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AT&T's Motion for Clarification  
Attachment D  
May 17, 2001

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. P-55, SUB 1022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Application of BellSouth Telecommunications, Inc., ) ORDER SETTING  
to Provide In-Region InterLATA Services ) HEARING AND  
Pursuant to Section 271 of the ) PROCEDURAL  
Telecommunications Act of 1996 ) SCHEDULE

BY THE CHAIR: On April 12, 2001, BellSouth Telecommunications, Inc. (BellSouth) filed a Notice of Intent to File Section 271 Application with the Federal Communications Commission and Request for Procedural Order. Specifically, BellSouth proposed the following 150-day timeline:

April 12, 2001	BellSouth submits prefiled direct testimony on all Track A and checklist compliance issues; discovery begins
May 15, 2001	BellSouth supplements its evidence by filing regionality attestation from third-party auditor
June 11, 2001	BellSouth supplements its evidence by filing performance data for the month of April 2001 and submitting prefiled direct testimony describing that data
June 25, 2001	Intervenors submit prefiled testimony on all issues
July 5, 2001	BellSouth submits prefiled rebuttal testimony on all issues; discovery ends
July 16-20, 2001	Hearings
August 10, 2001	Briefs and proposed orders due
September 10, 2001	Commission issues Order

SECCA's Response

On April 16, 2001, the Southeastern Competitive Carriers Association (SECCA) submitted its Response in Opposition to BellSouth's proposed schedule, stating that it believed consideration of BellSouth's application to be premature and that it should be deferred.

SECCA pointed out that several dockets bearing on critical Section 271 checklist

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Items are still pending before the Commission. For example, Docket No. P-100, Sub 133d, concerning unbundled network elements (UNEs) and bearing on checklist item 1, as well as Docket No. P-100, Sub 133j, concerning collocation and also bearing on checklist item 1, remain pending. Additionally, the Commission's generic performance measurements docket in Docket No. P-100, Sub 133k, which bears on checklist item 2, is pending and set for hearing in June.

SECCA also adverted to the status of third-party testing in Georgia and Florida. With respect to Georgia, SECCA pointed out that the tester, KPMG Consulting, LLC (KPMG), had reported to the Georgia Public Service Commission that BellSouth had not satisfied several evaluation criteria in the ordering and provisioning category. More hearings are planned in Georgia, but a procedural schedule has not been established. With respect to Florida, SECCA stated that testing in Florida is continuing and opined that the Florida test is superior to that in Georgia in many respects. A Section 271 hearing in Florida is not scheduled until October 15, 2001.

Accordingly, SECCA maintained that further review of BellSouth's 271 application should be deferred pending completion of the UNE rate, collocation and performance measurements dockets; completion by the Florida Commission of its review of the third-party Operations Support Systems (OSS) test; and a review to determine if the OSS offered by BellSouth in North Carolina is the same as that tested in Florida. SECCA also noted that all 14 checklist items need to be considered, especially in light of various subsequent FCC decisions bearing on Bell Operating Company responsibilities.

#### Comments of Time Warner Telecom

Time Warner Telecom of North Carolina LP (Time Warner) filed comments supporting the positions taken by SECCA in SECCA's Response in Opposition. Time Warner criticized BellSouth's failure to file all the materials upon which it will rely for its application. Recent arbitrations have also suggested that BellSouth is not offering nondiscriminatory access to OSS. See BellSouth/AT&T Arbitration, Finding of Fact No. 10, Docket Nos. P-140, Sub 73 and P-646, Sub 7 (March 9, 2001).

#### BellSouth's Reply to SECCA

On April 19, 2001, BellSouth filed its Reply to SECCA's Response in Opposition to BellSouth's Proposed Schedule.

