

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**

BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of)
)
Application of BellSouth) Case No 2001-105
Telecommunications, Inc to Provide)
In-Region InterLATA Services Pursuant)
To Section 271 of the)
Telecommunications Act of 1996)

**MOTION ON BEHALF OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC., AND TCG OHIO, INC.
TO CONTINUE OCTOBER 22, 2001 SECTION 271 HEARING**

COMES NOW AT&T Communications of the South Central States, Inc , and TCG Ohio, Inc (“AT&T”) and requests the Kentucky Public Service Commission (“Commission”) to continue the Section 271 hearing in this proceeding currently scheduled to begin on October 22, 2001 (the “October 22nd hearing”), until after the Federal Communications Commission (“FCC”) issues its decision regarding BellSouth Telecommunications, Inc.’s (“BellSouth’s”) anticipated Section 271 application for Georgia

Given past practice, AT&T fully expects that BellSouth will respond to this Motion by arguing that AT&T is seeking nothing more than additional delays to avoid an affirmative recommendation by this Commission supporting BellSouth’s Section 271 application. However, this Commission need look no further than BellSouth’s own words of recent weeks in Tennessee to fully discount BellSouth’s delay argument. Specifically, in Tennessee, BellSouth recently filed not one, but two, Motions seeking a delay of the Section 271 proceedings until after the FCC decides the Georgia application

Thus, based upon the logic of BellSouth's own request in Tennessee, this Commission should continue the October 22nd hearing as well. Such action is appropriate given that the status of Section 271 proceedings in Tennessee is very similar to those now pending in Kentucky. For example, both the Tennessee Regulatory Authority ("TRA") and this Commission have established procedural schedules but have not held any recent hearings regarding BellSouth's compliance with Section 271. Additionally, in both states, the TRA and this Commission are in the midst of completing performance measures proceedings, also with neither body having yet rendered its final decision regarding this important aspect of BellSouth's Section 271 application.

Additionally, as explained in greater detail below, given BellSouth's fundamental reliance on various Section 271 proceedings from Georgia to support its Section 271 applications in both Tennessee and Kentucky, such a continuance clearly is warranted even without BellSouth's recent filings in Tennessee. To this point, there is no secret that BellSouth has suggested to all state commissions in its territory (except for Florida) that they should look to KPMG Consulting, Inc.'s ("KCI's") third-party test in Georgia ("Georgia TPT") – not KCI's third-party test in Florida ("Florida TPT") – for information regarding whether BellSouth is meeting its obligations to provide nondiscriminatory access to its Operational Support Systems ("OSS")¹

Assuming, *arguendo*, the Georgia Commission votes in favor of a Georgia application October 2nd and BellSouth files its Georgia application at the FCC a few days thereafter, by early January 2002 this Commission will be able to review for itself

¹ There also is no secret that BellSouth missed its prediction of a mid summer 2001 approval of its Georgia Application and that the Georgia Commission will not rule on that application until October 2, 2001

the FCC's decision regarding the adequacy of KCI's third-party test in Georgia. Logically, this Commission's review should take place when the parties are able to comment fully on the FCC's decision regarding Georgia in a hearing before this Commission. Moreover, to the extent this Commission moves forward with the October 22nd hearing and thereafter the FCC decides the Georgia Application in early January 2002, there is a strong probability that this Commission would need to have yet another hearing to consider testimony from the parties regarding the impact of this most recent FCC decision. This certainly would not be a good use of this Commission's resources, but instead would thwart the goal which BellSouth fully supports in Tennessee of promoting "judicial economy and better allocation resources"²

I. BELLSOUTH HAS SOUGHT TO POSTPONE THE SECTION 271 PROCEEDING IN TENNESSEE BASED IN PART ON THE UNRESOLVED NATURE OF THE GEORGIA PROCEEDINGS; ACCORDINGLY, GIVEN THE SIMILARITY OF PROCEEDINGS IN KENTUCKY, THIS STATE DESERVES SIMILAR "TENNESSEE" TREATMENT FROM BELLSOUTH

As discussed above, support for AT&T's request to continue the October 22nd hearing can be found in BellSouth's own filings in Tennessee. On September 14, 2001, BellSouth filed a Motion to Amend Procedural Schedule in the Tennessee Section 271 proceedings (attached hereto as Exhibit 2). In its motion, BellSouth requested "that the Hearing Officer temporarily defer consideration of the remainder of the Section 271 issues (including suspension of testimony filings) until after January 1, 2002."

