

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**
Frankfort, Kentucky

In the Matter of:)	
Investigation Concerning the)	
Propriety of InterLATA Services)	Case No. 2001-105
by BellSouth Telecommunications,)	
Inc., Pursuant to the Telecommunications)	
Act of 1996)	

AT&T'S REQUEST FOR CLARIFICATION

On April 26, 2001, the Commission issued its Order establishing certain filing requirements and deadlines in this case. Subsequent to that Order, the parties and Staff participated in an Informal Conference on May 10, 2001. Also subsequent to the Order, on April 30, 2001, the Staff issued a letter to BellSouth concerning the attestation prepared by Price Waterhouse Coopers for BellSouth, and BellSouth responded by letter to the Staff on May 7, 2001. In light of these events that have occurred after the Commission issued its April 26, 2001, Order, and since none of the information provided in the Informal Conference or the April 30th or May 7th letters are officially a part of the record of this proceeding, AT&T requests clarification of two aspects of the Commission's April 26, 2001, Order.

First, AT&T requests clarification regarding the issue of Kentucky-specific third party testing of BellSouth's Operations Support Systems ("OSS").¹ The FCC "consistently has found that

¹ OSS are the computer systems that enable CLECs to gain nondiscriminatory access to BellSouth's network in order to obtain resale services and unbundled network elements ("UNEs"). OSS includes all related processes, information, and personnel resources needed for BellSouth to provide CLECs with nondiscriminatory access to BellSouth's network. Specifically, the Federal Communications Commission ("FCC") has determined that OSS consists of at least five functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. See First

nondiscriminatory access to [OSS] systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC.” Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corp. et al, for Provision of In-Region InterLATA Services in Louisiana*, CC Docket No, 98-121 ¶ 83 (October 13, 1998) (“Louisiana II Order”). Moreover, nondiscriminatory access to OSS functions is part of the evaluation of all of the checklist items of Section 271, and, in particular, of the evaluation of nondiscriminatory access to UNEs and resale (checklist items 2 and 14). The FCC has explained:

The Commission must therefore examine a BOC’s OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv). In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well. Consistent with prior orders, we examine SWBT’s OSS performance directly under checklist items 2 and 14, as well as other checklist terms. (¶ 93)

Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region InterLATA Services in Texas* ¶ 93 (“Texas Order”).

The issue of BellSouth’s OSS is a critical component of this case. Accordingly, the Commission’s April 26, 2001, Order sets forth a deadline for BellSouth to file information and evidence to advise the Commission of the general basis of its proof of Section 271 compliance, including OSS issues. Specifically, the April 26, 2001, Order requires BellSouth to inform the

Report and Order, *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Aug. 8, 1996) (“*Local Competition First Report and Order*”), OSS includes mechanized systems as well as manual processes. See Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*,

Commission whether it intends to rely on data and results from the Georgia third-party OSS testing procedure or another platform of evidence. The Order also requires BellSouth to “establish whether there is functional equivalency between the proposed test plan and the system to be used in Kentucky, *i.e.*, the functional equivalency of the DOE/SONGS systems,” as well as other specific requirements pertaining to the OSS third party test information BellSouth intends to submit in Kentucky.

It appears that BellSouth is endeavoring to circumvent the requirements of the April 26, 2001, Order by submitting information outside the record concerning the attestation performed by Price Waterhouse Coopers. BellSouth should not be permitted to undermine the Commission’s April 26, 2001, Order by submitting the attestation it directed Price Waterhouse Coopers to prepare. The April 26, 2001, Order clearly contemplates that BellSouth will provide Kentucky specific OSS third party test information to the Commission as part of BellSouth’s 271 compliance filing. This is consistent with the April 30, 2001, letter from the Staff to BellSouth, in which Staff said it would advise the Commission that “end-to-end volume testing involving Kentucky-specific software, such as that conducted in [Georgia and Florida], involving software used to access SOCS systems in those states, is the type of evidence that will enable this Commission to render a decision concerning the sufficiency of BellSouth’s OSS in Kentucky.”

