COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In re:	)	
	)	
Application of BellSouth Telecommunications,	)	Docket No. 2001-00105
Inc. to Provide In-Region InterLATA Services	)	
Pursuant to Section 271 of the	)	
Telecommunications Act of 1996	)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION TO SECCA'S MOTION FOR REHEARING AND RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its opposition to SECCA's Motion for Rehearing and Reconsideration (the "Motion"). The Commission should deny the Motion for the following reasons: (1) the Motion presents no new evidence or law that warrants reconsideration by the Commission; and (2) the FCC's recent decision on BellSouth's Georgia/Louisiana applications fully supports the Commission's decision.[1]

Generally, SECCA takes several flawed positions in its filing. First, as should be patently obvious from the tone of the filing, SECCA's principal purpose is to seek more delay in the process and more delay of benefits to the consumers of Kentucky. This strategy is evidenced by SECCA's argument that the Commission should delay its approval of BellSouth's application until the Commission "has the opportunity to make sure that *any subsequent OSS enhancements* actually work as promised." (Motion, at 9)(emphasis added). Under SECCA's theory, the Commission would never address BellSouth's application because BellSouth will always be enhancing its OSS.

Second, SECCA contends that the Commission relied upon promises of future performance (p. 2) in approving BellSouth's application. This is not the case. For every

[1] Memorandum Opinion and Order, *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. 02-35, May 15, 2002 ("*Georgia/Louisiana Order*").

checklist item, the Commission found BellSouth in current compliance with the requirements of section 271.[2] While the Commission indicated in several instances that it would continue to monitor BellSouth's performance, such monitoring does not mean that BellSouth is not in current compliance with its obligations. Indeed, even the FCC, in its recent *Georgia/Louisiana Order,* indicated in several instances that it would continue to monitor BellSouth's performance to ensure that BellSouth remained in compliance with its obligations. *See, e.g.* §§ 118, 146, 193, 300, and 307. This intent to monitor, however, does not change the fact that both the Commission and the FCC found BellSouth in current compliance with the checklist.

Third, throughout its filing, SECCA makes the assumption that because an issue was not specifically addressed in the Advisory Opinion, the Commission did not consider the evidence before it. *See e.g.* Motion, at 2 ("Commission does not address a number of significant problems and concerns raised by CLECs in this proceeding, such as inadequate line loss notification, improper trunk fragmentation, collocation issues and trunk blockage issues."). This assumption is speculative and without basis in fact. The correct assumption is that the Commission reviewed all of the evidence before it and made its decision accordingly. The fact that the Commission chose not to address every allegation in its Opinion should not be construed as meaning that the Commission ignored the evidentiary record.

DISCUSSION

The Motion Presents No New Evidence Or Law That Warrants Reconsideration Of The Commission's Decision.

A motion for reconsideration is not an opportunity for the losing party to reargue evidence already put before the Commission. Rather, a motion for reconsideration must present new evidence or law that the Commission had not previously considered and which, if

[2] As set forth in its Motion for Clarification, the Commission approved BellSouth's current compliance with checklist item 2, but will continue to monitor the implementation of the Single C ordering process.

considered, could have a material impact on the Commission's decision. SECCA has not presented any such law or evidence, and thus the Commission should deny the Motion.

SECCA first claims that the Commission should reconsider its decision that BellSouth's provision of electronic ordering for line splitting is reasonable. SECCA does not, however, present a single fact to justify its position that the Commission's decision needs to be reconsidered. Rather, it simply argues that the Commission's decision wasn't ripe because the functionality had not been used. This argument, which presents no new evidence, is not grounds for reconsideration. Moreover, assuming *arguendo* that the argument had merit back in January, when the Commission rendered its opinion in late April, the functionality had been in place for over 3 months and not a single CLEC had complained about it. In addition, the FCC recently supported the Commission's conclusion in the *Georgia/Louisiana Order*, finding that "BellSouth implemented permanent OSS for line splitting on January 5, 2002, and competitive LECs have raised *no complaints* about this new process. We find, therefore, that given the record before us, BellSouth's process for line splitting orders is in compliance with the requirements of the checklist at this time." *Georgia/Louisiana Order,* ¶ 243.

SECCA next alleges that the Commission should reconsider its decision based on the Commission's statement that BellSouth's DSL policy may become an issue "in the future." This too is a red herring. BellSouth's current policy meets the requirements of the competitive checklist according to both the Commission and the FCC. *See Georgia/Louisiana Order,* ¶ 157. As discussed above, the fact that the Commission is going to continue to monitor this policy on a going-forward basis has no bearing on BellSouth's current compliance with section 271, and provides no grounds upon which the Commission should reconsider its decision.

