LECs compared to 1.06% for the (continued....)

January and February, and the fact that competitive LEC volumes are low compared to other relevant missed repair appointment metrics, we do not find that this disparity rises to the level of checklist noncompliance.

226. KMC provides its own data to demonstrate that BellSouth's Georgia and Louisiana performance for missed installation appointments and provisioning troubles within 30 days for voice grade loops show discriminatory performance for competitive LECs.⁸⁸⁰ Xspedius also claims that BellSouth's missed installation appointment performance for voice grade loops with LNP for October through January does not achieve parity.⁸⁸¹ We do not find that KMC and Xspedius's claims warrant a finding of checklist noncompliance. In making this finding, we rely on aggregate competitive carrier performance data, which we have found above to be accurate and reliable, to show that BellSouth's performance meets the requirements of checklist item four in this case.⁸⁸² According to the carrier-to-carrier reports for both Georgia and Louisiana, with the exception of November 2001 in Louisiana,⁸⁸³ BellSouth's performance data for the relevant four month period show that it is provisioning voice grade loops in a timely manner in Georgia and Louisiana. Moreover, despite relatively low competitive carrier volumes, BellSouth's Georgia and Louisiana performance data for installation quality of voice grade loops show nondiscriminatory treatment.⁸⁸⁴ Given this evidence, and recognizing that BellSouth is meeting the service installation dates for competitive LECs at higher rates than for its own retail customers,⁸⁸⁵ and provisions voice grade loops of a quality sufficient to afford competitors a meaningful opportunity to compete, we do not find that KMC and Xspedius's claims warrant a finding of checklist noncompliance. Thus, although KMC and Xspedius claim that its data show discriminatory performance, anomalous results for a single carrier in this instance does not qualify as a pattern of systemic performance disparities that result in competitive harm.⁸⁸⁶

(Continued from previous page) _____

retail analogue. BellSouth's data show zero missed appointments for the ten competitive LEC appointments scheduled in February. *Id.*

⁸⁸⁰ KMC GALA I Comments at 3-4. In Georgia, KMC claims that BellSouth missed over 10% of the basic 2 Wire Analog Loop installs for KMC over an 8 month period ending January 2002: 26% of KMC's analog loop orders with LNP in December 2001; and 13% of KMC's analog installs failed within 30 days of installation. *See* KMC GALA II Comments at 6. In Louisiana, KMC asserts that 16% of the analog loop installs failed within 30 days of being installed in December 2001. *Id.*

⁸⁸¹ Xspedius GALA II Comments at 8-9.

⁸⁸² For a discussion of the evidentiary case, *see* section IIIB, *supra*.

⁸⁸³ *See* Georgia/Louisiana B.2.18.8.1.1-B.2.18.3.2.4 (% Missed Installation Appointments, 2W Analog Loop). BellSouth missed 4.06% of its appointments for its own customers, and 20.00% of the five appointments of those for its competitors in November in Louisiana. *See* Louisiana B.2.1810.1.1 (% Missed Installation Appointments, 2W Analog Loop with INP Design<10 circuits/Dispatch).

⁸⁸⁴ *See* Georgia/Louisiana B.2.19.8.1.1-B.2.19.13.2.4 (% Provisioning Troubles within 30 Days, 2W Analog Loop).

⁸⁸⁵ *See* Georgia/Louisiana B.2.18.8.1.1-B.2.18.3.2.4 (% Missed Installation Appointments, 2W Analog Loop).

⁸⁸⁶ *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

227. We also reject Mpower's claim that BellSouth will not provide access to SL1 voice grade loops for end users that BellSouth serves through remote terminals.⁸⁸⁷ In particular, Mpower asserts that when a requested loop is served by a DLC system, BellSouth insists on providing a more expensive SL2 loop to the competitive carrier.⁸⁸⁸ The record reflects, however, that BellSouth will fill an SL1 loop order whenever the facilities are available, and it imposes no requirement that competitive LECs order a more expensive loop simply because DLC equipment is present.⁸⁸⁹ Because we are not persuaded by Mpower's contention that BellSouth will not provide access to SL1 voice grade loops for end users that BellSouth serves through remote terminals, we do not believe that we have a sufficient basis for finding that these concerns warrant a finding of noncompliance with checklist item 4. We also note that no other carrier raises similar claims in this proceeding.

228. *xDSL-Capable Loops.* Based upon the evidence in the record, we find, as did the Georgia and Louisiana Commissions,⁸⁹⁰ that BellSouth demonstrates that it provides xDSL-capable loops in accordance with the requirements of checklist item 4.⁸⁹¹ BellSouth makes available xDSL-capable loops in Georgia and Louisiana through interconnection agreements and pursuant to tariffs approved by the Georgia and Louisiana Commissions.⁸⁹² In analyzing BellSouth's showing, we review performance measures comparable to those we have relied upon in prior section 271 orders: order processing timeliness, installation timeliness, missed installation appointments, installation quality, and the timeliness and quality of the maintenance and repair functions.⁸⁹³ Based on our analysis of BellSouth's performance under these measures, we conclude that BellSouth's performance for competitive LECs has generally met the benchmark and parity standards established in Georgia and Louisiana.

229. While BellSouth's performance with respect to a maintenance and repair measure – the customer trouble report rate – appears to be out of parity in October and December in Georgia, we find that these disparities are slight and thus not competitively significant. Indeed, in Georgia, BellSouth's performance data show that BellSouth performed slightly better for its

⁸⁸⁷ Mpower GALA I Comments at 30-31.

⁸⁸⁸ *Id.* at 32.

⁸⁸⁹ BellSouth GALA I Reply App., Tab H, Reply Affidavit of Wiley G. Latham, Jr. at para. 7 (BellSouth GALA I Latham Reply Aff.).

⁸⁹⁰ Georgia Commission GALA I Comments at 157; Louisiana Commission GALA I Comments at 61-62.

⁸⁹¹ We note that competing carriers in Georgia and Louisiana rely principally on two types of unbundled xDSL-capable loops: the xDSL loop and the ISDN loop. The Georgia and Louisiana Commissions developed separate loop-type performance measurement categories for xDSL loops (including, but not limited to, loops provisioned for ADSL, HDSL, and UCL) and ISDN loops, which can be used by some competing carriers to provide IDSL services.

⁸⁹² See BellSouth GALA I Latham Aff. at para. 3.

⁸⁹³ See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17462-63, para. 79; *Verizon Connecticut Order*, 16 FCC Rcd at 15153-56, paras. 15-20; *Verizon Massachusetts Order*, 16 FCC Rcd at 9056, 9059, paras. 123, 130; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6326-27, paras. 181-82.

retail affiliate from October through February.⁸⁹⁴ Moreover, no commenter has indicated that the maintenance and repair performance of xDSL loops is a problem in Georgia. We therefore find that these issues are not fatal to BellSouth's showing, and do not warrant a finding of checklist noncompliance. Should BellSouth's performance in this area deteriorate, we will pursue appropriate enforcement action. Moreover, contrary to DIRECTV Broadband's assertion,⁸⁹⁵ we are not persuaded that BellSouth is making fundamental changes to its DSL architecture that would severely limit the existing capability of DSL circuits to support advanced services.⁸⁹⁶

230. *ISDN Loops.* Based on the evidence in the record, we also find, as did the Georgia and Louisiana Commission,⁸⁹⁷ that BellSouth provides ISDN loops to competitors in Georgia and Louisiana in accordance with the requirements of checklist item 4. Although BellSouth's data reveal some performance issues with ISDN loops, we conclude that these issues are not fatal to BellSouth's showing.⁸⁹⁸ We find that the performance issues are relatively slight and do not appear to be competitively significant to competing LECs. Accordingly, in light of BellSouth's competitive carrier xDSL-capable loop record overall, we do not find that BellSouth's performance demonstrates that it fails to meet the requirements of checklist item 4.

⁸⁹⁴ The October-February average for this measure is 0.82% for competitive LECs and 0.81% for BellSouth retail. See Georgia B.3.2.5.1 (Customer Trouble Report Rate, xDSL (ADSL, HDSL, and UCL)/Dispatch).

⁸⁹⁵ DIRECTV Broadband GALA I Comments at 5.

⁸⁹⁶ See BellSouth GALA I Milner Reply Aff. at para. 44 (explaining that BellSouth has not changed the way DSL is provisioned, nor does it have plans currently do so).

⁸⁹⁷ Georgia Commission GALA I Comments at 157; Louisiana Commission GALA I Comments at 61-62.

⁸⁹⁸ Specifically, in Louisiana, BellSouth's customer trouble report rate (dispatch) was out of parity for all months reported. See Louisiana B.3.2.6.1 (Customer Trouble Report Rate, UNE ISDN/Dispatch). However, the customer trouble report rate has remained low in Louisiana, with competitive carriers experiencing an average of 1.40% dispatch trouble reports compared to an average of 0.58% for BellSouth retail operations from October through February. *Id.* In addition, the UNE ISDN customer trouble report rate (non-dispatch) was in parity for all months reported, with competitive LECs experiencing an average of 0.79% non-dispatch customer trouble reports compared to an average of 1.03% for BellSouth retail operations from October-February. See Louisiana B.3.2.6.2 (Customer Trouble Report Rate, UNE ISDN/Non-Dispatch). BellSouth has also generally met the benchmark for installation timeliness and missed installation appointments for each month from October-February in Georgia and Louisiana. See Georgia/Louisiana B.2.1.6.3.1 (Order Completion Interval, UNE ISDN<6 circuits/Dispatch); Georgia/Louisiana B.2.18.6.1.1 (% Missed Installation Appointments, UNE ISDN<10 circuits/Dispatch). BellSouth's Georgia performance data show that it provides an installation quality sufficient to afford competitors a meaningful opportunity to compete. See Georgia B.2.19.6.1.1 (% Provisioning Troubles within 30 Days, UNE ISDN<10 circuits/Dispatch). Competitive LECs experience an average of 4.90% trouble reports within 30 days after installation of an ISDN loop, compared to an average of 5.70% for BellSouth retail operations from October-February in Georgia. See *id.* In addition, BellSouth's maintenance and repair performance, which measure the timeliness and quality of the maintenance and repair functions, has shown parity or very low repeat trouble rates during the same period. See Georgia/Louisiana B.3.1.6.1-B.3.16.2 (Missed Repair Appointments, UNE ISDN); Georgia/Louisiana B.3.4.6.1-B.3.4.6.2 (% Repeat Troubles within 30 Days, UNE ISDN).