With respect to the points raised by SECCA regarding third-party testing, BellSouth stated that the FCC had recognized in its Kansas/Oklahoma Order that the "most probative evidence that OSS functions are operationally ready is actual commercial usage," not third-party testing. While useful, third-party testing is not the most compelling evidence of compliance. The fact that competing local providers (CLPs) serve nearly 272,000 lines

In BellSouth's North Carolina service area is itself indicative that BellSouth's OSS are operationally handling local competition today. Moreover, BellSouth will provide more information on June 11<sup>th</sup>, graded against performance measures approved by the Georgia Commission and will demonstrate that the same systems and processes in Georgia are used here. As for third-party testing, BellSouth believes that the Commission can rely on the Georgia experience, since, among other points, the Georgia test meets all the important criteria identified by the FCC in its Bell Atlantic Order. Indeed, the Georgia test covered over 1,170 test criteria. The KPMG report issued on March 20, 2001, found that less than 2% of the test criteria were deemed "not satisfied." KPMG is continuing to test several criteria, relating to that part of the test dealing with performance measurements. BellSouth has addressed these issues in prefiled testimony and will do so at hearing. Thus, BellSouth contends that there is sufficient proof for the Commission to make a reasoned judgment concerning BellSouth's compliance with checklist item 2.

With respect to the generic proceedings issue, BellSouth pointed out that the Commission has made substantial progress on the generic dockets in P-100, Subs 133d, 133j, and 133k. The UNE docket is almost complete, the deaveraging Order having been issued and the cost proceeding nearly so. The collocation proceeding has been held and briefs filed, but, given that BellSouth has completed approximately 700 collocation arrangements and BellSouth has submitted substantial evidence in its April 12<sup>th</sup> filing, the Commission has ample grounds to reach a reasoned decision independent of the generic collocation proceeding. The performance measures docket is less advanced, but it need not be completed for the Commission to make a determination because BellSouth has also filed a complete set of performance measurements in this proceeding for the Commission's consideration, with North Carolina data graded against Georgia performance measures forthcoming.

Finally, BellSouth agreed that it should present, and argued that it has presented, evidence concerning its compliance with each of the checklist items. For all the above reasons, the Commission should adopt BellSouth's procedural schedule.

#### AT&T's Response to Proposed Schedule

On April 23, 2001, AT&T Communications of the Southern States, Inc. (AT&T) filed its Response to BellSouth's Proposed Procedural Schedule. Like SECCA, AT&T argued that BellSouth's proposed schedule was premature and ought to be rejected. Specifically, AT&T argued that, to determine Section 271 checklist compliance, the Commission must consider the results of all states engaged in third-party testing of BellSouth's OSS. Particular attention should be paid to Florida, which AT&T characterized as being more thorough and comprehensive than that in Georgia. To the extent that the Commission elects not to require third-party testing in North Carolina, it should consider fully the results in Florida. For example, the Florida test reviews interfaces currently used by competitors, and includes end-to-end testing and the testing of manual processes. The Florida test

also includes review of the ability of competitors to build interfaces and provides for significant competitor participation. Furthermore, the Florida test includes an adequacy review of performance measures and in fact has uncovered new problems and problems supposedly "fixed" in Georgia, such as in the Change Management Process. Reliance on Georgia alone would not provide the Commission with the information it needs to make a thorough and complete decision. The Commission simply cannot evaluate BellSouth's compliance with the checklist items until it is able to perform a comprehensive review of the performance of BellSouth's OSS, and such a review cannot be conducted until the Commission is able to consider the results of Florida's comprehensive third-party testing of OSS.

AT&T further noted that the Commission has not completed addressing certain key areas which are critical to issues beyond OSS in reviewing BellSouth's application. For example, the Commission has not completed its review of such issues as performance measures, competitor access to xDSL, how BellSouth and competitors are to interconnect their networks, access to physical collocation, and the pricing of network elements.

#### Sprint's Petition for Comments

On April 26, 2001, Sprint Communications Company LP (Sprint) filed a Petition to Intervene and a Petition for Order Soliciting Comments on Procedural Schedule. Citing concerns about unfinished generic dockets and the operation of BellSouth's OSS systems, as well as the mammoth size of BellSouth's filing, Sprint suggested that the Commission should formally seek comments from all interested parties on the appropriate procedural schedule for this docket.

