

BEFORE THE COMMONWEALTH OF KENTUCKY

PUBLIC SERVICE COMMISSION

IN THE MATTER OF

Investigation Concerning the Propriety of  
InterLATA Services By BellSouth  
Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996.

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CASE NO. 2001-105

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MOTION TO ESTABLISH PROCEDURAL SCHEDULE  
ON BEHALF OF  
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, LLC,  
TCG OHIO, INC., WORLDCOM, INC. AND SOUTHEASTERN COMPETITIVE  
CARRIERS ASSOCIATION

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AT&T Communications of the South Central States, LLC, and TCG Ohio, Inc., (collectively "AT&T"), WorldCom, Inc. ("WorldCom"), and Southeastern Competitive Carriers Association, ("SECCA")<sup>1</sup> respectfully request that the Kentucky Public Service Commission ("Commission") reopen its proceedings and establish a new procedural schedule in order to evaluate BellSouth Telecommunications Inc.'s ("BellSouth's") application for interLATA approval under Section 271 of the Telecommunications Act of 1996 ("the Act").<sup>2</sup> To date, BellSouth has relied heavily on the results of the third-party Operational Support Systems ("OSS") testing conducted in Georgia and on performance data produced in a format allegedly

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<sup>1</sup> SECCA members include: Association of Communications Enterprises (ASCENT), AT&T of the Southern and South Central States, Birch Telecom, Inc., Business Telecom, Inc., Cinergy Communications, Competitive Telecommunications Association, e.spire Communications, KMC Telecom, ICG Communications, ITC^Deltacom, Inc., Network Telephone, NewSouth Communications, Nuvox Communications, Talk America, Time Warner Telecom, US LEC Corp., WorldCom, Inc., XO Communications, and Xspedius Corporation.

<sup>2</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. § 251 *et seq.*

approved by the Georgia Commission.<sup>3</sup> As detailed below, the Federal Communications Commission (“FCC”) recently expressed serious concerns regarding BellSouth’s compliance with Section 271 after reviewing the Georgia test and associated performance data. Indeed, BellSouth withdrew its joint Georgia/Louisiana application to the FCC on December 20, 2001.<sup>4</sup>

Despite the FCC’s concerns, BellSouth has indicated that it will re-file its Georgia/Louisiana application with the FCC in February 2002.<sup>5</sup> Moreover, BellSouth has stated publicly that it plans to file with the FCC its Kentucky Section 271 application by the end of June 2002.<sup>6</sup> It appears that BellSouth intends to “wait and see” what the FCC does with its re-filed Georgia/Louisiana application before filing its Kentucky application with the FCC – which makes sense. That said, this Commission should not allow BellSouth to goad it into making its decision on BellSouth’s Kentucky compliance based on evidence that was insufficient for the FCC, before the FCC completes its review of BellSouth’s re-filed Georgia/Louisiana application.

**I. THE GEORGIA THIRD-PARTY TEST AND GEORGIA DATA BELLSOUTH RELIED UPON IN THIS PROCEEDING WERE INSUFFICIENT TO ESTABLISH § 271 COMPLIANCE AT THE FCC**

Throughout these proceedings, BellSouth has consistently urged this Commission to rely on the work done in Georgia as a basis for the Commission’s Section 271 evaluation. Indeed, BellSouth asked this Commission to accept the results of the Georgia third-party OSS test as

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<sup>3</sup> See Direct Testimony of Ronald M. Pate, filed May 18, 2001 at 9; Direct Testimony of Alphonso J. Varner, filed May 18, 2001 at 9-10.

<sup>4</sup> December 20, 2001 *ex parte* filing on behalf of BellSouth, CC Docket No. 01-277 at 1 (“*Withdrawal letter*”) (attached as exhibit 1).

<sup>5</sup> See Robert Luke, *Atlanta Tech: BellSouth Plans New Long-distance Push*, Atlanta Journal-Constitution, Jan. 23, 2002.