² See Motion to Amend Procedural Order (filed by BellSouth in the Tennessee proceedings on September 18, 2001) (attached hereto as Exhibit 1), at 3

BellSouth sought to defer proceedings in Tennessee based in part upon “the representations that BellSouth will not ask [the Tennessee Regulatory] Authority to hear this matter prior to an FCC decision in the Georgia 271 case.” Given that BellSouth deems it appropriate to await the FCC’s decision regarding the Georgia Application before going forward in Tennessee, there is no basis for moving forward with the October 22nd hearing in this state. As in Tennessee, in Kentucky BellSouth seeks to rely upon the Georgia Service Quality Measurement plan (“SQM”) and the Georgia TPT to support its Section 271 application. Accordingly, there is not much difference procedurally between these two states given that BellSouth is proposing that both rely upon the Georgia SQM and the Georgia TPT.

Moreover, in the Tennessee proceeding, BellSouth filed yet another “Motion to Amend Procedural Order” on September 18, 2001. *See* Exhibit 1 In this second motion, BellSouth sought to consolidate all remaining Section 271 issues in Tennessee and schedule them to be heard in late February 2002 by the TRA. BellSouth justified this request by expressing its view that “the Tennessee 271 proceeding should run parallel with the Authority’s OSS proceedings.” In Tennessee, the TRA is evaluating the adequacy of BellSouth’s OSS in an OSS proceeding separate and apart from the Section 271 proceeding. AT&T agrees that a determination that BellSouth’s OSS are adequate is a necessary precursor to a Section 271 recommendation, but the fact of the matter is that the FCC has not yet determined that either the Georgia TPT or the Georgia SQM provides persuasive evidence of the adequacy of BellSouth’s OSS. Accordingly, this Commission should wait until the FCC evaluates the Georgia TPT and the Georgia SQM in the context of the upcoming Georgia Application

If past FCC decisions are predictive, when reviewing the Georgia Application, the FCC will provide guidance on the completeness and relevance of the Georgia TPT and the Georgia SQM as well as the reporting of BellSouth's data under the Georgia SQM. Such guidance will be forthcoming regardless of whether the FCC approves or disapproves BellSouth's Georgia Section 271 application.³ That guidance can only assist this Commission in making its Section 271 recommendation for Kentucky. Additionally, if the FCC does not approve the Georgia application, then it would be a waste of this Commission's time and resources to review an application that the FCC ultimately determines is "noncompliant." To this point, just like BellSouth argued in Tennessee that it needed to conserve its "regulatory resources" and thus twice has moved to continue the Section 271 proceedings in that state, CLECs should not be forced to waste their limited regulatory resources unnecessarily on premature proceedings in Kentucky.

II. BELLSOUTH'S RELIANCE ON THE GEORGIA PROCEEDINGS TO ESTABLISH NONDISCRIMINATORY SUPPORT IS PREMATURE

As discussed above, in its effort to meet its burden of proof to support its Section 271 application in Kentucky, BellSouth has relied heavily on proceedings in Georgia claiming that: (1) its Kentucky actual commercial usage data is based on an allegedly Georgia SQM and (2) its OSS provide nondiscriminatory access based on the results of the Georgia TPT despite the fact that this test has not yet been completed.⁴

³ Deferring these proceedings until the FCC reviews the BellSouth Georgia application also would have the added benefit of providing this Commission with much more complete results from the ongoing and more comprehensive Florida TPT.

⁴ BellSouth also asserts that its OSS are regional, thus providing support for its argument that this state commission need only look to the Georgia TPT to determine the adequacy of its OSS.

However, neither the Georgia SQM nor the Georgia TPT upon which BellSouth relies has yet been reviewed by the FCC, much less approved by the FCC. Accordingly, continuing the October 22nd hearing will provide this Commission with an opportunity to fully review the FCC's decision on the Georgia Application before rendering a Section 271 decision in Kentucky

To support its case in Kentucky, BellSouth has produced its commercial usage data in a format that BellSouth claims is produced in compliance with the Georgia SQM. *See* Direct Testimony of Alphonso J Varner, Case No 2001-105, filed May 18, 2001 at 3-4 & 9-10 BellSouth witness Varner claims that these data reports contain information deemed adequate by the FCC. Indeed he states that the data are presented in "the FCC format" *Id* at 10