#### BellSouth's Reply to AT&T's Response

On April 30, 2001, BellSouth filed a Reply to AT&T's Response to Proposed Procedural Schedule. BellSouth urged that moving forward with its application will hasten the day when even more robust competition will come to North Carolina markets, as evidenced by the experience in other states where 271 applications have been approved. BellSouth noted that the FCC has said that the most probative evidence of OSS functions being ready is actual commercial usage. The fact that CLPs have approximately 271,799 lines in service in North Carolina means that the CLPs are using BellSouth's system and processes to place orders. BellSouth also noted that the Georgia third-party test is complete. Georgia testing meets all the important criteria identified by the FCC in its New York Order, and is comparable to the tests conducted in New York and Texas. BellSouth also stated that it does not believe it is necessary for the Commission to conclude every possible telecommunications docket prior to commencing its 271 analysis.

Specifically, BellSouth indicated that it will present evidence at hearing that will allow the Commission to render a decision on BellSouth's competitive checklist, including

compliance with checklist item 2. BellSouth will present the results of the Georgia third-party test to the Commission for consideration. BellSouth further argued that, to the extent necessary, the Commission can and should rely on the Georgia test to substantiate BellSouth's position that it provides nondiscriminatory access to its OSS. The question of the value of the Georgia test is an appropriate issue for the hearing, of course, but the Georgia test is "robust in breadth and scope" and meets the FCC's criteria. It will serve to supplement the evidence of commercial usage. Interestingly, BellSouth noted, AT&T has indicated that it does not think the Florida test is broad enough, as shown by AT&T's filings in Florida.

#### Oral Argument

On April 24, 2001, AT&T filed a request for an oral argument on the proposed procedural schedule. This request was granted by Order dated April 30, 2001, and the oral argument was scheduled and held on May 2, 2001. At the oral argument, the parties restated and expanded upon the points they had made in their written filings to date. SECCA proposed a revised schedule which would bifurcate the process so that there would be a hearing on competition, regional systems comparability, and OSS tests on August 20, 2001, and a hearing on the remaining issues on December 10, 2001.

#### BellSouth's Response to SECCA Revised Schedule

On May 7, 2001, BellSouth filed a letter in response to SECCA's proposed schedule, since BellSouth stated that it had not had the opportunity to review it fully prior to the oral argument. BellSouth argued that the revised schedule would be virtually impossible to implement in any timely way. BellSouth stated that if the Commission issued an Order on performance measurements on August 27<sup>th</sup>, BellSouth could not in all likelihood implement that Order until the end of February 2002. Given the lag time for the collection of data, a final decision might not be possible until the Summer of 2002. BellSouth reiterated that, under its proposal, the Commission would have all the information it needs to render a reasoned decision.

WHEREUPON, the Chair reaches the following

#### CONCLUSIONS

After careful consideration, the Chair concludes that the hearing on BellSouth's Section 271 application should be scheduled for a week beginning on Monday, October 29, 2001. This hearing should cover all the issues associated with the Section 271 application.

This represents a degree of compromise between the date proposed by BellSouth and that proposed by SECCA at the oral argument for the hearing-in-chief. The primary

reasons for adopting this schedule are to allow the Commission to issue Orders in its major generic dockets which are now pending, namely, the UNE, collocation, and performance measures dockets, and to allow for further information to be developed concerning pertinent Section 271 dockets in other states. Orders in the generic dockets are important because the decisions made there factor significantly into the Section 271 docket on issues such as collocation provisioning/rates, UNE issues/rates, and nondiscriminatory access to OSS. With reference to the performance measures docket in particular, the Chair notes that we would likely have been at least four months nearer to completion had we not, for good cause shown, granted BellSouth's motion to delay that case to allow for consideration of results from the Georgia and Louisiana proceedings. Overall, this delay should simplify the ultimate decision in that case; however, the fact remains that we do face a hearing in the performance measures docket one month prior to the date urged by BellSouth for its Section 271 hearing. It is, of course, a controverted point as to what degree BellSouth should rely on another state's performance measures to support its Section 271 application and, if so, which one. It is not debatable that, as of this point in time, in neither Georgia nor Florida has the FCC determined that BellSouth is providing nondiscriminatory access to its OSS. It is therefore a matter of simple prudence and judicial economy for the Commission to enter Orders in these major generic dockets prior to convening the hearing to consider BellSouth's Section 271 application.