<sup>6</sup> *Id.*

persuasive evidence that BellSouth provides nondiscriminatory access to OSS in Kentucky.<sup>7</sup> BellSouth also told this Commission that it could rely on performance data produced under BellSouth's proposed interim SQM, which is allegedly based upon the Georgia SQM.<sup>8</sup> The existing record, therefore, is closely related to the record BellSouth took to the FCC on October 2, 2001, when BellSouth filed its first joint application with the FCC for authorization to provide in-region, interLATA service originating in Georgia and Louisiana pursuant to Section 271 of the Act.<sup>9</sup> In its application, BellSouth alleged that the Georgia independent third-party OSS test in conjunction with performance data demonstrated compliance with Section 271's checklist items for both states.<sup>10</sup>

BellSouth withdrew its joint application on December 20, 2001, noting that FCC staff had raised concerns regarding five areas of BellSouth's application. According to BellSouth, the concerns raised by FCC staff were:

- timeliness of evidence demonstrating that competing carriers could integrate or have successfully integrated pre-ordering and ordering functionality;
- BellSouth's performance on service order accuracy;
- the accuracy of certain performance data;
- the timeliness of evidence on the "double FOC" performance issue related to the due date calculator; and

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<sup>7</sup> Pate Direct at 9.

<sup>8</sup> Varner Direct at 3-4, 9-10.

<sup>9</sup> In the Matter of *Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Georgia and Louisiana*, CC Docket No 01-277 (2001).

<sup>10</sup> Brief in Support of Application By BellSouth for Provision of In-region, Inter-LATA Services in Georgia and Louisiana, *In the Matter of: Joint application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 01-277 at 59.

- the timeliness of evidence related to the allocation of resources in the Change Control Process.<sup>11</sup>

FCC Chairman Michael Powell expressed broader concerns:

[Q]uestions remain regarding whether BellSouth has satisfied the rigorous requirements of the statute and [FCC] precedents, including the adequacy of [BellSouth's] operational support systems, the integrity of its performance data and its change management process, and related issues.<sup>12</sup>

The concerns raised by the FCC and BellSouth's decision to withdraw its application to address those concerns reveal areas of deficiency that warrant further attention from this Commission. Indeed, AT&T, WorldCom, and other competing local exchange carriers ("CLECs") raised these concerns in testimony before this Commission. For example, AT&T witness Jay Bradbury explained that BellSouth has failed to provide CLECs with equivalent parsing functionality in Kentucky. Specifically, BellSouth does not provide CLECs with fully fielded, parsed Customer Service Records ("CSRs").<sup>13</sup> The Georgia Commission ordered BellSouth to provide fully fielded, parsed CSR data by January 5, 2001.<sup>14</sup> Yet, fully fielded, parsed CSR data remains unavailable today.<sup>15</sup> AT&T witness Bradbury also testified that

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<sup>11</sup> December 20, 2001 *ex parte* filing on behalf of BellSouth, CC Docket No. 01-277 at 1 ("Withdrawal letter") (attached as exhibit 1).

<sup>12</sup> Statement of FCC Chairman Michael Powell on withdrawal of BellSouth 271 application, December 20, 2001 ("Powell Statement") (attached as exhibit 1); December 20, 2001 *ex parte* filing on behalf of BellSouth, CC Docket No. 01-277 at 1 ("Withdrawal letter") (attached as exhibit 2).

<sup>13</sup> See Rebuttal Testimony of Jay M. Bradbury, filed July 9, 2001 at 41-42.

<sup>14</sup> Order, *In re Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996*, Georgia Public Service Commission, Docket No. 6863-U (Oct. 19, 2001) at 3.

<sup>15</sup> Although BellSouth has claimed in other jurisdictions that it has implemented parsed CSR functionality, the implementation of that functionality has been plagued with problems and the functionality BellSouth has implemented does not provide CLECs with the parsed CSR functionality they have sought since September 1999 when CLECs filed a change request under the Change Control Process. Moreover, BellSouth itself has identified

(Footnote cont'd on next page)

BellSouth's change management process is inadequate—BellSouth disregards CLEC input because it retains and exercises a unilateral veto power<sup>16</sup> and delays or fails to implement CLEC-initiated requests.<sup>17</sup> Further, BellSouth does not provide a suitable testing environment.<sup>18</sup>

In addition, the CLEC community has produced evidence that BellSouth's performance data is inaccurate, unreliable and cannot be replicated.<sup>19</sup> The data BellSouth did submit demonstrates significant performance failures. For example, BellSouth failed three of the five performance submetrics for service order accuracy.<sup>20</sup> The FCC took these problems seriously, as should this Commission.