The Commission should not allow an attestation prepared by Price Waterhouse Coopers to substitute for a truly independent review of BellSouth’s Kentucky OSS. The attestation itself is clear that the assertions contained therein were written by BellSouth – not Price Waterhouse Coopers –

FCC 01-29, CC Docket No. 00-217 ¶ 112 and N. 311 (Jan. 22, 2001) (“SBC KS and OK Order”).

and remain “the responsibility of BST’s management.” Moreover, the attestation is limited only to a determination that BellSouth’s assertions are “fairly stated.” It is notable that the attestation makes no pretense as to the accuracy, appropriateness, or correctness of the assertions.

The FCC has made clear that any 271 review must start first with the RBOC’s performance in the state for which 271 approval is sought. To the extent the FCC has approved the RBOC’s 271 application in another state, the FCC’s decision may be “informed” by performance in the “approved” state. *See SBC KS and OK Order ¶¶ 35, 36.* Although BellSouth apparently is seeking to rely on Georgia data in Kentucky, neither the Georgia Public Service Commission, nor the FCC has approved any BellSouth 271 application. Indeed, no date has been established for the Georgia Public Service Commission to vote on BellSouth’s request, and the Georgia third party test is not complete at this time. Key exceptions involving the integrity of the performance data provided by BellSouth remain open. In addition, the Florida Public Service Commission is conducting a comprehensive third party test at this time. *See Attachment E,* for a comparison of the Georgia and Florida tests. The Florida test also is not complete. Therefore, any attempt to rely on Georgia is both inappropriate and premature.

Further, the attestation itself is too limited in scope to be of any real value to the Commission. In its May 7, 2001, Order, BellSouth appears to suggest that the issue of OSS comparability is limited to a review of “the DOE/SONGS issue.” That is simply incorrect, and is a primary indicator of the limitations of the attestation. In particular, the scope of the attestation is limited only to the software and computer systems used in pre-ordering and ordering. It does not address billing, provisioning, or maintenance and repair, all of which involve state-specific processes and information. It also fails to address in any way the performance of the pre-ordering and ordering

systems, and, in particular, the comparability of performance from one state to another and one system to another. It also fails to address any of the systems beyond SOCS, and it fails to address the underlying data used from state to state in populating the systems it does address.

BellSouth incorrectly asserts in its May 7th letter that its OSS are not specific to any state in the region. Specifically, BellSouth refers only to its DOE and SONGS pre-ordering and ordering computer systems. OSS, however, encompasses more than simply the software used for pre-ordering and ordering. The Tennessee Regulatory Authority (“TRA”) recently agreed. On May 15, 2001, the TRA adopted the *First Report and Recommendation of Pre-Hearing Officer* in Docket No. 01-00362 (In re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations)(Attachment A). The *Pre-Hearing Officer Report* notes that OSS are not limited to computer systems and software, but encompass “systems, databases, and personnel.” The *Pre-Hearing Officer Report* determines that “some legacy systems serve only a subset of the region, and some serve only Tennessee. Some OSS processes that serve only Tennessee customers are different from those that serve Georgia and Florida customers.” *See also* May 15, 2001, Directors Conference, Tr. at 31 (“some Legacy systems serve only a subset of the region and some serve only Tennessee. Some OSS processes that serve Tennessee customers are different from those that serve Georgia and Florida.”) (Attachment B).

Accordingly, the TRA decided to engage an independent third party consultant to determine what, if any, testing of BellSouth’s OSS is needed and to conduct any such testing if ordered by the TRA. Specifically, the consultant will prepare a report consisting of:

- (1) identification of the systems or processes used by BellSouth’s Tennessee operations for providing services and network elements to competitors;

- (2) an audit of BellSouth's Tennessee performance data; and
- (3) recommendations regarding performance and system testing necessary for the Authority to ascertain whether BellSouth is providing network services and elements to CLECs in Tennessee without impeding competition.

Pre-Hearing Officer Report at 5. In doing so, the consultant shall take into consideration the testing performed in other states, but will not simply adopt the results of those tests, and will verify the appropriateness, the independence, and the accuracy of the testing. *Id.*; Directors Conference, Tr. at 31-32. The approach adopted by the TRA allows BellSouth to build upon the work already performed in other states, including both Georgia and Florida, while ensuring the accuracy, completeness, and independence of the information the TRA must have to consult with the FCC on any *Tennessee* BellSouth Section 271 application.

