

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETY)	
OF PROVISION OF INTERLATA SERVICES BY)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	CASE NO. 96-608
PURSUANT TO THE TELECOMMUNICATIONS)	
ACT OF 1996)	

ADVISORY OPINION

On December 20, 1996, on its own motion, the Commission instituted this proceeding in order to compile a record that would enable the Commission to advise the Federal Communications Commission ("FCC") as to whether BellSouth Telecommunications, Inc. ("BellSouth") should be permitted to enter the in-region, interLATA market in Kentucky pursuant to Section 271 of the Telecommunications Act of 1996, Pub.L.No. 104-104, 110 Stat. 56, 47 U.S.C. § 151 et seq. ("the Act"). The FCC will make its decision on BellSouth's application based on whether BellSouth has complied with the fourteen point competitive checklist at Section 271(c)(2)(B) (the "Competitive Checklist"); whether the in-region interLATA services will be provided in accordance with the separate affiliate requirements of Section 272; and whether in-region, intraLATA entry is consistent with the public interest, convenience, and necessity. 47 U.S.C. § 271(d)(3). This Commission is to advise the FCC as to whether BellSouth complies with the requirements of Section 271(c). 47 U.S.C. § 271(d)(2)(B).

BellSouth previously has filed notices of intent to file a Section 271 application regarding its entry into the in-region, interLATA market in Kentucky with the FCC. However, to date, BellSouth has filed no such application. On April 23, 1999, BellSouth filed a notice with this Commission withdrawing its previous statement of intent to file with the FCC. BellSouth states it will, however, continue to improve and enhance its systems and facilities for competitive local exchange carrier (CLEC) support. BellSouth also reaffirms its commitment to comply with its obligations pursuant to the Commission's December 20, 1996 Order, including the obligation to provide the Commission with at least ninety days' advance notice before filing an application with the FCC for in-region, interLATA authority in Kentucky. On May 10, 1999, Intervenor AT&T Communications of the South Central States ("AT&T") filed a response to BellSouth's April 23 filing, stating, among other things, that the Commission should provide the parties with its view of the status of BellSouth's compliance with its obligations to open its local market to competition. This document, based on the record compiled to date, is issued in order to apprise BellSouth and other interested parties of those items on the Competitive Checklist which, in this Commission's opinion, BellSouth has met. Absent material changes in circumstance, the parties hereto need not submit additional evidence or argument in regard to these items.

In addition to AT&T, intervenors in this case include Sprint Communications Company L.P. ("Sprint"), MCI Telecommunications Corp. and MCIMetro Access Transmission Services, Inc. (collectively, "MCI"), American Communications Services of Louisville, Inc., American Communications Services of Lexington, Inc., and ACSI Local Switched Services, Inc. all d/b/a e.spire Communications, Inc. (collectively, "e.spire"),

BellSouth Long Distance, Inc. ("BellSouth Long Distance"), LCI International Telecom Corp. ("LCI"), WorldCom, Inc. ("WorldCom"), DeltaCom, Inc. ("DeltaCom"), the Competitive Telecommunications Association ("CompTel"), the ICG Telecom Group, Inc. (ICG), the Southeastern Competitive Carriers Association (SECCA), and the Telecommunications Resellers Association (TRA").

A five day hearing on the matter was held before the full Commission during the week of August 25, 1997. An additional hearing was held more recently, on August 20-21, 1998.

The Legal Framework for BellSouth's In-Region, InterLATA Entry in Kentucky

Section 271 of the Act requires a regional Bell operating company (RBOC) to show that it satisfies the requirements of either 271(c)(1)(A) ("Track A") or 271 (c)(1)(B) ("Track B") in order to receive FCC approval of its application to enter the interLATA market in its region. For the reasons stated below, as well as those reasons stated in its previous Orders in this docket, this Commission has concluded that BellSouth must comply with Track A requirements to provide in-region, interLATA service in Kentucky.