AT&T repeatedly has questioned the propriety of BellSouth's reliance on data produced in BellSouth's "Monthly State Summary" attached to witness Varner's testimony.⁵ Evaluating BellSouth performance in Kentucky against the Georgia SQM makes little sense. Such action would require this Commission to resolve pending disputes regarding BellSouth's compliance with the Georgia Commission's Order on performance measures as well as determine the reliability of BellSouth's Georgia performance reporting and data even before the FCC completes its review of this information

⁵ AT&T has presented evidence in this proceeding that the data is not produced in compliance with the SQM plan ordered by the Georgia Commission. *See* Rebuttal Testimony of Cheryl Bursh, Case No 2001-105, filed July 9, 2001 at 9-20. Instead, BellSouth unilaterally has modified the plan, contrary to the order of the Georgia Commission, and reports data under a modified plan of BellSouth's own choosing. *Id*. AT&T also has presented evidence that BellSouth cannot and does not produce accurate reliable data under the proposed plan. *See* Rebuttal Testimony of Sharon E Norris, Case No 2001-105, filed July 9, 2001 ("*Norris Data Integrity Testimony*") at 4-23

Furthermore, BellSouth's reliance on the Georgia TPT also is misplaced. Again, the FCC has yet to determine the adequacy of the Georgia TPT. Indeed, the Georgia TPT is not complete in that the important evaluation of BellSouth's ability to collect and report accurate performance data still has open exceptions. See *Norris Data Integrity Testimony* at 21-22.⁶ Moreover, as summarized in the Third-party Test testimony of AT&T witness Norris, the Georgia test had numerous deficiencies in its design and execution, including the fact that the test was not as comprehensive as the test accepted by the FCC in New York or the ongoing Florida test, thus calling into question its usefulness in Kentucky. See Rebuttal Testimony of Shaon E Norris, Case No. 2001-105, filed July 9, 2001 ("*Norris Third-Party Test Testimony*") at 5-26.

Further, BellSouth effectively has asked this Commission to disregard the ongoing, more comprehensive Florida TPT and to accept the Georgia TPT as persuasive evidence that BellSouth provides nondiscriminatory access to its OSS in Kentucky. See Direct Testimony of Ronald M Pate, Case No. 2001-105, filed May 18, 2001 at 8-9 & 191. However, the Florida TPT, which is much more like the test the FCC accepted in New York and the recently accepted Pennsylvania test, is uncovering numerous deficiencies in areas not tested in Georgia and continues to list deficiencies upon which KCI provided a passing grade to BellSouth in the Georgia TPT. See *Norris Third Party Test Testimony* at 6-7. Specifically, the latest results from the Florida test reveal that, as of September 12, 2001, there exist 64 open exceptions, or deficiencies, in BellSouth's

⁶ The Georgia TPT continues in that KCI has uncovered discrepancies between the data collected directly out of BellSouth's legacy systems and the data BellSouth reports. KCI also has been unable to reconcile the data BellSouth collected on its performance for KCI as a pseudo-CLEC with the data KCI collected on that performance. *Norris Data Integrity Testimony* at 22.

OSS. In addition, there exist 38 additional observations, or potential deficiencies, in BellSouth's OSS. See Florida OSS Testing of BellSouth, Status of Observations and Exceptions as of September 12, 2001 (attached hereto as Exhibit 3)

Despite the numerous questions raised about the Georgia SQM and the Georgia TPT, BellSouth continues to ask this Commission to rely on various Georgia proceedings to the exclusion of ongoing activities in other states. Such reliance is not appropriate. Even assuming, *arguendo*, that the Georgia Commission votes to support BellSouth's Georgia application on October 2nd, the adequacy of the Georgia SQM and Georgia TPT still must pass muster at the FCC. Accordingly, until the FCC has decided the Georgia Application, it would be premature for this Commission to rely solely upon the results of the Georgia SQM and Georgia TPT.

There is no dispute that, in the past, the FCC has approved a Regional Bell Operating Company's ("RBOC's") Section 271 application which relies upon the results of third-party tests conducted in other states.⁷ However, the FCC only has relied upon third-party tests from other states when the FCC already had reviewed the applicability and adequacy of other states' third-party tests in the context of previous Section 271 applications. Moreover, it is abundantly clear from the FCC's *Kansas-Oklahoma Order*