231. *Digital Loops.* Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions,⁸⁹⁹ that BellSouth's performance with respect to digital loops complies with checklist item 4. We recognize that BellSouth's performance with respect to the order completion interval metric in Georgia has been out of parity for competitive LECs for almost all months reported.⁹⁰⁰ We find, however, that this performance does not warrant a finding of checklist noncompliance. BellSouth's parity performance for all relevant months under the missed appointment metric in Georgia and Louisiana indicates that BellSouth provisions digital loops in a timely manner. We also note that, for every month during the relevant period, BellSouth maintained parity under the installation quality measure in Georgia and Louisiana.⁹⁰¹ Disaggregated maintenance and repair performance is not available for digital loops. Rather, digital loop maintenance and repair performance is subsumed under a broader category ("UNE Other Design"), which include unbundled port and transport data. BellSouth generally maintained parity during the relevant months for measures of repair and maintenance timeliness and quality.⁹⁰² Given this evidence, we do not find that BellSouth's digital loop performance warrants a finding of checklist noncompliance.

232. *High Capacity Loops.* Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions,⁹⁰³ that BellSouth's performance with respect to high capacity loops complies with checklist item 4. We reach this conclusion despite the fact that BellSouth's performance with respect to two specific performance metrics – the percentage of troubles found within 30 days following installation of a high capacity loop and the percentage of missed installation appointments – appear to be out of parity for several recent months.⁹⁰⁴ As we discuss below, however, this performance does not warrant a finding of checklist noncompliance. As the Commission has stated in the past, isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.⁹⁰⁵ Moreover, given BellSouth's generally acceptable performance for all other categories of loops, and recognizing that high capacity loops make up a small percentage of

⁸⁹⁹ Georgia Commission GALA I Comments at 166; Louisiana Commission GALA I Comments at 56.

⁹⁰⁰ See Georgia B.2.1.18.1.1 (Order Competition Interval, Digital Loop < DS1 / < 10 circuits / Dispatch).

⁹⁰¹ See Georgia/Louisiana B.2.19.18.1.1 (% Provisioning Troubles within 30 Days, Digital Loop < DS1 / < 10 circuits / Dispatch).

⁹⁰² Georgia/Louisiana B.3.1.10.1-B.3.1.10.2 (Missed Repair Appointments, Other Design); Georgia/Louisiana B.3.2.10.1-B.3.1.10.2 (Customer Trouble Report Rate, Other Design); Georgia/Louisiana B.3.3.10.1-B.3.3.10.2 (Maintenance Average Duration, Other Design); Georgia/Louisiana B.3.4.10.1-B.3.4.10.2 (% Repeat Troubles within 30 Days, Other Design).

⁹⁰³ Georgia Commission GALA I Comments at 166; Louisiana Commission GALA I Comments at 56.

⁹⁰⁴ See Georgia/Louisiana B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loop >= DS1 / < 10 circuits / Dispatch); Louisiana B.2.18.19.1.1 (% Missed Installation Appointments, Digital Loop >= DS1 / < 10 circuits / Dispatch).

⁹⁰⁵ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 22.

overall loop orders in Georgia and Louisiana, we find that BellSouth's performance is in compliance with checklist item 4.⁹⁰⁶

233. In Georgia and Louisiana, BellSouth's performance for a high capacity loop installation quality measure, the percentage of troubles found within 30 days following installation, has been statistically out of parity for the five-month period.⁹⁰⁷ According to BellSouth, however, when its performance under this metric is recalculated to not reflect troubles "found O.K.," "no trouble" found, and competitive LEC caused reports its performance improves.⁹⁰⁸ In Georgia, BellSouth explains that the competitive LEC troubles are approximately half central office problems and half facility problems.⁹⁰⁹ BellSouth states that its review of the competitive LEC trouble reports in Louisiana indicates the majority of the reports are attributable to facility issues.⁹¹⁰ More significant, BellSouth claims that competitive LECs received approximately 95 percent actual trouble free installations from December through February when troubles found O.K., no troubles found, and competitive LEC caused reports are removed from the calculations. In light of these facts, we give credence to statements made by BellSouth in this proceeding and are encouraged that BellSouth has instituted new procedures in Georgia and Louisiana to reduce the trouble reports for this metric.⁹¹¹ Moreover, prior to the completion of any high capacity loop, BellSouth states that its technicians in the customer wholesale

⁹⁰⁶ Through February 2002, BellSouth had provisioned 3,145 and 3,154 high capacity loops in Georgia and Louisiana, respectively. *See* BellSouth Apr. 17 *Ex Parte* Letter.

⁹⁰⁷ Competing carriers experienced an average of 7.87% trouble reports within 30 days after installation of an high capacity digital loop, compared to an average of 1.76% for BellSouth retail operations from October through February in Georgia. *See* Georgia B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loop>= DS1/<10 circuits/Dispatch). Louisiana performance data show that competitive carriers experienced an average of 6.93% trouble reports, compared to an average of 1.00% for BellSouth resale operations for the same period. *See* Louisiana B.2.19.19.1.1 (% Provisioning Troubles within 30 Days, Digital Loop>=DS1/<10 circuits/Dispatch).

⁹⁰⁸ *See* BellSouth Mar. 14 *Ex Parte* Letter at Att. 7; BellSouth Apr. 17 *Ex Parte* Letter.

⁹⁰⁹ *See* BellSouth Apr. 17 *Ex Parte* Letter.

⁹¹⁰ *Id.*

⁹¹¹ BellSouth GALA I Varner Aff. at para. 236. BellSouth states that it has implemented specific action plans in Georgia to bring the high capacity loop measure into parity with their retail analogue. *See* BellSouth Apr. 17 *Ex Parte* Letter. First, BellSouth states that the Louisiana Service Advocacy Centers (SACs) have increased their readiness to resolve any and all service order jeopardies. *See id.* Second, BellSouth claims that it is providing a "maintenance spare" DS1 circuit (where possible) in service areas with known defective pairs. In Georgia, BellSouth states that it has instituted an action plan requiring the appropriate Network supervisor to review all provisioning trouble reports to determine the report's cause and the necessary action to keep it from recurring. *Id.* *But see* Letter from Patrick J. Donovan, Counsel to Cbeyond, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed April 26, 2002) (Mar. 14 *Ex Parte* Letter); Letter from Tricia Brekenridge, Executive Vice President, Industry Affairs, KMC Telecom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed May 2, 2002) (Mar. 14 *Ex Parte* Letter).

interconnection network service (CWINS) center, central office, and field will do a simultaneous test to make sure that the loop meets the appropriate specifications.⁹¹²

234. We also note that BellSouth's performance with respect to a provisioning timeliness metric – the missed installation appointments metric for dispatch orders – has been out of parity for October through February in Louisiana.⁹¹³ However, BellSouth's performance reflected by another provisioning timeliness metric – the order completion interval metric – satisfies the benchmark for most months.⁹¹⁴ In addition, BellSouth's satisfies the benchmark for all relevant months with respect to the non-dispatch missed installation appointment metric.⁹¹⁵ We are encouraged that BellSouth has initiated specific action plans to address missed installations, and BellSouth states that, for December 2001, the majority of the missed installations were a result of facility issues.⁹¹⁶ Because we look to the totality of circumstances in evaluating BellSouth's performance in providing loops in accordance with the checklist requirements, we do not find that lack of parity on these high capacity loop measurements warrant a finding that BellSouth fails to meet checklist item 4.⁹¹⁷

235. KMC provides its own data to demonstrate that BellSouth misses firm loop installation appointments for high capacity loops, and that a large percentage of its high capacity loop installs fail within 30 days of installation.⁹¹⁸ We find, however, that this KMC-specific data does not warrant a finding of checklist noncompliance for checklist item 4. We discuss above BellSouth's aggregate performance under the installation quality and missed installation appointment metrics, and do not find that lack of parity on these high capacity loop measurements warrant a finding of checklist noncompliance.

236. We also note that KMC has expressed concern about BellSouth's high capacity loop maintenance and repair performance for the percentage of repeat troubles within 30 days.⁹¹⁹

⁹¹² *Id.* We note that we will monitor BellSouth's compliance with its commitment to improve its high capacity loop performance. Deterioration of BellSouth's performance could result in enforcement action.

⁹¹³ See Louisiana B.2.18.19.1.1 (% Missed Installation Appointments, Digital Loop \geq DS1/ $<$ 10 circuits/Dispatch). The October-February average for this measure is 7.13% for competitive LECs and 2.23% for BellSouth retail.

⁹¹⁴ See generally Louisiana B.2.1.18.1.1-B.2.1.19.2.2 (Order Completion Interval, Digital Loop).

⁹¹⁵ See Louisiana B.2.18.18.1.1 (% Missed Installation Appointments, Digital Loop $<$ DS1/ $<$ 10 circuits/Non Dispatch).

⁹¹⁶ BellSouth GALA II Varner Reply Aff. at para. 97.

⁹¹⁷ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6344, para. 213.

⁹¹⁸ See generally KMC GALA I Comments at 8.

⁹¹⁹ KMC GALA I Comments at 3; KMC GALA II Comments at 10. KMC claims that BellSouth's own reported performance indicates that over one-third of KMC's DS1 and higher loop troubles in both Georgia and Louisiana from August 2001 to March 2002 experienced a trouble report within 30 days of installation. See KMC GALA II Comments at 10.

As discussed above, disaggregated maintenance and repair performance is not available for high capacity loops. Rather, high capacity loop maintenance and repair performance is subsumed under a broader category ("UNE Other Design"), which include unbundled port and transport data. BellSouth has maintained parity performance with respect to the maintenance and repair timeliness under the mean time to repair measure. Moreover, BellSouth's disaggregated maintenance and repair performance for high capacity loops shows repair timeliness under the mean time to repair measure. Georgia and Louisiana UNE Other Design maintenance and repair performance, which measure the timeliness and quality of the maintenance and repair functions, has shown parity or very low trouble rates in recent months.⁹²⁰ Given this evidence, we do not find that BellSouth's maintenance and repair performance warrants a finding of checklist noncompliance.