AT&T requests that the Commission clarify its intent to follow a similar approach, as set forth in its April 26, 2001, Order. Specifically, AT&T requests that the Commission clarify that it will adhere to the procedural and filing requirements set forth in the April 26, 2001, Order, and that it will not allow BellSouth to circumvent the requirements pertaining to OSS and Kentucky-specific third party testing by filing the Price Waterhouse Coopers attestation. Finally, if BellSouth does intend to rely upon the attestation, AT&T requests that the Commission order BellSouth to provide to the parties copies of all supporting documents that pertain or relate to the effort of Price Waterhouse Coopers in preparing the attestation.

AT&T also requests that the Commission clarify that it intends to conclude its performance measures proceeding before the hearing on BellSouth's Section 271 compliance. An adequate performance measurements plan, as well as adequate performance results are required for BellSouth

to demonstrate that it is providing nondiscriminatory access to all of the items on the competitive checklist in Section 271. Additionally, even after the Commission has established those measures, it is imperative that sufficient data is collected and reviewed based on those measures for an appropriate time period after the measures have been established and before the Commission approves BellSouth's 271 application.

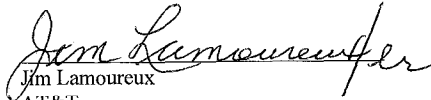
Given the remaining work regarding performance measures in Kentucky and other BellSouth states, it simply would not be the best use of this Commission's time and resources to consider performance data based on inadequate measures such as those BellSouth proposes to file. The Commission must review data based on adequate measures to sufficiently determine whether BellSouth is providing nondiscriminatory access to interconnection and network elements, and it must resolve all these issues *before* it embarks on a Section 271 hearing. Indeed, the FCC has clearly established that promises of future performance have no probative value in demonstrating present compliance. *Texas Order* ¶ 38. In the *Texas Order*, the FCC states, "In order to gain in-region interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior." *Id.* Unless or until BellSouth meets its burden, which cannot be met through promises of future performance, the Commission cannot find that BellSouth meets the requirements of the Section 271 checklist. BellSouth must demonstrate nondiscriminatory access and support through empirical evidence of sufficient quality and quantity. Memorandum and Opinion, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-298 (Aug. 19, 1997) ("*Ameritech Order*") ¶¶ 161, 211.

In the *Texas Order*, the FCC afforded the findings of Texas Commission substantial weight because it had already developed a comprehensive performance measurement and remedy plan. *Texas Order*, ¶ 11. Accordingly, it is necessary for a performance measures review to precede a compliance review of the Section 271 checklist, since performance measures and data is a substantial part of the evidence establishing nondiscriminatory access to the checklist items. This is also the approach adopted both in Tennessee and North Carolina. In Tennessee, the TRA has established two dockets, one to address performance measures and the other to address third party testing, and it has said that the performance measures docket will precede the third party testing docket. *Order Consolidating Docket Nos. 99-00347 and 00-00392 Into Docket No. 01-00193 and Opening Docket No. 01-00362*, Docket Nos. 01-00193, 01-00362, 99-00347, 00-00392 (May 15, 2001)(Attachment C). Similarly, the North Carolina Utilities Commission determined that it would conclude its currently pending performance measures docket before holding any hearing on BellSouth's Section 271 compliance. *Order Setting Hearing and Procedural Schedule*, Docket Nos. P-55, Sub 1022 (May 9, 2001)(Attachment D).

Currently, BellSouth does not have adequate performance measures in place in Kentucky, nor has it provided the necessary data and comparisons for this Commission to determine whether BellSouth is providing nondiscriminatory access to its network. In order to demonstrate compliance with Sections 251 and 271 of the Act, BellSouth must establish that it offers non-discriminatory access and interconnection to its network and that it provides nondiscriminatory support for resale and UNEs. Adequate performance measures and data provide the basis of a comprehensive review of BellSouth's compliance with the Section 271 checklist. Accordingly, AT&T requests that the Commission clarify that it will first establish adequate measures and then require BellSouth to

provide sufficient data based on those measures before the Commission undertakes a full consideration of BellSouth's Section 271 compliance.

Respectfully submitted,



Jim Lamoureux
AT&T

Room 8068
1200 Peachtree Street, N.E.
Atlanta, GA 30309
(404) 810-4196

Attorney for AT&T Communications of the South
Central States, Inc.

May 17, 2001