⁷ See Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Tel Co., and Southwestern Bell Communications Services, Inc (d/b/a Southwestern Bell Long Distance) for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC 01-29 CC Docket No. 00-217 ¶ 35 (rel. January 22, 2001) ("*Kansas-Oklahoma Order*"), ¶ 35. See also Memorandum Opinion and Order, *In the Matter of Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide in-Region, InterLATA Services in Connecticut*, FCC 01-208, CC Docket No. 01-100 (rel. July 20, 2001) ("*Verizon Connecticut Order*"). The FCC accepted the ILEC's Connecticut § 271 application based in part upon performance data from the ILEC's New York § 271 application that the FCC previously had reviewed and approved, together with the finding that the ILEC conducted its Connecticut operations out of New York "using the same systems and processes." See *id.* ¶¶ 6-7.

that the FCC will not rely upon another state’s test data or other findings not previously reviewed by it in a previous Section 271 application. See *Kansas-Oklahoma Order*, ¶ 35 (“Where SWBT provides evidence that a particular system reviewed and approved in Texas is also used in Kansas and Oklahoma, our review of the same system in this proceeding will be informed by our findings in the *SWBT Texas Order*. While our review may be informed by our prior findings, we will consider all relevant evidence in the record”) (emphasis added). See also *id.* ¶ 36 (applicant may “rely on findings made in a prior, successful section 271 application) and ¶ 37 (“we cannot simply rely on our findings relating to an applicant’s performance in an anchor state at the time we issued the determination for that state”) (emphasis added).

Importantly, the FCC never has approved an application by an RBOC which relies upon unapproved test results or performance standards from a different state. Consequently, until the FCC reviews and approves the Georgia SQM (and results therefrom) and the Georgia TPT, it would be imprudent for this Commission to rely upon this information in deciding the pending Section 271 application for Kentucky. Thus, the Commission should continue this Commission’s October 22nd hearing until such time as the FCC rules on the Georgia Application.⁸ This approach is no different than when BellSouth asked the TRA to delay the Section 271 proceedings pending in Tennessee

⁸ If the FCC approves the Georgia application, this Commission will have to determine whether the findings in Georgia apply equally to this state. The FCC accepted the relevance of its prior findings in Texas only upon the ILEC’s demonstration that “many of its systems and processes used in Kansas and Oklahoma, as well as the legal obligations imposed by the Kansas and Oklahoma Commissions, are the same as those reviewed and approved in the Texas § 271 proceeding.” *Kansas-Oklahoma Order*, ¶ 35

III. A POSTPONEMENT PENDING RESOLUTION OF THE GEORGIA PROCEEDINGS WOULD ENABLE BOTH THE COMMISSION AND THE PARTIES TO CONSERVE RESOURCES

As explained above, BellSouth's reliance on the Georgia SQM and Georgia TPT requires a continuance of the October 22nd hearing in this proceeding. As BellSouth recognized in its recent Tennessee motions, it makes no sense to proceed on the basis of the Georgia SQM and the Georgia TPT until after the FCC has reviewed and evaluated this Georgia-specific information.


Fundamentally, the continuance requested by AT&T would conserve the limited resources of this Commission and the parties. It would be unnecessary and wasteful for BellSouth to continue to press this Commission to make a decision regarding its Section 271 application in Kentucky based upon only existing information from Georgia that has not yet been reviewed by the FCC. A better course would be to wait and review this upcoming decision of the FCC, which will occur in the very near term. By continuing the October 22nd hearing until that time, the Commission would promote efficiency and economy. Indeed, the FCC likely will provide definitive guidance on many of the issues currently in dispute in this proceeding.

Such a decision also would make it possible for the parties to conserve their own resources. As mentioned above, concern for its own "limited regulatory resources" was one of the reasons that BellSouth filed its Motions in Tennessee. *See* Exs. 1 and 2. This Commission also is entitled to have the parties adequately prepared and focused on the review that is conducted in this state. In this respect, granting AT&T's request to continue the October 22nd hearing until such time as the FCC issues a decision regarding the Georgia Application would have just such an effect.

CONCLUSION

BellSouth has chosen to make decisions and proceedings in Georgia an integral part of its Section 271 application in Kentucky. However, BellSouth treats those Georgia issues as if the FCC already has approved them. It has not.⁹ Thus, review of BellSouth's Georgia-dependent application in this state before the FCC has decided the Georgia Application would be a waste of this Commission's resources. Continuing the October 22nd hearing should not create an unreasonable delay, and it will conserve resources and also provide this Commission with important additional information about the Florida TPT. Accordingly, based on all the foregoing, this Commission should continue the October 22nd hearing until the FCC decides the Application.

Respectfully submitted,

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⁹ Indeed, the Florida TPT continues to reveal deficiencies of BellSouth's OSS and this will be a pivotal issue presented by many CLECs to the FCC in the context of the Georgia Application.