237. We also reject Cbeyond's allegations that BellSouth provides competitive carriers inferior quality DS1 loops and does not charge competitors correctly.⁹²¹ The record reflects that BellSouth delivers DS1 loops with a four-wire interface, regardless of the particular technology developed.⁹²² Significantly, the Georgia Commission has investigated and dismissed Cbeyond's claim, finding no basis to conclude that BellSouth has violated its interconnection agreement with Cbeyond in this respect.⁹²³ Given this, we do not find that we have a sufficient basis for finding that Cbeyond's claims warrant a finding of checklist noncompliance.

238. *Line Sharing.* Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions,⁹²⁴ that BellSouth demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop.⁹²⁵ BellSouth offers line sharing in Georgia and

⁹²⁰ Georgia/Louisiana B.3.1.10.1-B.3.1.10.2 (Missed Repair Appointments, Other Design); Georgia/Louisiana B.3.2.10.1-B.3.1.10.2 (Customer Trouble Report Rate, Other Design); Georgia/Louisiana B.3.3.10.1-B.3.3.10.2 (Maintenance Average Duration, Other Design); Georgia/Louisiana B.3.4.10.1-B.3.4.10.2 (% Repeat Troubles within 30 Days, Other Design).

⁹²¹ Cbeyond GALA I Comments at 22-26. Cbeyond claims that BellSouth is violating the parties' interconnection agreement because BellSouth does not provide the four-wire DS1 loops ordered by Cbeyond; instead, BellSouth frequently provides inferior quality 2-wire DS1 loops, which result in service degradation and inferior quality. *Id.* at 25. Cbeyond further claims that it is unfairly compensating BellSouth for its inappropriate provisioning of 2-wire DS1 loops. *Id.*

⁹²² See BellSouth Milner GALA I Reply Aff. at paras. 25, 27-29.

⁹²³ Georgia Commission GALA I Comments at 107.

⁹²⁴ Georgia Commission GALA I Comments at 164; Louisiana Commission GALA I Comments at 64.

⁹²⁵ *Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*) (*pet. for rehearing pending sub nom. USTA v. FCC*, DC Cir. No. 00-102 (filed Jan. 18, 2000)); *Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Order on Reconsideration, CC Docket No. 98-147, Fourth Report and Order on Reconsideration, CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking; CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking; CC Docket No. 96- (continued....)

Louisiana under its interconnection agreements and the terms of its tariff, in accordance with the requirements of the *Line Sharing Order* and the *Line Sharing Reconsideration Order*.⁹²⁶

239. BellSouth's performance with regard to the customer trouble report rate is out of parity for several recent months in Louisiana.⁹²⁷ According to BellSouth, however, several of the customer trouble reports in November and December 2001, and January 2002, were actually information reports from competitive LECs and were not an indication of actual trouble.⁹²⁸ Moreover, BellSouth's performance data show that customer trouble reports for competitive LECs decreased from 9.60 percent in January to 2.11 percent in February in Louisiana. We find that, given BellSouth's generally acceptable performance for all other categories of line-shared loops, BellSouth's performance is in compliance with checklist item 4.⁹²⁹ As the Commission has stated in the past, isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.⁹³⁰ No commenter has raised concerns with BellSouth's line sharing customer trouble report rate in Louisiana.

240. While not addressing specific instances of line-shared performance disparities, AT&T raises broader policy and legal issues regarding BellSouth's line-sharing obligations.⁹³¹ AT&T contends that BellSouth does not permit competitive LECs to obtain access to the entire capabilities of the unbundled next generation digital loop carrier loop at the central office and at

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98, 16 FCC Rcd 2101 (2001) (*Line Sharing Reconsideration Order*); see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6345-46, para. 215.

⁹²⁶ See BellSouth GALA I App., Tab W, Affidavit of Thomas G. Williams at para. 17 (Williams GALA I Aff.).

⁹²⁷ In Louisiana, the October-February average for this measure is 5.10% for competitive LECs and 1.47% for BellSouth retail. See Louisiana B.3.2.7.2 (Customer Trouble Report Rate, Line Sharing/Non-Dispatch).

⁹²⁸ See Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed April 9, 2002) (BellSouth Apr. 9 *Ex Parte* Letter). BellSouth explains that a breakdown of the trouble report rate show that, during November and December 2001, and January 2002, the number of reports for which there were "no trouble found" ranged from 50% in November 2001 to 72% in February 2002. See *id.*

⁹²⁹ Georgia and Louisiana performance for installation timeliness and installation quality show nondiscriminatory treatment between competitors and BellSouth retail customers for line-shared loops. See Georgia/Louisiana B.2.18.7.1.1-B.2.18.7.2.2 (% Missed Installation Appointments, Line Sharing); Georgia/Louisiana B.2.19.7.1.2-B.2.19.7.2.1 (% Provisioning Troubles within 30 Days, Line Sharing). In addition, BellSouth's performance demonstrates that competing carriers experience comparable repair times for line shared loops as BellSouth retail operations, and in both states, the percentage of competitive LEC missed repair appointments and repeat troubles were out of parity for only one of the five months reported. See Georgia/Louisiana B.3.4.7.1 (% Repeat Troubles within 30 Days, Line Sharing/Dispatch); Georgia/Louisiana B.3.4.7.2 (% Repeat Troubles within 30 Days, Line Sharing/Non-Dispatch); Georgia/Louisiana B.3.3.7.1 (Maintenance Average Duration, Line Sharing/Dispatch); Georgia/Louisiana B.3.3.7.2 (Maintenance Average Duration, Line Sharing/Non-Dispatch).

⁹³⁰ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 22.

⁹³¹ AT&T GALA I Comments at 42-45.

the remote terminal through the installation of integrated splitter/DSLAM cards.⁹³² We reject AT&T's allegation because although incumbent LECs are required to provide unbundled access to the entire loop, we have found that "the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a copper facility."⁹³³ Furthermore, competitive LECs may provide data services to BellSouth voice customers served by digital loop carriers by either collocation in the remote terminal or, in the event that the Commission's four-part test for packet switching is met, access to unbundled packet switching. In fact, BellSouth states that competitive LECs can choose whether to access the high frequency portion of the loop at a BellSouth central office or remote terminal, and competitive LECs can engage in line sharing or line splitting whether the customer is served by an all-copper loop, or by a combination of copper and digital loop carrier equipment.⁹³⁴ Therefore, we disagree with AT&T that BellSouth's policies and practices concerning the provisioning of line sharing, as explained to us in the instant proceeding, violate the Commission's unbundling rules.⁹³⁵ Accordingly, we decline to find that these allegations warrant a finding of checklist non-compliance.

241. *Line Splitting.* Based on the evidence in the record, we find, as did the Georgia and Louisiana Commissions,⁹³⁶ that BellSouth complies with its line-splitting obligations and provides access to network elements necessary for competing carriers to provide line splitting.⁹³⁷

242. We disagree with AT&T's claim that BellSouth must provide splitters for "voice" competitive LECs that seek to engage in line splitting.⁹³⁸ The Commission rejected this precise argument in the *SWBT Texas Order*, explaining that "[t]he Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs, therefore have no current obligation to make the

⁹³² *Id.*

⁹³³ See *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2107, para. 10.

⁹³⁴ BellSouth GALA I Reply at 78.

⁹³⁵ As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding. See *Verizon Massachusetts Order*, 16 FCC Rcd at 8993, para. 10; *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 23. We note that many of these allegations with respect to competitive access to fiber-fed loops are being addressed in pending proceedings before the Commission. See *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297, 15 FCC Rcd 17806, 17856-62, paras. 118-33 (Aug. 10, 2000); *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2127-30, paras. 55-64.

⁹³⁶ Georgia Commission GALA I Comments at 165; Louisiana Commission GALA I Comments at 65.

⁹³⁷ See *Line Sharing Reconsideration Order*, 16 FCC Rcd at 2111, para. 20 n.36.

⁹³⁸ AT&T GALA I Comments at 44.

splitter available.⁹³⁹ BellSouth, however, explains that it will allow a competitive carrier to provide its own splitter, or lease a BellSouth owned splitter for both line sharing and line splitting for central office based deployments and for both existing and new customers.⁹⁴⁰ Thus, we do not find that AT&T's claims warrant a finding of checklist noncompliance.

243. We also disagree with AT&T's claim that BellSouth's OSS does not comply with our *Line Sharing Reconsideration Order*.⁹⁴¹ Specifically, AT&T asserts that BellSouth does not provide electronic OSS for ordering, provisioning and maintaining line splitting.⁹⁴² Pursuant to the Georgia Commission's mandate to make such OSS available for line splitting, BellSouth implemented permanent OSS for line splitting on January 5, 2002, and competitive LECs have raised no complaints about this new process. We find, therefore, that given the record before us, BellSouth's process for line splitting orders is in compliance with the requirements of the checklist at this time.

244. *Other Issues.* KMC contends that BellSouth takes weeks to accomplish the actual loop disconnect when requested by KMC.⁹⁴³ KMC estimates that, in Georgia, between 20 percent and 30 percent of the facilities underlying loop disconnect orders remain unavailable 30 days after the loop disconnect, and in Louisiana, BellSouth's failure to disconnect loops properly has led to customer outages and delay in the release of the facility for use by KMC and other competitive carriers.⁹⁴⁴ We conclude, however, that there is no evidence that the difficulties KMC may have encountered with BellSouth's loop disconnect processes reflect systemic defects with BellSouth's provisioning of unbundled local loops, and thus cannot find checklist noncompliance.

C. Checklist Item 5 – Unbundled Transport

245. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”⁹⁴⁵ Based on our review of the record, we conclude, as did both the

⁹³⁹ See *SWBT Texas Order*, 15 FCC Rcd at 18516, para. 327.

⁹⁴⁰ BellSouth GALA I App., Tab T, Reply Affidavit of Thomas G. Williams at para. 8 (Williams GALA I Reply Aff.).