In its initial Order of December 20, 1996, the Commission first stated that Track A compliance by BellSouth would be required. 47 U.S.C. § 271(c)(1)(B) provides that only if no qualifying interconnection request is made may a Bell operating company enter the in-region, interLATA market by showing that it "generally offers" access and interconnection that meet statutory requirements pursuant to an effective Statement of Generally Available Terms. In 1996 interconnection requests were submitted to BellSouth by competitors including intervenors e.spire (formerly ACSI), AT&T and MCI. Subsequently, the terms of

interconnection with AT&T and MCI were arbitrated by the Commission in dockets numbered 96-482¹ and 96-431,² respectively. In both dockets, the Commission set appropriate rates and the parties' agreements incorporated those rates. The final interconnection agreements between BellSouth and AT&T and BellSouth and MCI were approved on August 21, 1997. In addition, an interconnection agreement between BellSouth and e.spire, which has constructed facilities in Kentucky, was approved by the Commission after an initial request for arbitration was withdrawn. It appears that the competitors in these cases negotiated with BellSouth in good faith and have taken steps to implement their respective agreements. Accordingly, pursuant to Section 271(c)(1)(B) of the Act, the Commission concludes that BellSouth has received qualifying requests for access and interconnection.

The plain meaning of the Act is that the SGAT is a Track B document and that its use is not an option if interconnection agreements have been sought by qualifying competitors. Because Track A is the only viable option for BellSouth in Kentucky, in this docket the Commission assesses the access and interconnection provided by BellSouth to requesting facilities-based carriers based upon two factors: [1] the adequacy of access and interconnection provided for in "one or more agreements" with competitors, Section 271(c)(2)(A); and [2] the practical ability of BellSouth to provide the agreed-upon access

¹ Case No. 96-482, The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C.

² Case No. 96-431, Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

and interconnection in such a manner as to permit the competitor to compete on equal footing with BellSouth.

It is apparent that BellSouth has, in the past months, made advances toward achieving systems that will enable it to provide the necessary parity. Although not all of the conditions of Track A and the Competitive Checklist have been met, the Commission finds that BellSouth appears to be in compliance with the following items of the Competitive Checklist.

The Competitive Checklist

Checklist Item 3, 47 U.S.C. § 271(c)(2)(B)(iii), requires BellSouth to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Act. BellSouth's agreements obligate it to provide access to poles, ducts, conduits and rights-of-way it controls on terms that are reasonable and nondiscriminatory. There does not appear to be any reason why access cannot be given pursuant to these agreements. Empirical data necessary to reach a definitive conclusion on this checklist item is not available, due to the scarcity of competitors seeking access; however, the Commission finds that BellSouth appears to have met this item of the Competitive Checklist.

Competitive Checklist Item 8, found at Section 271(c)(2)(B)(viii), requires BellSouth to provide white page directory listings of customers' names, addresses, and telephone numbers that are nondiscriminatory in terms of appearances and integration and to ensure

that listings are provided for competitors with the same accuracy and reliability as the listings it provides to its own customers. BellSouth states that it fully integrates CLECs' customers' white pages listings with its own and that it handles those listings precisely as it handles its own. The Commission notes that BellSouth permits CLECs to switch customers "as is," thereby greatly simplifying the process for changing local carriers, and, in such a case, the listing simply remains as it was. The absence of any difference in the way BellSouth handles CLEC customer listings indicates that reliability and accuracy are nondiscriminatory. This checklist item has been met.

Checklist Item 9 requires BellSouth to provide nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service. 47 U.S.C. § 271(c)(2)(B)(ix). Pursuant to this section, BellSouth must provide nondiscriminatory access to telephone numbers for assignment to competing carriers' customers until the date the telecommunications numbering administration guidelines, plan, or rules are established. After that date, BellSouth must comply with such guidelines, plans, or rules. A LEC providing nondiscriminatory access to telephone numbers provides competitors access to those numbers that is identical to the access that the LEC provides itself.³ It must, accordingly, charge other carriers fees for the assignment of central office codes if the fee is uniform and is also charged to itself.⁴ In addition, delays competitors

³ 47 C.F.R. § 51.217(c)(1).

⁴ FCC Second Report and Order at §§ 328, 323-33.

must suffer that are not experienced by BellSouth itself would indicate that discrimination exists.

BellSouth has established procedures to provide nondiscriminatory NPA/NXX code assignments to CLECs. Its procedures conform to the Industry Numbering Council standards.⁵ No requests from CLECs for NPA/NXX code assignments have been refused in Kentucky.⁶ This checklist item has, accordingly, been met.

Competitive Checklist Item 10 requires BellSouth to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. 47 U.S.C. § 271(c)(2)(B)(x). Databases and signaling are UNEs that must be provided on a nondiscriminatory basis pursuant to Section 251(c)(3). Comparison of the manner in which BellSouth obtains access to its databases and signaling network and the manner in which it provides such access to competitors is the crucial component of this inquiry.

BellSouth's agreements have been approved by this Commission and provide for nondiscriminatory access pursuant to this checklist item. Accordingly, this checklist item has been met.