The Chair is also mindful of the burden that current and prospective telecommunications dockets are placing on the resources of this Commission and those of the parties, as well as the representations of the intervenors that more time is needed to conduct discovery into assertions made by BellSouth in this important and complicated case. In addition, entry of an Order in our performance measures docket will, in all likelihood, take place in September. BellSouth has a Section 271 proceeding scheduled in Florida in mid-October. Thus, late-October is a worthy compromise that will allow sufficient time for the parties to develop their proof, but not so long a time as to unreasonably delay BellSouth's application.

IT IS, THEREFORE, ORDERED as follows:

1. That a hearing to consider BellSouth's Section 271 application shall be convened in this docket on Monday, October 29, 2001, at 2:00 p.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. This hearing shall conclude no later than Friday, November 2, 2001.
2. That BellSouth shall file its supplemental information as follows: Regionality attestation from third-party auditor shall be filed no later than Tuesday, May 22, 2001. Performance data for the month of April 2001, and supporting prefiled testimony shall be filed no later than Monday, June 11, 2001. BellSouth shall continue to file updated performance data on a monthly basis on the same day of the month thereafter pending further Order.

3. That intervenors, including the Public Staff, shall prefile their testimony no later than Monday, September 10, 2001. To the extent feasible, intervenors are urged to file collectively. No interventions will be allowed after September 10, 2001.

4. That BellSouth shall prefile its rebuttal testimony no later than Monday, October 8, 2001.

5. That the parties shall submit their preferred order of witnesses and estimated cross-examination times no later than Monday, October 22, 2001.

6. That discovery shall be regulated as follows:

- a. BellSouth and the intervenors expecting to engage in discovery shall, prior to the initiation of discovery, meet together with a view toward facilitating the provision of as much relevant information as practicable voluntarily without resort to formal requests and with a view toward concluding any necessary and appropriate confidentiality agreements.
- b. Parties shall file data requests with the Commission. The filing party shall either hand deliver or fax copies of data requests to the receiving party at the same time the data requests are filed with the Commission.
- c. After a data request is filed with the Commission and served on a party, the party receiving the data request shall have seven calendar days to file specific objections to it on an item-by-item basis. The party objecting to discovery shall hand deliver or fax copies of its objections to the party seeking discovery contemporaneously with such filing.
- d. If the party seeking discovery intends to pursue requests objected to, it must file its responses to the objections on an item-by-item basis within seven calendar days after the time the responding party files its objections. The party seeking discovery shall hand deliver or fax copies of its responses to the party objecting to the data requests contemporaneously with such filing.
- e. Parties receiving data requests shall serve answers to data requests to which they have not objected on the party seeking the discovery within fourteen calendar days of the filing of such data requests.



- f. If the Commission requires a party to answer data requests to which it has objected, that party shall have seven calendar days from the date of the Commission Order requiring disclosure to serve answers to such data requests.
- g. Except by leave of the Chair, intervenors shall serve no data requests pertaining to BellSouth's prefiled direct testimony after Friday, June 29, 2001; no data requests pertaining to Intervenor testimony shall be served after Friday, September 14, 2001; and no data requests pertaining to BellSouth's rebuttal testimony shall be served after Friday, October 12, 2001. Upon request, the Chair reserves the right to shorten reply times as necessary to facilitate the conclusion of discovery.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of May, 2001.

NORTH CAROLINA UTILITIES COMMISSION

*Gail L. Mount*

Gail L. Mount, Deputy Clerk

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