⁹⁴¹ AT&T GALA I Comments at 45-46; AT&T GALA I Turner Decl. at para. 24.

⁹⁴² AT&T GALA I Comments at 45; AT&T GALA I Turner Decl. at 24.

⁹⁴³ KMC GALA I Comments at 10.

⁹⁴⁴ *Id.*

⁹⁴⁵ 47 U.S.C. § 271(c)(2)(B)(v).

Georgia Commission and the Louisiana Commission, that BellSouth complies with the requirements of this checklist item.⁹⁴⁶

246. In past orders, the Commission has relied on the missed appointment rate to determine whether a BOC is provisioning transport to its competitors in a nondiscriminatory fashion.⁹⁴⁷ Despite the low transport order volume for competitive LECs, BellSouth's performance for this metric in Georgia and Louisiana from October through January shows that, with the exception of one month of performance in Georgia, BellSouth missed fewer appointments provisioning transport to its competitors than for its own retail customers.⁹⁴⁸ Based on this data, we conclude that BellSouth provides unbundled transport to competitive LECs in a nondiscriminatory manner.

247. We note that US LEC/XO alleges that "BellSouth's intransigence in providing ... transport to XO and US LEC, or in converting existing special access circuits to UNEs, violates checklist item [5 – access to unbundled transport]."⁹⁴⁹ These claims are addressed in our discussion of checklist item 2 above.⁹⁵⁰ We also note that DIRECTV requests that the Commission require BellSouth to commit to offering interLATA ATM transport services after grant of its application.⁹⁵¹ We address these arguments in our public interest discussion below.⁹⁵²

D. Checklist Item 6 –Unbundled Local Switching

248. Section 271(c)(2)(B)(vi) of the competitive checklist requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."⁹⁵³ To

⁹⁴⁶ See BellSouth GALA I Application at 26, 114-116; BellSouth GALA I Milner Aff. at para. 159; Georgia Commission GALA I Comments at 166-68; Louisiana Commission GALA I Comments at 69-71; Georgia Commission GALA II Comments at 1; Louisiana Commission GALA II Comments at 1.

⁹⁴⁷ See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9106-07, para. 210.

⁹⁴⁸ See B.2.18.2.1.1 (% missed installation appointments). During October, BellSouth missed the one and only competitive LEC appointment in the month of October. Thus, BellSouth's missed appointment rate was 100% for that month. We note that competitive LEC volumes were in the single digits from October through January in Georgia. Due to the low volume of competitive LEC orders, a single or handful of missed install appointments can cause seemingly large variations in the monthly data. See, e.g., *Verizon Massachusetts Order*, 16 FCC Rcd at 9040, para. 94 n.299. Given the low volumes, however, we do not find these disparities warrant a finding of noncompliance. We note that, in Louisiana, during the only months with competitive LEC data reported (December and January), BellSouth achieved parity.

⁹⁴⁹ US LEC/XO GALA II Comments at 3-5.

⁹⁵⁰ See discussion of checklist item 2, *supra*.

⁹⁵¹ DIRECTV Broadband GALA II Comments at 6.

⁹⁵² See discussion of the public interest analysis, *infra*.

⁹⁵³ 47 U.S.C. § 271(c)(2)(B)(vi).

satisfy its obligations under this subsection, an applicant must demonstrate compliance with Commission rules relating to unbundled local switching.⁹⁵⁴

249. Based on our review of the record,⁹⁵⁵ we conclude that BellSouth complies with this checklist item.⁹⁵⁶ Specifically, BellSouth demonstrates that it provides: (1) line-side and trunk side facilities;⁹⁵⁷ (2) basic switching functions;⁹⁵⁸ (3) vertical features;⁹⁵⁹ (4) customized routing;⁹⁶⁰ (5) shared trunk ports;⁹⁶¹ (6) unbundled tandem switching;⁹⁶² (7) usage information for

⁹⁵⁴ See 47 C.F.R. § 51.319(c)(4); see also *SWBT Texas Order*, 15 FCC Rcd at 18520-22, paras. 336-38.

⁹⁵⁵ BellSouth GALA I Application at 116-21; BellSouth GALA I Milner Aff. at paras. 169-93; BellSouth GALA I Application at 116-120; BellSouth GALA I Milner Aff. at paras. 169-93; BellSouth Application App. A, Vol. 6a, Tab Q, Joint Affidavit of John A. Ruscilli and Cynthia K. Cox (BellSouth GALA I Ruscilli/Cox Aff.) at paras. 45-62; BellSouth Application App. A, Vol. 7, Tab S, BellSouth GALA I Scollard Aff. at paras. 8-9, 35; BellSouth GALA I Varner Ga. Aff. at paras. 257-59; BellSouth GALA I Varner La. Aff. at para. 265.

⁹⁵⁶ We note that commenting parties' challenges to BellSouth's compliance with this checklist item have been previously addressed in this application. In particular, we address AT&T's concern that BellSouth does not provide nondiscriminatory access to customized routing for operator services and directory assistance in our discussion of checklist item 7, *infra*. See AT&T GALA II Comments at 4; AT&T GALA I Comments at 13-14, 66-69. Additionally, WorldCom states that BellSouth transmitted usage information on intraLATA calls, implicating either a switching or a billing problem. WorldCom GALA I Reply at 14-15; WorldCom GALA I Lichtenberg/Desrosiers/Kinard/Cabe Reply Decl. at paras. 63-66. We address this concern in our discussion of checklist item 2, *supra*.

⁹⁵⁷ Line-side facilities include, but are not limited to, the connection between a loop termination at a main distribution frame, and a switch line card. Trunk-side facilities include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a switch trunk card. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20724 nn.679-80. See also BellSouth GALA I Application at 117; BellSouth GALA I Milner Aff. at para. 170.

⁹⁵⁸ The basic switching function includes, but is not limited to: connecting lines to lines; lines to trunks; trunks to lines; trunks to trunks; as well as the same basic capabilities that are available to the BOC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20726 n.690. See also BellSouth GALA I Application at 117; BellSouth GALA I Milner Aff. at para. 170; BellSouth GALA I Ruscilli/Cox Joint Aff. at para. 45.

⁹⁵⁹ Vertical features provide end-users with various services such as custom calling, call waiting, call forwarding, caller ID and Centrex. *Second BellSouth Louisiana Order* at 13 FCC Rcd at 20726, para. 216; see also BellSouth GALA I Application at 118; BellSouth Milner Aff. at para. 172; BellSouth Ruscilli/Cox Joint Aff. at paras. 45, 54.

⁹⁶⁰ Customized routing permits requesting carriers to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent that will carry certain classes of traffic originating from requesting carriers' customers. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20728-29, para. 221; BellSouth GALA I Application at 118-20; BellSouth Milner Aff. at paras. 180-93. Customized routing is also referred to as selective routing. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20728 n.704.

⁹⁶¹ *Implementation of the Local Competition Provision in the telecommunications Act of 1996, Interconnection between Local Exchange carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460, 12475-80, paras. 25-30 (1997) (*Local Competition Third Reconsideration Order*); *Ameritech Michigan Order*, 12 FCC Rcd at (continued...)

billing exchange access;⁹⁶³ and (8) usage information for billing for reciprocal compensation.⁹⁶⁴ We also note that the Georgia and Louisiana Commissions concluded that BellSouth complies with this requirement.⁹⁶⁵

E. Checklist Item 7 – 911/E911 Access & Directory Assistance/Operator Services

1. 911 and E911 Access

250. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]on discriminatory access to [...] 911 and E911 services.”⁹⁶⁶ BellSouth must provide competitors with access to its 911 and E911 services in the same manner that it obtains such access for itself, *i.e.*, at parity.⁹⁶⁷ Specifically, the BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”⁹⁶⁸ We find, consistent with the Georgia and Louisiana Commissions, that BellSouth provides nondiscriminatory access to 911 and E911 services.⁹⁶⁹

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20716-17, paras. 327-29; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20732, para. 228; BellSouth GALA I Application at 117; BellSouth GALA I Milner Aff. at paras. 170-71.

⁹⁶² The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including, but not limited to, call recording, the routing of calls to operator services, and signaling conversion features. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733 n. 732. *See also* BellSouth GALA I Application at 117; BellSouth GALA I Milner Aff. at paras. 178-79; BellSouth GALA I Ruscilli/Cox Joint Aff. at para. 48.

⁹⁶³ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20733-35, paras. 230-31; BellSouth Aff. at 120-21; BellSouth Ruscilli/Cox GALA I Joint Aff. at para. 51-53; BellSouth GALA I Scollard Aff. at para. 8.

⁹⁶⁴ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20735-37, paras. 232-34; BellSouth GALA I Application at 120-21; BellSouth GALA I Ruscilli/Cox Joint Aff. at paras. 51-53; BellSouth GALA I Scollard Aff. at para. 9.

⁹⁶⁵ *See* Georgia Commission GALA I Comments at 168; Louisiana Commission GALA I Comments at 82; Georgia Commission GALA II Comments at 1.

⁹⁶⁶ 47 U.S.C. § 271(c)(2)(B)(vii).

⁹⁶⁷ *Bell Atlantic New York Order*, 15 FCC Rcd 4130-31, para. 349 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256).

⁹⁶⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

⁹⁶⁹ *See* Georgia Commission GALA I Comments at 182; Louisiana Commission GALA I Comments at 78. The Commission has twice before found that BellSouth satisfies the 911 and E911 components of checklist item 7. *See BellSouth South Carolina Order*, 13 FCC Rcd at 666-67, para 230; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20737, para. 235.

251. Only one competitive LEC raises an issue with this requirement by asserting that the database includes inaccurate data making BellSouth's provision of 911 services in Louisiana discriminatory.⁹⁷⁰ We are not persuaded by this argument because we agree with the Louisiana Commission that this is an isolated incident and is not indicative of a systematic problem with BellSouth's 911 and E911 services.⁹⁷¹

2. Directory Assistance / Operator Services

252. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.⁹⁷² Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing with no unreasonable dialing delays."⁹⁷³

253. Based on our review of the record, we conclude that BellSouth offers nondiscriminatory access to its directory assistance database.⁹⁷⁴ BellSouth also offers competing carriers several options for accessing its operator services (OS) and directory assistance (DA) services.⁹⁷⁵ BellSouth's services are designed in such a manner that calls from customers of competing carriers are processed in an identical manner to BellSouth retail customers resulting in identical performance.⁹⁷⁶ Also, pursuant to the Commission's rules, competing carriers that wish

⁹⁷⁰ KMC GALA I Comments at 13-14; KMC GALA I Demint Aff. at para. 9.