Competitive Checklist Item 11, 47 U.S.C. § 271(c)(2)(B)(xi), requires BellSouth to provide interim telecommunications number portability through remote call forwarding,

⁵ BellSouth 1998 Brief at 56.

⁶ BellSouth 1998 Brief at 56; Milner 1998 Direct Testimony, at 9-10.

direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible.

BellSouth appears to meet the standard for interim number portability and has complied with Commission Orders and the industry standards in this regard. No intervenor asserts to the contrary. Accordingly, this checklist item has been met.

Competitive Checklist Item 12, 47 U.S.C. § 271(c)(2)(B)(xii), requires BellSouth to provide "[n]ondiscriminatory 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)." Section 251(b)(3), in turn, imposes upon all LECs "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory services, directory assistance, and directory listing, with no unreasonable dialing delays." Dialing parity exists if a competitors' customers are able to "route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications service providers (including such local exchange carrier)." 47 U.S.C. § 153(15).

BellSouth has demonstrated that customers of competing carriers do not have to dial additional digits to complete a local call and that there are no "unreasonable dialing delays" experienced by such customers. BellSouth also notes it is unaware of any complaints from CLECs that they or their end-users must dial any access codes or

additional digits to complete a local call.⁷ Accordingly, BellSouth has met this item of the checklist.

Competitive Checklist Item 13, at Section 271(c)(2)(B)(xiii) of the Act, requires BellSouth's access and interconnection to include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." Section 252(d)(2)(A) provides that terms and conditions for reciprocal compensation are just and reasonable only if they provide for recovery by each carrier for costs associated with transport and termination of calls that originate on the facilities of the other carrier and if they calculate those costs on the basis of reasonable approximation of the additional costs of terminating those calls.

The parties to this proceeding dispute whether BellSouth has met this item of the checklist. The principal objection to BellSouth's reciprocal compensation arrangements appears to be that BellSouth will not provide compensation for termination of internet service provider ("ISP") calls because, in BellSouth's opinion, such traffic is interstate rather than local. Other carriers dispute this characterization and have filed formal complaints with this Commission demanding compensation for termination of ISP calls.⁸ The Commission has not yet issued its decision in these cases. In order to avoid

⁷ BellSouth 1998 Brief at 61.

⁸ See Case No. 98-212, American Communications Services of Louisville, Inc. d/b/a e.spire Communications, Inc. American Communications Services of Lexington, Inc. d/b/a e.spire Communications, Inc., ALEC, Inc. and Hyperion vs. BellSouth Telecommunications, Inc.

prejudgment of the issue, the Commission declined, in Case No. 98-348,⁹ to approve a restrictive provision regarding reciprocal compensation for ISP traffic in its case regarding BellSouth's proposed SGAT. It reaffirms that decision here. The Commission notes that the FCC, in its decision denying BellSouth's application to provide in-region, interLATA service in Louisiana, declined to consider the ISP traffic issue, although it stated that any future grant of in-region interLATA authority will be conditioned on compliance with decisions relating to Internet traffic in Louisiana.¹⁰ The FCC has since entered a declaratory ruling finding that ISP-bound traffic is jurisdictionally mixed, but largely interstate and that parties should be bound by their existing interconnection agreements, as interpreted by state commissions.¹¹ Such interpretation has not yet been issued in Kentucky. Accordingly, at present, this checklist item appears to have been met.

CONCLUSION

Based upon the foregoing, it is the conclusion of this Commission that although BellSouth has not achieved full compliance with the Competitive Checklist at Section 271 of the Act, it has met seven of the fourteen checklist items. This docket remains open to

⁹ Case No. 98-348, Investigation Regarding Compliance of the Statement of Generally Available Terms of BellSouth Telecommunications, Inc. with Section 251 and Section 252(d) of the Telecommunications Act of 1996.

¹⁰ Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (October 13, 1998) at 13-14.

¹¹ Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice, CC Docket No. 99-68 (released February 26, 1999), at & 1.

enable BellSouth and other interested parties to file relevant information. The Commission will continue closely to monitor BellSouth's development of its systems, and it urges the FCC to provide further guidance in developing industry standards, particularly for operations support systems and performance measurement standards, to assist state commissions as well as telecommunications carriers as they carry out their responsibilities under the Telecommunications Act of 1996.

Done at Frankfort, Kentucky, this 8th day of July, 1999.

By the Commission

ATTEST:

Executive Director