Finally, the Florida OSS test is nearing completion. By reopening 271 proceedings, this Commission would also have the opportunity to avail itself of the results of the Florida OSS test. Indeed, at an informal conference on May 10, 2001, BellSouth assured this Commission that it "is confident that the FCC will accept the Georgia testing platform, if it does not, BellSouth will back up and use Florida testing as its proof."<sup>21</sup> BellSouth withdrew its Georgia application

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*(Footnote cont'd from previous page.)*

some 24 defect change request on this implementation which will require corrective action. Although some were to be implemented on February 2, 2002, other defects are not currently scheduled to be corrected until April.

<sup>16</sup> See Bradbury Rebuttal at 98-100.

<sup>17</sup> See Bradbury Rebuttal at 108-09.

<sup>18</sup> See Bradbury Rebuttal at 111-14.

<sup>19</sup> See AT&T Late Filed Exhibit of King Timmons, filed Nov. 12, 2001; see also Supplemental Rebuttal Testimony of Sharon E. Norris, filed August 27, 2001 at 13, as adopted by King Timmons at the hearing before the Kentucky Public Service Commission, Tr. Vol. 5 at 336.

<sup>20</sup> See Supplemental Direct Testimony of Alphonso J. Varner, filed Dec. 10, 2001, AJV-6, att. 1E.

<sup>21</sup> Intra-Agency Memorandum, *In the matter of Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Case No. 2001-105 (May 16, 2001) at 3.

because of FCC concerns. Accordingly, this Commission could now accept BellSouth's proposal and consider the results of the Florida test.

**II. THIS COMMISSION SHOULD DEVELOP AN ADEQUATE RECORD BEFORE BELLSOUTH FILES A KENTUCKY APPLICATION AT THE FCC**

The evidence BellSouth has put before this Commission to date is evidence that was, in effect, rejected by the FCC. Because the Commission cannot approve BellSouth's application based on the flawed and inadequate evidence now before it, it should reopen its Section 271 proceedings and require BellSouth to demonstrate that it has resolved the issues that gave rise to the FCC's concerns.

These deficiencies should be addressed first by this Commission, not the FCC. On this point the FCC has been quite clear, specifically addressing BellSouth's tactics during its first round of 271 filings more than three years ago:

While we commend BellSouth for making significant improvements over the past eight months since we issued the *First BellSouth Louisiana Order*, BellSouth has filed a second application for Louisiana without fully addressing the problems we identified in previous BellSouth applications. This problem is particularly evident in BellSouth's provision of operations support systems. Because BellSouth does not satisfy the statutory requirements, we are compelled to deny its application for entry into the interLATA long distance market in Louisiana. In this regard, we caution that the Commission expects applicants to remedy deficiencies identified in prior orders before filing a new section 271 application, or face the possibility of summary denial.<sup>22</sup>

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<sup>22</sup> *In re Application of BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order ¶ 5 (rel. Oct. 13, 1998) ("*Louisiana II Order*") (emphasis added) (footnotes omitted).

The FCC also has addressed the responsibilities of state commissions with respect to subsequent 271 applications:

We fully acknowledge and are sensitive to limitations on state commissions' resources for purposes of developing their recommendation of a BOC's 271 applications. We believe, however, that in making its recommendation on a BOC's section 271 application, a state commission may assist us greatly by providing factual information. When a BOC files a subsequent application in a state, it is important for the state commission to provide the factual information gathered and relied upon by the state commission concerning changes that have occurred since the previous application was filed. Thus, for subsequent applications, we encourage state commissions to submit factual records, in addition to their comments, demonstrating that: (1) the BOC has corrected the problems identified in previous applications; and (2) there are no new facts that suggest the BOC's actions and performance are not longer consistent with the showing upon which this Commission based any determination that the statutory requirements for certain checklist items have been met.

*Id.* ¶ 21 (emphasis added).

The only difference between the BellSouth's recent Georgia/Louisiana 271 application and its first Louisiana application is that in this case BellSouth chose to withdraw its application at the last moment rather than face yet another FCC 271 rejection order. As a result, the Commission does not have before it an FCC order outlining in detail where BellSouth fell short in its application. Indeed, the obvious reason BellSouth withdrew the application was to prevent such a list of problems from being made public so it could put its own spin on why withdrawal was necessary. But there is no doubt concerning the main areas that must be addressed: both Chairman Powell's statement and BellSouth's press release identified OSS, change management and data integrity as key. The *Louisiana II Order* requires BellSouth to address these areas before it refiles, and "encourages" this Commission to develop a factual record demonstrating that these areas have been appropriately addressed and that no new problems have emerged.