⁹⁷¹ Louisiana Commission GALA I Comments at 78 (stating that the single example raised by KMC does not indicate a systemic failure and explains that the fault may not even be BellSouth's).

⁹⁷² 47 U.S.C. § 271(c)(2)(B)(vii)(II), (III). See also *Bell Atlantic New York Order*, 15 FCC Rcd at 4131, para. 351.

⁹⁷³ 47 U.S.C. § 251(b)(3). We have previously held that a BOC must be in compliance with section 251(b)(3) in order to satisfy sections 271(c)(2)(B)(vii)(II) and (III). See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. See also *Bell Atlantic New York Order*, 15 FCC Rcd at 4132-33, para 352.

⁹⁷⁴ BellSouth offers access to its directory assistance database information through two methods. First, BellSouth "provides direct on-line access to the BellSouth directory assistance database for individual inquiries" through its Direct Access Directory Assistance Service (DADAS). BellSouth GALA I Application at 124. In the *Second BellSouth Louisiana Order*, the Commission found that the DADAS system alone satisfied the requirements for nondiscriminatory access to directory assistance. 13 FCC Rcd at 20744-45, para. 248. Second, BellSouth offers Directory Assistance Database Service (DADS) which gives competitive carriers the ability "to incorporate the subscriber listing information contained in the BellSouth directory assistance database into their own databases." BellSouth GALA I Application at 124.

⁹⁷⁵ Competing carriers may choose to resell the BOC's OS/DA services, provide their own services, or route calls to a third-party provider BellSouth. GALA I Application at 123.

⁹⁷⁶ BellSouth GALA I Application at 125. Therefore, it is unnecessary to disaggregate BellSouth's retail OS/DA performance from competitive carrier end-user customers as required by the Commission in the *Second BellSouth* (continued....)

to resell BellSouth's operator services and directory assistance have a choice of whether the services will be branded, unbranded, or custom branded with the competing carrier's own brand.⁹⁷⁷

254. Only one commenter contends that BellSouth's provision of OS/DA is discriminatory. Specifically, AT&T, the only competing carrier in either Georgia or Louisiana to use customized routing, raises two issues with respect to customized routing and an additional complaint regarding customized branding using Original Line Number Screening (OLNS).⁹⁷⁸ First, AT&T argues that customized routing is not being offered in the manner required by the *BellSouth Second Louisiana Order* because single region-wide codes for AT&T's multiple routing options are not yet available to any carriers in BellSouth's territory.⁹⁷⁹ Instead, AT&T argues that new line class codes are needed for each line for which AT&T wants customized routing.⁹⁸⁰ We reject AT&T's assertion because we find that competitive LECs may obtain multiple customized routing options through AIN without having to specify line class codes.⁹⁸¹ Additionally, BellSouth and AT&T now have a contract establishing region-wide and state-wide codes for customized routing options.⁹⁸² Finally, the Commission previously has noted that section 271 proceedings are not the ideal venue for deciding whether to include line class codes among the specific attributes of the switching element.⁹⁸³

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Louisiana Order, 13 FCC Rcd at 20742-43, para. 245. Likewise, the Georgia and Louisiana Commissions found that BellSouth provides OS/DA services at parity with its retail by design. See Georgia Commission GALA I Comments at 184; Louisiana Commission GALA I Comments at 81-82.

⁹⁷⁷ BellSouth GALA I Application at 126-27. BellSouth has the ability to provide the requested branding in two ways. First, competitive carriers may choose branding via customized routing offered using either Advanced Intelligent Network (AIN) or line class codes. *Id.* at 118-19. Second, BellSouth offers customized branding using the Original Line Number Screening system which does not require customized routing. *Id.* at 126-27

⁹⁷⁸ AT&T GALA I Comments at 67-68. See BellSouth GALA I Milner Decl. at paras. 185, 188; BellSouth GALA I Milner Reply Decl. at para. 57.

⁹⁷⁹ See AT&T GALA I Comments at 67-68; AT&T GALA I Bradbury Decl. at paras. 278-80. See also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20730-31, para. 224.

⁹⁸⁰ Last fall, AT&T contended that BellSouth fails to provide a required OS/DA service because this functionality has not yet been implemented. See AT&T GALA I Bradbury Decl. at para. 283; AT&T GALA I Comments at 67-68.

⁹⁸¹ BellSouth GALA I Application at 120; BellSouth GALA I Milner Aff. at para. 183; BellSouth GALA I Reply at 98. Moreover, the Commission recognized in the *Second BellSouth Louisiana Order*, that BellSouth's AIN offering has the potential to meet the requirements of this checklist item, but had not been fully implemented at that time. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20729, para. 222. BellSouth's AIN is now available BellSouth's region. BellSouth GALA I Reply at 98.

⁹⁸² This contract was executed in August 2001. BellSouth April 5 *Ex Parte* Letter; BellSouth April 9 *Ex Parte* Letter at attach. B. This demonstrates BellSouth's ability and willingness to make region-wide and state-wide codes available for customized routing options. See BellSouth GALA I Milner Decl. at paras. 190, 193.

⁹⁸³ *SWBT Texas Order*, 15 FCC Rcd at 18523-24, para. 342.

255. Second, AT&T asserts that customized routing options cannot be included in electronic orders.⁹⁸⁴ We reject this claim because BellSouth provides adequate documentation explaining how competing carriers can submit electronic orders with requests for customized routing using line class codes, like AT&T, or using AIN.⁹⁸⁵ Moreover, we note that BellSouth also provides documentation explaining how to electronically order customized OS/DA branding using its OLNS.⁹⁸⁶

256. Finally, we reject AT&T's contention that BellSouth's provision of OS/DA is discriminatory because, when competing carriers use OLNS for custom branding of BellSouth's OS/DA services, the customers of the competing carriers are not given as many automatic menu choices to route the customers' calls as BellSouth retail customers.⁹⁸⁷ BellSouth explains that providing competitive LECs with the type of routing they request would be extremely costly because it requires customized routing from BellSouth's OS/DA platform to the competing carrier's individual repair center.⁹⁸⁸ Nonetheless, BellSouth is willing to provide special trunks in order to do so through the Bona Fide Request (BFR) process which requires the competing carrier to fund the additional routing necessary.⁹⁸⁹ Specifically, AT&T's claim that BellSouth provides discriminatory treatment to competing carriers with custom branded OS/DA was dismissed by the Georgia Commission.⁹⁹⁰ We note that there is no indication on the record that AT&T has submitted a Bona Fide Request to acquire this capability. Nor does AT&T dispute that competing carriers can connect with the operator by dialing "0" or "0" plus the desired number in parity with BellSouth retail customers.⁹⁹¹

F. Checklist Item 8 - White Pages

257. Section 271(c)(2)(B)(viii) of the competitive checklist requires a BOC to provide "[w]hite page directory listings for customers of the other carrier's telephone exchange

⁹⁸⁴ AT&T GALA I Comments at 68.

⁹⁸⁵ BellSouth GALA I Milner Reply Decl. at paras. 49-50; AT&T GALA I Bradbury Decl. at paras. 277-83. As further assurance, we note that KPMG recently closed a related exception in the Florida third party audit stating, "KPMG Consulting was [] able to successfully submit its OS/DA service requests electronically and manually." Exception 69, Disposition Report, Nov. 13, 2001.

⁹⁸⁶ BellSouth GALA I Milner Reply Decl. at paras. 49-50; AT&T GALA I Bradbury Decl. at paras. 277-83.

⁹⁸⁷ AT&T GALA I Comments at 68-69; AT&T GALA I Bradbury Decl. at paras. 286-90. Specifically, customers of competing carriers do not have the option to have their calls automatically transferred to the competing carrier's repair services. *Id.* at 287-88.

⁹⁸⁸ BellSouth GALA I Reply at 100; BellSouth GALA I Milner Reply Decl. at para. 56.

⁹⁸⁹ BellSouth GALA I Reply at 100; BellSouth GALA I Milner Reply Decl. at para. 56.

⁹⁹⁰ The Georgia Commission found that the "automatic routing of calls to a service or repair center is not an OS/DA function." Georgia Commission GALA I Comments at 185.

⁹⁹¹ See 47 C.F.R. § 51.217(c)(2); BellSouth GALA I Reply at 100-01.

service.”⁹⁹² Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings.⁹⁹³ BellSouth asserts that it provides directory listings to competitive LECs in Georgia and Louisiana under the same business rules, and without any material change, as the Commission found acceptable in the *Second BellSouth Louisiana Order*.⁹⁹⁴ Based on the evidence in the record, we conclude, as did the Georgia and Louisiana Commissions, that BellSouth satisfies the requirements of checklist item 8.⁹⁹⁵

258. We disagree with KMC that BellSouth provides directory listing information in a discriminatory manner. Specifically, KMC contends that BellSouth made numerous errors processing its customer directory information.⁹⁹⁶ KMC alleges that BellSouth lost all of KMC’s directory listing information submitted by KMC’s Augusta, Georgia office for the month of April 2001, and that the problem did not become apparent until two weeks prior to the directory closing.⁹⁹⁷ BellSouth, however, states that it never lost any of KMC’s listings in Augusta. Rather, BellSouth contends that it was responding to a late request from KMC to make certain changes in listing for some KMC customers and, despite the short time-frame, those changes were implemented successfully.⁹⁹⁸ In addition, KMC alleges that in October 2000, BellSouth did not give KMC adequate notice of a change in procedures for the submission of directory listings.⁹⁹⁹ BellSouth, however, contends that the revised process for submitting directory listings was available as early as January 2000.¹⁰⁰⁰ We find that KMC’s allegations, even if true, describe

⁹⁹² 47 U.S.C. § 271(c)(2)(B)(viii).

⁹⁹³ 47 U.S.C. § 251(b)(3).

⁹⁹⁴ BellSouth GALA I Application at 127; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20747-50, paras. 252-59.

⁹⁹⁵ BellSouth provides competitive LECs with white page directory listings under interconnection agreements and tariffs. BellSouth GALA I Application at 26, 127-29; BellSouth GALA I Reply at 102; BellSouth GALA I Application App. A, Vol. 4, Tab J, Affidavit of Terrie Hudson (BellSouth GALA I Hudson Aff.) at paras. 5-32; BellSouth GALA I Milner Aff. at para. 230, BellSouth Milner GALA I Reply Aff. at para. 59.

⁹⁹⁶ KMC GALA II Comments at 3; KMC GALA I Comments at 11-13.

⁹⁹⁷ KMC GALA I Comments at 11.

⁹⁹⁸ See BellSouth GALA I Reply at 102; BellSouth GALA I Application Reply App., Vol 1, Tab G, Reply Affidavit of Terrie Hudson (BellSouth GALA I Hudson Reply Aff.) at paras. 4-9; Georgia Commission GALA I Comments at 187-89.

⁹⁹⁹ KMC GALA I Comments at 12. KMC also describes two incidents where it alleges that BellSouth printed incorrect numbers for KMC customers in the directory listings. BellSouth attributes one incorrect listing to human error and states that it has since been fixed. In the other case, BellSouth believes that KMC incorrectly asserted that BellSouth published an error in a listing in Savannah, Georgia. BellSouth GALA I Application Reply at 103. KMC alleges that in Louisiana, BellSouth twice incorrectly listed a large block of numbers for a medical center in the Shreveport directory. KMC GALA I Comments at 12. See also Georgia Commission GALA I Comments at 187-89.

¹⁰⁰⁰ BellSouth GALA I Reply at 102.

merely isolated incidents and not systemic problems. Thus, we decline to find noncompliance for checklist item 8. Although not a basis for our decision here, the record demonstrates that BellSouth is attempting to implement procedures to minimize the potential errors in the listings provisioned for competitive LECs.¹⁰⁰¹

G. Checklist Item 11 – Number Portability

259. Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.¹⁰⁰² Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”¹⁰⁰³ Based on the evidence in the record, we conclude, as did the Georgia and Louisiana Commissions,¹⁰⁰⁴ that BellSouth complies with the requirements of checklist item 11.¹⁰⁰⁵

260. Several commenters raise issues concerning BellSouth’s compliance with its number portability obligation, none of which demonstrate that BellSouth presently fails to comply with the requirements of checklist item 11. For example, AT&T explains that, in a number of instances, after BellSouth has ported a telephone number to an AT&T customer, BellSouth has erroneously assigned the same number to a new BellSouth customer.¹⁰⁰⁶ BellSouth acknowledges that it has previously identified two problems that led to instances of duplicate assignment of ported telephone numbers and has addressed both problems.¹⁰⁰⁷ According to BellSouth, in December 1999, it modified its order negotiation system to correct orders that were issued without a field identifier and, in the last quarter of 2000, BellSouth determined that, due to a software upgrade, when a competitive LEC ported a block of Direct Inward Dialing (DID) numbers, only the lead number would be marked as ported.¹⁰⁰⁸ BellSouth states that it has implemented an interim manual solution to this problem in January 2001, and a software solution is being pursued.¹⁰⁰⁹ BellSouth claims that the manual solution will continue to ensure that all

¹⁰⁰¹ BellSouth GALA I Application at 127-29, BellSouth GALA I Reply at 102-03.

¹⁰⁰² 47 U.S.C. § 271(c)(2)(B)(xi).

¹⁰⁰³ *Id.* at § 251(b)(2).

¹⁰⁰⁴ Georgia Commission GALA I Comments at 200; Louisiana Commission GALA I Comments at 87.

¹⁰⁰⁵ BellSouth provides permanent number portability in conformance with Commission rules and provides interim number portability to competing carriers through remote call forwarding, direct inward dialing, route-index portability hub, directory numbering routing indexing, and local exchange routing guide (LERG) reassignment. BellSouth GALA I Milner Aff. at paras. 276, 278.

¹⁰⁰⁶ AT&T GALA I Comments at 36.

¹⁰⁰⁷ BellSouth GALA I Ainsworth Aff. at paras. 173-76.

¹⁰⁰⁸ See BellSouth GALA I Reply at 105.

¹⁰⁰⁹ BellSouth GALA I Reply at 105; BellSouth GALA I Ainsworth Aff. at para. 174.

future number porting activity will be properly marked in BellSouth's number assignment database to prevent duplicate assignment of numbers.¹⁰¹⁰ We therefore conclude that, based on this evidence, the number reassignment problems experienced by AT&T are *de minimis* and isolated, and thus do not warrant a finding of noncompliance for this checklist item.

261. We also reject AT&T's claim that loss of inbound service calling attributable to problems with the number portability process warrant a finding of checklist noncompliance. AT&T claims that BellSouth fails to perform the necessary switch translations when porting numbers to some customers, and as a result those customers cannot receive calls from BellSouth customers.¹⁰¹¹ AT&T believes that the source of this problem is BellSouth's failure to perform translation work on its switch, where the switch cannot implement an automatic trigger, at the time the number is ported.¹⁰¹² According to BellSouth, however, for the vast majority of its orders, the LNP Gateway System automatically issues a trigger order with a zero due date, which does not require manual intervention, and meets or exceeds any national standards for number portability.¹⁰¹³ We also recognize that, in response to AT&T's claims, BellSouth has established specific project managers to address those orders that are large or complex to ensure that such orders are worked properly and that conversions are accurately handled.¹⁰¹⁴ More significantly, we note that the Georgia Commission considered AT&T's allegation with respect to this issue and concluded that BellSouth's approach is "a reasonable one."¹⁰¹⁵ Given BellSouth's evidence, along with the prior determination of the Georgia Commission, we conclude that these allegations are not indicative of a systemic failure in BellSouth's provision of number portability. If, however, such loss of inbound calling rises to a level that impedes a carrier's opportunity to compete, we may take appropriate enforcement action under section 271(d)(6).

262. AT&T also claims that BellSouth's number portability process results in customers continuing to receive bills from BellSouth after they have switched their service to AT&T or another competitive carrier.¹⁰¹⁶ According to BellSouth, however, an AT&T or competitive LEC customer will receive a duplicate bill for disconnects processed during a current billing period and for any services that BellSouth continues to provide.¹⁰¹⁷ BellSouth further states that, to the extent that any double billing problem attributable to BellSouth has arisen, BellSouth has worked with the collaboratives to investigate and resolve, where necessary, these

¹⁰¹⁰ BellSouth GALA I Ainsworth Reply Aff. at para. 91.

¹⁰¹¹ AT&T GALA I Comments at 34-35; AT&T GALA I Berger Decl. at paras. 19-27.

¹⁰¹² AT&T GALA I Comments at 34.

¹⁰¹³ See BellSouth GALA I Milner Reply Aff. at para. 60.

¹⁰¹⁴ *Id.* at paras. 60-61.

¹⁰¹⁵ Georgia Commission GALA I Comments at 203.

¹⁰¹⁶ AT&T GALA I Comments at 35; AT&T GALA I Berger Decl. at para. 23.

¹⁰¹⁷ BellSouth GALA I Reply at 106-07; BellSouth GALA I Ainsworth Reply Aff. at para. 94.

types of issues.¹⁰¹⁸ While we do not discount the potential inconvenience of double billing, there is insufficient evidence of double billing in this instance to indicate that BellSouth is in violation of checklist item 11. To the extent that this billing issue increases in magnitude, we are prepared to take the appropriate enforcement action pursuant to section 271(d)(6).¹⁰¹⁹

263. AT&T also argues that there are certain “odd ball” central office codes assigned by BellSouth that are not portable and that cannot be dialed by competitive LEC customers in violation of checklist items 11 and 12.¹⁰²⁰ BellSouth explains that these odd ball central office codes involve four separate types of numbers: the first are codes used for internal BellSouth functions and are never assigned to retail customers;¹⁰²¹ the second are “choke” codes,¹⁰²² which the Southeastern LNP Operations Team agreed would not be portable to avoid generating additional LNP query load during mass calling events;¹⁰²³ the third involves a BellSouth service that pre-dated LNP called ZipConnect, in which there are approximately 312 numbers in service throughout the BellSouth territory,¹⁰²⁴ and the fourth involves another pre-LNP service called Uniserve with 33 numbers in service in Georgia and 30 in Louisiana.¹⁰²⁵ Concerning the first group of numbers, discussed above, BellSouth states that it has begun the work required to use toll free numbers instead of central office or NXX codes for official BellSouth communications.¹⁰²⁶ Given the relatively small number of central office codes involved, the fact competitive LECs can allow their customers to access the majority of these codes, and that the actual numbers that these codes point to are portable, we do not believe these arrangements demonstrate that BellSouth fails to comply with the requirements of checklist items 11 and 12.

264. Commenters argue that BellSouth’s failure to meet the LNP Disconnect Timeliness Measure is evidence of poor performance in Georgia and Louisiana.¹⁰²⁷ For example,

¹⁰¹⁸ BellSouth GALA I Ainsworth Reply Aff. at para. 94.

¹⁰¹⁹ 47 U.S.C. § 271(d)(6).

¹⁰²⁰ AT&T GALA I Berger Decl. at paras. 35-39.

¹⁰²¹ BellSouth GALA I Milner Reply Aff. at para. 73.

¹⁰²² Choke codes are used to restrict access to prevent network congestion during mass calling events. See BellSouth GALA I Reply at 108.

¹⁰²³ *Id.*

¹⁰²⁴ *Id.* at para. 75.

¹⁰²⁵ *Id.* at para. 76.

¹⁰²⁶ See Letter from Glenn T. Reynolds, Vice President-Federal Regulatory, BellSouth, to William Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed April 12, 2002) (BellSouth Apr. 12 *Ex Parte* Letter). BellSouth also plans to discontinue its ZipConnect and Uniserv services in the BellSouth region. *Id.* BellSouth plans to return all of these codes to the North American Numbering Plan Administrator (NANPA) once it has vacated the codes. *Id.*

¹⁰²⁷ AT&T GALA I Comments at 36; see also Georgia and Louisiana B.2.31.1 (Disconnect Timeliness, LNP).