## CONCLUSION

The language and structure of the Act demonstrate Congress' intent that the FCC and the state commissions should work together in achieving the goal of robust local competition.<sup>23</sup> This is an ideal circumstance in which this Commission can examine BellSouth's Section 271 compliance with full knowledge of the FCC's current concerns. AT&T, WorldCom, and SECCA, therefore, request that this Commission reopen Section 271 proceedings and require BellSouth to provide evidence demonstrating that it has addressed in Kentucky each of the deficiencies identified by the FCC. In connection with the public interest requirements of Section 271, the Commission should also examine closely whether BellSouth's UNE rates foster competition in Kentucky. Furthermore, because testing in Florida is nearing completion, the Commission should consider availing itself of the results of the Florida OSS test.

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<sup>23</sup> See 47 U.S.C. § 261(c).

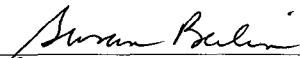


Respectfully Submitted,



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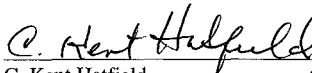
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December 20, 2001

EX PARTE – Filed Electronically

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 01-277

Dear Ms. Salas:

BellSouth believes that its joint application to provide long distance service in Georgia and Louisiana is the strongest overall application filed with the FCC. The undisputed record in this proceeding shows significantly more competition in Georgia than existed in any previous application. In addition, the level of local competition in Louisiana compares very favorably with other approved states. We also believe that the application demonstrates that we have fully satisfied the competitive checklist.

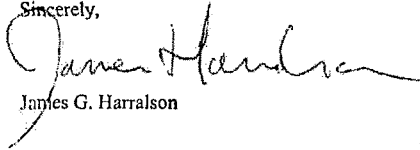
The Commission's Staff has raised concerns regarding five areas of the application. We understand these concerns generally arise from a belief that commenting parties have not had an adequate opportunity to evaluate and respond to evidence that has been submitted on these issues. We understand the Staff's concerns to be: (1) the timeliness of evidence demonstrating that competing carriers could integrate or have successfully integrated pre-ordering and ordering functionality; (2) BellSouth's performance on service order accuracy; (3) the accuracy of certain performance data; (4) the timeliness of evidence on the "double FOC" performance issue related to the due date calculator; and (5) the timeliness of evidence related to the allocation of resources in the Change Control Process. To address these concerns, BellSouth provides this notice that it is withdrawing its joint application and will shortly file to initiate a new application.

Consistent with the procedures followed in similar 271 proceedings, BellSouth will request that the Commission incorporate the existing record in our new application, and we will file additional evidence on the issues described above. This will provide all

interested parties an added opportunity to comment on the entirety of the record on these issues, and allow the Commission to grant the application expeditiously, providing consumers of Georgia and Louisiana the long-awaited benefits of the added competition associated with BellSouth's long distance entry.

I am filing two copies of this notice in the docket identified above, as required by Section 1.1206(b)(2) of the Commission's rules and request that you associate this notice with the record of that proceeding. Thank you.

Sincerely,

A handwritten signature in black ink that reads "James G. Harralson". The signature is written in a cursive style with a large, looping initial "J".

James G. Harralson

cc: Chairman Michael K. Powell  
Marsha MacBride  
Kyle Dixon  
Commissioner Kathleen Q. Abernathy  
Matthew Brill  
Commissioner Michael J. Copps  
Jordan Goldstein  
Commissioner Kevin J. Martin  
Monica Shah Desai  
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# NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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FOR IMMEDIATE RELEASE  
December 20, 2001

Contact: David Fiske  
(202) 418-0513

## STATEMENT OF FCC CHAIRMAN MICHAEL POWELL ON WITHDRAWAL OF BELL SOUTH 271 APPLICATION

BellSouth has withdrawn its application to provide long distance service in Georgia and Louisiana. The FCC cannot approve such applications by the Bell Companies unless they satisfy the requirements of section 271 of the Communications Act.

BellSouth's application demonstrated the company's commitment and ability to make significant progress toward satisfying the statutory requirements and our precedents. Moreover, this application evidences significant and critical work by the Georgia and Louisiana state utility commissions.

Yet, despite extensive conversation and collaboration with the FCC, questions remain regarding whether BellSouth has satisfied the rigorous requirements of the statute and our precedents, including the adequacy of the company's operational support systems, the integrity of its performance data and its change management process and related issues.

We look forward to working with the company and with the Georgia and Louisiana utility commissions to provide them with any additional guidance they need to understand and satisfy the demanding requirements in this area.

- FCC -