KMC and US LEC/XO accuse BellSouth of modifying its LNP disconnect timeliness measure instead of improving performance under the current measurement.¹⁰²⁸ US LEC/XO also alleges that BellSouth “refuses” to pay penalties to competitive carriers on this measure.¹⁰²⁹ According to BellSouth, however, the disparate performance results are not the result of discriminatory conduct, but rather the result of a flawed metric.¹⁰³⁰ BellSouth argues that the initial disconnect timeliness measure may not be an accurate indicator of BellSouth’s performance because it does not reflect actual customer experience.¹⁰³¹ As a result, BellSouth asks us not to rely on this measurement, and, pursuant to an order of the Georgia Commission, BellSouth has not reported performance under this metric since May 2001.¹⁰³² In the interim, the Georgia Commission granted BellSouth’s motion to modify the disconnect timeliness performance measurement, and directed that BellSouth report results for a modified form of the existing metric, as well as for three new metrics, beginning with June data.¹⁰³³ Furthermore, the Georgia Commission held that any penalties associated with this measurement should be held in escrow until the conclusion of a LNP Disconnect Timeliness review.¹⁰³⁴ Similarly, the Louisiana Commission also ordered BellSouth to report results for new LNP disconnect timeliness metrics.¹⁰³⁵ We agree that the modified metrics will more accurately reflect BellSouth’s LNP Disconnect Timeliness performance in Georgia and Louisiana.

265. We recognize that BellSouth’s performance with respect to two of the revised performance metrics appears to be out of parity in Georgia and Louisiana for the five-month period.¹⁰³⁶ We find, however, that this performance does not warrant a finding of checklist noncompliance. First, upon initial review, BellSouth’s performance with respect to the LNP-Disconnect Timeliness, Non-Trigger metric is out of parity for the five-month period.¹⁰³⁷ In

¹⁰²⁸ KMC GALA I Comments at 7-8; US LEC/XO GALA II Comments at 23-25.

¹⁰²⁹ US LEC/XO GALA II Comments at 23-25.

¹⁰³⁰ See BellSouth GALA I Application at 136; BellSouth GALA I Varner Aff. at paras. 45-48.

¹⁰³¹ BellSouth GALA I Reply at 109.

¹⁰³² See BellSouth GALA II Varner Reply Aff. at para. 117.

¹⁰³³ In Georgia, BellSouth reports each month its performance related to LNP Disconnect Timeliness under three metrics: P-13B (Out of Service<60 minutes); P-13C (% LNP Trigger Applied Prior to DD); and P-13D (Disconnect Timeliness, Non-Trigger). See Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed April 18, 2002) (BellSouth Apr. 18 *Ex Parte* Letter).

¹⁰³⁴ BellSouth GALA II Varner Reply Aff. at para. 132.

¹⁰³⁵ *Id.* at para. 134. BellSouth reports each month its performance related to LNP Disconnect Timeliness under three modified metrics in Louisiana: P-10A (LNP Disconnect Timeliness); P-10C (Out of Service<60 minutes); and P-10B (% LNP Trigger Applied Prior to DD). See BellSouth Apr. 18 *Ex Parte* Letter.

¹⁰³⁶ See Georgia P-13D (Disconnect Timeliness, Non-Trigger); Louisiana P-10A (LNP Disconnect Timeliness).

¹⁰³⁷ See Georgia P-13D (Disconnect Timeliness, Non-Trigger).

particular, BellSouth reported an aggregate 95 percent error rate for disconnect timeliness in December 2001 in Georgia.¹⁰³⁸ According to BellSouth, however, there were two large LNP conversions in December that resulted in an enormous increase in volume over previous months.¹⁰³⁹ BellSouth also states that it has discovered coding issues, which affected BellSouth's performance with respect to the non-trigger method.¹⁰⁴⁰ BellSouth claims that this coding issue does not take into account successful timely LNP disconnects.¹⁰⁴¹ BellSouth contends that its actual performance on these conversions was excellent, although its reported results reflect otherwise.¹⁰⁴² We also note that BellSouth's performance reflected by the other Disconnect Timeliness metrics satisfies the benchmark established by the Georgia Commission for all relevant months.¹⁰⁴³ In light of these facts and the history surrounding the Disconnect Timeliness metric, we give credence to statements made by BellSouth in this proceeding. To the extent that BellSouth's performance deteriorates with respect to this metric, we are prepared to take appropriate enforcement action under section 271(d)(6).

266. Second, BellSouth's performance with respect to the LNP Disconnect Timeliness measure in Louisiana is out of parity during the five-month period.¹⁰⁴⁴ We note, however, that BellSouth's performance reflected by the other Disconnect Timeliness metrics satisfies the benchmark established by the Louisiana Commission for all relevant months.¹⁰⁴⁵ Next, this metric may not be an accurate indicator of BellSouth's performance.¹⁰⁴⁶ Finally, even setting aside the questions about the accuracy of this metric, we find that the performance differences reported under this metric do not appear to be competitively significant. Indeed, no commenter has questioned BellSouth's performance with respect to this modified metric. Therefore, absent further substantiation of systemic problems, we find that BellSouth's performance does not warrant a finding of noncompliance with this checklist item. If, however, BellSouth's

¹⁰³⁸ Georgia P-13D (Disconnect Timeliness, Non-Trigger) (showing that BellSouth only satisfied 4.96% of the Non-Trigger LNP Disconnects in a timely manner). *See also* US LEC/XO GALA II Comments at 25.

¹⁰³⁹ BellSouth Varner GALA II Reply Aff. at para. 117.

¹⁰⁴⁰ *See* BellSouth Apr. 18 *Ex Parte* Letter.

¹⁰⁴¹ For December 2001, BellSouth states that it disconnected approximately 3,000 non-trigger orders within the benchmark; however, the information in its database could not identify when the disconnect occurred. *See* BellSouth Apr. 18 *Ex Parte* Letter. Furthermore, BellSouth states that, while the disconnects were completed on time, the record keeping did not reflect it, which caused BellSouth's poor performance for this metric in December. *See id.*

¹⁰⁴² *Id.*

¹⁰⁴³ Georgia P-13B (Out of Service<60 minutes); Georgia P-13C (% LNP Trigger Applied Prior to DD).

¹⁰⁴⁴ *See* Louisiana P-10A (LNP Disconnect Timeliness).

¹⁰⁴⁵ *See* Louisiana P-10C (Out of Service<60 minutes); Louisiana P-10B (% LNP Trigger Applied Prior to DD).

¹⁰⁴⁶ As explained above, the Louisiana Commission ordered BellSouth to report each month its performance related to LNP Disconnect Timeliness as measured under three new metrics. The Louisiana Commission, however, is reviewing these metrics to determine if they adequately measure BellSouth's LNP Disconnect Timeliness.

performance deteriorates with respect to this particular metric, we may take appropriate enforcement action under section 271(d)(6).

267. In addition, we note that commenters raise other complaints about problems that they attribute to the number portability process. For instance, AT&T claims that BellSouth's failure to implement ten-digit Calling Name Global Title Translation (GTT) causes some customers that port their numbers to competitive LECs to lose the ability to have their names appear on the caller identification (ID) boxes of the recipients of their calls.¹⁰⁴⁷ Because BellSouth completed its region-wide implementation of ten-digit Calling Name GTT in its SS7 network on November 9, 2001, we find that AT&T's allegations do not warrant a finding of noncompliance.¹⁰⁴⁸ Similarly, KMC claims that BellSouth has problems with the delivery and accuracy of KMC customers' calling party number and name on caller ID from calls originating from a KMC switch in Louisiana.¹⁰⁴⁹ As BellSouth explains, there are multiple explanations for KMC's reported problems, and KMC offers no evidence that BellSouth has caused its customers any problems with caller ID.¹⁰⁵⁰ Because KMC's claim appears to be anecdotal and unsupported by any persuasive evidence, we conclude that it does not warrant a finding of noncompliance with this checklist item.

H. Checklist Item 12 – Local Dialing Parity

268. Section 271(c)(2)(B)(xii) requires “[n]on discriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”¹⁰⁵¹ BellSouth demonstrates that it provides local dialing parity in accordance with the Commission's rules.¹⁰⁵² Like the Commission found in the *Second BellSouth Louisiana Order*, and consistent with the Georgia and Louisiana Commissions, we find that BellSouth satisfies the requirements of this checklist item.¹⁰⁵³

269. WorldCom claims that BellSouth fails to provide local dialing parity because certain intraLATA toll calls by its UNE-P customers are charged to WorldCom as local calls on

¹⁰⁴⁷ AT&T GALA I Comments at 37.

¹⁰⁴⁸ BellSouth GALA I Reply at 107; BellSouth GALA I Milner Reply Aff. at 65. BellSouth completed its implementation of ten-digit GTT in its SS7 network in Georgia and Louisiana on August 17, 2001, and October 12, 2001, respectively.

¹⁰⁴⁹ KMC GALA I Comments at 14; KMC GALA I Demint Aff. at 10; KMC GALA I Braddock Aff. at 8.

¹⁰⁵⁰ BellSouth GALA I Reply at 107-08; BellSouth GALA I Milner Reply Aff. at paras. 71-72.

¹⁰⁵¹ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁰⁵² BellSouth GALA I Milner Aff. at paras. 287-89.

¹⁰⁵³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20771-73, paras. 295-97; Georgia Commission GALA I Comments at 205-07; Louisiana Commission GALA I Comments at 88-89.

DUF bills.¹⁰⁵⁴ Originally, WorldCom claimed that BellSouth's DUF bills were inaccurate, or that this was a problem with switch translations.¹⁰⁵⁵ However, BellSouth demonstrates that the DUF billing records accurately depict the actual call routing¹⁰⁵⁶ and that there is no systemic problem with inaccurate switch translations.¹⁰⁵⁷ BellSouth explains that WorldCom's dispute arises because, in Georgia, there is a slight geographic difference between flat-rate local calling areas and measured-rate local calling areas.¹⁰⁵⁸ Currently, because UNE-P is a measured-rate service, BellSouth measures UNE-P switching based on the slightly larger measured-rate local calling area.¹⁰⁵⁹ BellSouth asserts that very few intraLATA toll calls are affected because this issue is limited to intraLATA toll calls that terminate outside of the flat-rate local calling area but within the measured-rate local calling area – an area smaller than the entire LATA.¹⁰⁶⁰ BellSouth

¹⁰⁵⁴ WorldCom GALA II Reply at 7-8; WorldCom GALA II Lichtenberg Reply Decl. at para. 16; Letter from Keith L. Seat, Senior Counsel, Federal Advocacy, WorldCom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 at 1-5 (filed May 10, 2002) (WorldCom May 10 *Ex Parte* Letter). *See also* WorldCom GALA II Lichtenberg Decl. at paras. 16-20; WorldCom GALA I Reply at 14-15; WorldCom Lichtenberg, Desrosiers, Kinard, and Cabe Reply Decl. at paras. 63-66.

¹⁰⁵⁵ WorldCom GALA II Lichtenberg Decl. at paras. 16-20; WorldCom GALA I Reply at 14-15; WorldCom Lichtenberg, Desrosiers, Kinard, and Cabe Reply Decl. at paras. 63-66.

¹⁰⁵⁶ BellSouth GALA I Scollard Reply at paras 2-3; BellSouth GALA II Application App. A, Vol. 1a, Tab A, Affidavit of John Ruscilli and Cynthia Cox (BellSouth GALA II Ruscilli/Cox Aff.) at para. 6.

¹⁰⁵⁷ BellSouth demonstrates that the problem is not a systemic switch translation problem as it has reviewed WorldCom's complaint, including the examples provided by WorldCom, and found only one instance in which the switch translation did not correspond to the customer service record. BellSouth GALA II Ruscilli/Cox Aff. at para. 6; BellSouth April 12 *Ex Parte* Letter at 3.

¹⁰⁵⁸ BellSouth GALA II Ruscilli/Cox Aff. at para. 7; BellSouth May 7 *Ex Parte* Letter at 1 & Attach. at 1-3 (describing the issue and noting that a difference between flat-rate and measured-rate local calling areas is only a problem in Georgia); Letter from Kathleen B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-35 at 1-2 & attach. (filed May 14, 2002) (explaining that the Georgia Commission ordered a difference between flat-rate and measured-rate local calling areas on December 18, 1991 in Georgia Commission Docket No. 3905-U).

¹⁰⁵⁹ BellSouth GALA II Ruscilli/Cox Aff. at para. 7; BellSouth May 7 *Ex Parte* Letter at 1 & Attach. at 1-2. *See also* WorldCom April 29 *Ex Parte* Letter at 1-2 & Attachs. 1-2. BellSouth also offers to competitive LECs a LATA-wide local calling area to which 17 of the 30 competitive LECs offering UNE-P service in Georgia subscribe, accounting for approximately 45% of all Georgia UNE-P lines. BellSouth May 7 *Ex Parte* Letter at 2. BellSouth also asserts that the difference between the flat-rate and measured-rate calling areas does not preclude competing carriers from billing end users according to its own local calling area demarcation map. BellSouth GALA II Ruscilli/Cox Aff. at para. 9. *But see* WorldCom GALA II Reply at 8; WorldCom GALA II Lichtenberg Reply Decl. at paras. 15-16 (explaining that reprocessing usage records in such a manner would be an arduous undertaking).

¹⁰⁶⁰ Moreover, it is generally limited to those competing carriers that purchase UNE-P in Georgia and have their own intraLATA toll and long distance facilities. *See* WorldCom May 10 *Ex Parte* Letter at n.2 (stating that approximately 10% of WorldCom's local UNE-P customers choose a carrier other than WorldCom or BellSouth for intraLATA toll calls). Specifically, when a competing carrier's UNE-P customer makes an intraLATA toll call that terminates outside of the measured-rate local calling area, the call is carried by the customer's preferred intraLATA toll carrier and billed accordingly. On the other hand, a call that terminates within the measured-rate local calling area, but outside of the flat-rate local calling area is not connected to the carrier's intraLATA toll facilities but rather (continued....)

estimates that the difference between flat-rate and measured-rate local calling areas accounts for approximately 0.17 percent of the minutes-of-use by WorldCom's UNE-P customers in Georgia.¹⁰⁶¹ We note that BellSouth and WorldCom have agreed to settle compensation issues for the call traffic affected by this local calling area differential.¹⁰⁶² We also note that this does not in any way impair WorldCom's customers, who are still able to choose WorldCom for their intraLATA toll carrier and have benefited from an expanded local calling area.¹⁰⁶³ Because this dispute has a limited commercial impact and no other competitive LEC raises this issue, we do not find that this problem warrants a finding of noncompliance. Although not decisional to our analysis, we also note that BellSouth plans to remedy its systems to eliminate this problem.¹⁰⁶⁴ To the extent that WorldCom disputes that this fix was improperly scheduled or is not clearly documented for sufficient understanding, WorldCom should address its concerns through the change management process.¹⁰⁶⁵ Should this intraLATA routing issue prove to be a systemic problem with BellSouth's OSS, or should the scheduled July fix prove to cause carriers competitive harm, the Commission may take appropriate enforcement action.

270. AT&T contends that BellSouth fails to satisfy checklist item 12 because BellSouth markets and assigns special "oddball" NXX code numbers to retail customers that cannot be dialed by competitive LEC customers.¹⁰⁶⁶ We address this concern in our discussion of checklist item 11, *supra*.

I. Checklist Item 13 – Reciprocal Compensation

271. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."¹⁰⁶⁷ In turn, section 252(d)(2)(A) specifies when a state commission may consider the terms and

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is carried over the UNE-P facilities leased from BellSouth and billed as a local call rather than an intraLATA toll call. BellSouth May 7 *Ex Parte* Letter at 1 & Attach. at 2. This problem is further limited to only those competing carriers that have not chosen to provide their UNE-P customers with the LATA-wide local calling area. BellSouth May 7 *Ex Parte* Letter at 2.

¹⁰⁶¹ Letter from Kathy B. Levitz, Vice President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-35 (filed May 10, 2002) (BellSouth May 10 *Ex Parte* Letter); BellSouth May 7 *Ex Parte* Letter at 2 (stating that only 0.15% of WorldCom's minutes of use are affected when end users that had the larger measured rate as customer of BellSouth are excluded).

¹⁰⁶² BellSouth is reviewing one year's worth of WorldCom's calling records and states that the two parties are actively negotiating settlement of this issue. BellSouth May 7 *Ex Parte* Letter, Attach. at 3-4. See BellSouth GALA II Ruscilli/Cox Aff. at para. 9.

¹⁰⁶³ BellSouth May 7 *Ex Parte* Letter at 1-2 & Attach. at 1-2.

¹⁰⁶⁴ BellSouth May 7 *Ex Parte* Letter at 1-2 & Attach. at 3-4.

¹⁰⁶⁵ WorldCom May 10 *Ex Parte* Letter at 3-5.

¹⁰⁶⁶ AT&T GALA I Comments at 38-39; AT&T GALA II Comments at 1.

¹⁰⁶⁷ 47 U.S.C. § 271(c)(2)(B)(xiii); see Appendix C at para. 66.

conditions for reciprocal compensation to be just and reasonable.¹⁰⁶⁸ Based on the record, we conclude that BellSouth demonstrates that it provides reciprocal compensation as required by checklist item 13.

272. We reject US LEC's assertions regarding reciprocal compensation for ISP-bound traffic.¹⁰⁶⁹ As a preliminary matter, we note the record shows that US LEC and BellSouth entered into a settlement agreement on October 4, 2001, that "resolves all past disputes over reciprocal compensation."¹⁰⁷⁰ Regardless, under a prior Commission order, ISP-bound traffic is not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2).¹⁰⁷¹ This decision was reaffirmed by the Commission on remand.¹⁰⁷² Although the D.C. Court has remanded this latest Commission decision, the court did not vacate it and our rules remain in effect.¹⁰⁷³ Therefore, we continue to find that whether a carrier pays such compensation is "irrelevant to checklist item 13."¹⁰⁷⁴ We conclude that BellSouth has met its obligations under checklist item 13.

¹⁰⁶⁸ 47 U.S.C. § 252(d)(2)(A).

¹⁰⁶⁹ See US LEC GALA I Comments at 36-40; US LEC and XO GALA II Comments at 41-45; see also Letter from Patrick J. Donovan, Counsel to US LEC, to Magalie R. Salas, Federal Communications Commission, CC Docket No. 01-277 (November 29, 2001). In its comments, US LEC cites past disputes with BellSouth regarding reciprocal compensation for ISP-bound traffic and whether the tandem interconnection rate was applicable. US LEC concedes these disputes were resolved by the Georgia Commission. See Complaint of US LEC of Georgia, Inc. Against BellSouth Telecommunications, Inc., Georgia Public Service Commission, Docket No. 9577-U, Order (June 15, 2000) and Order to Determine Interconnection Rate (May 21, 2001) and Order on Tandem Interconnection Rate in Georgia Commission Docket No. 9577-U (May 21, 2001). To the extent reciprocal compensation disputes remained following the Georgia Orders, US LEC has now settled all such disputes with BellSouth on October 4, 2001. See BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 32. In addition, commenters state that an identical issue involving XO is presently being arbitrated before the Georgia Commission. See US LEC and XO GALA II Comments at 44. As we have previously stated, we do not "preempt the orderly disposition of intercarrier disputes by state commissions." *Verizon Massachusetts Order*, 16 FCC Rcd. at 9102, para. 203. Accordingly, this information is not relevant to our evaluation of BellSouth's current compliance with checklist item 13.

¹⁰⁷⁰ BellSouth GALA I Reply at 109-110; BellSouth GALA I Ruscilli/Cox Reply Aff. at para. 32.

¹⁰⁷¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, para. 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), *rev'd and remanded sub nom. Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

¹⁰⁷² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, 9171-72, paras. 35, 44 (2001).

¹⁰⁷³ *WorldCom v. FCC*, No. 01-1218 (D.C. Cir. May 3, 2002).

¹⁰⁷⁴ *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 119; *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, para. 377.