Next SECCA argues that the Commission should reconsider its decision based on an order issued by the Tennessee Regulatory Authority ("TRA") on two BellSouth product offerings. (Motion, at 4-6). This, too, fails to constitute new evidence that necessitates granting a motion for reconsideration. First, the BellSouth programs at issue in the TRA decision were in effect during the pendancy of this case. Thus, if SECCA really believed them to be an issue, SECCA could have raised these specific programs to the Commission. In fact, no complaint regarding these allegations has been filed with this Commission. SECCA, however, did not and cannot now be heard to complain about a perceived failure in its own case. Second, the TRA decision does not constitute "evidence" upon which the Commission can grant a motion for reconsideration. It does not constitute facts, nor is it binding precedent on this Commission. Third, when BellSouth learned of the combined offering that is the subject of the TRA's Order, BellSouth ceased marketing the combined offering region-wide and no customers have been allowed to sign up for that offering. Thus, even had it been an issue, the issue no longer exists. Finally, the TRA's order was brought to the FCC's attention, and the FCC did not consider it a violation of the public interest standard. *See Georgia/Louisiana Order,* ¶ 301 (citing TRA Order, among other allegations, FCC held that "we also reject commenters' allegations that BellSouth's applications are not in the public interest because of the marketing tactics engaged in by BellSouth.")

SECCA then simply reiterates several issues that were litigated extensively in the proceeding. First, SECCA asks the Commission to revisit its claim that the Commission must conduct its own third-party test (Motion, at 6) and claims that the Commission's decision that BellSouth's OSS are regional is "premature." (Motion, at 7). Once again, SECCA presents no new facts or law and simply asks the Commission to change its mind. This request is especially

spurious in light of the FCC's recent conclusion that BellSouth's OSS in Georgia and Louisiana, the two states under consideration, are regional. *Georgia/Louisiana Order,* ¶ 110. This finding is particularly pertinent to the Commission in that Georgia and Louisiana use DOE and SONGS, respectively. Moreover, this Commission conducted its own review of the extensive regionality evidence presented to it and, therefore, it need not defer to a similar review of a sister state on this issue.

SECCA also asks the Commission to revisit the extensively litigated question of whether the Commission must wait on the Florida Third Party Test. (Motion, at 7-8). As with all the issues raised in the Motion, SECCA presents no new facts or law, but simply demands that the Commission must look at the issue again because, in SECCA's opinion, the Commission got it wrong. Needless to say, this is not grounds for granting a motion for reconsideration. SECCA tries to bolster its argument by alleging that the Commission erred in "rely[ing] on the FCC's determination of the sufficiency of BellSouth's OSS to ascertain whether CLECs in the Commonwealth have necessary and nondiscriminatory access to BellSouth's OSS." (Motion, at 8). Given the thousands of pages of evidence filed by the parties, the extensive hearings conducted by the Commission, and the months of careful deliberations undertaken by the Commission, it seems highly unlikely that the Commission simply followed the FCC as SECCA alleges (particularly given that the Commission decided in advance of the FCC's decision). It seems more likely, in BellSouth's view, that the Commission carefully and thoroughly considered all of the evidence before it and reached a decision on the merits of BellSouth's position. SECCA's apparent opinion that the Commission abdicated its responsibilities has no basis in fact, and certainly is not grounds for reconsideration of its decision.

With respect to SECCA's allegations on Single C, there is no question that the Commission found BellSouth in current compliance with checklist item 2. As detailed in its Motion for Clarification, BellSouth understands the Order to mean that while BellSouth's two-order process meets the requirements of the checklist, the Commission is interested in BellSouth's fulfillment of its commitment to implement Single C in Kentucky and will continue to monitor such implementation. The Commission's finding on this item was seconded by the FCC in the *Georgia/Louisiana Order*. *See Georgia/Louisiana Order,* ¶ 167 (finding that BellSouth's two-order process met the requirements of the checklist).

Change control is the next issue raised by SECCA. (Motion, at 10). On this issue, SECCA does not even purport to be raising a new issue for the Commission's reconsideration – rather, it simply stresses the importance of the change control process and complains that the Commission's intent to "monitor" the process somehow means that the Commission's finding that BellSouth has complied with its obligations is moot. As discussed in the Introduction, this position is nonsensical. During the course of the proceeding, the parties presented, and the Commission considered, extensive evidence about the change control process. The Commission considered all of this evidence and concluded that BellSouth had complied with checklist item 2. SECCA presents no new evidence challenging that conclusion. Moreover, the FCC agrees with the Commission's conclusion. *See Georgia/Louisiana Order,* ¶¶ 179-198 (documenting how BellSouth meets each of the FCC's stated change management requirements).

SECCA then raises various alleged issues with BellSouth's SQM, (Motion, at 10-12), all of which were raised during the course of the proceeding and reviewed by the Commission in Phase I on performance measurements. The main issue SECCA raises (repeating its prefiled testimony) is that BellSouth has not complied with the Georgia Public Service Commission's

Order in implementing the Interim SQM. It is difficult to understand why SECCA keeps raising this same argument, given that it was rejected by the Georgia Commission itself and, more recently, by the FCC in the *Georgia/Louisiana Order*. Most importantly, however, for this Commission's purposes in ruling on the Motion, SECCA raised the identical issues during the hearing. Thus, these issues present no grounds for reconsideration of the Commission's decision.

Finally, SECCA points to alleged "new evidence" of so-called "anticompetitive allegations." (Motion, at 12-14). This laundry list of allegations is undocumented, unsubstantiated, and frivolous and therefore does not constitute grounds for reconsideration. For example, SECCA claims that BellSouth is acting in an anticompetitive manner because it is filing various tariffs and it is "too hard" for CLECs to keep up with such tariffs. With all due respect to counsel for SECCA, the very essence of a competitive market is knowing what your competitors are doing, and trying to do it better, cheaper or faster in the marketplace. What SECCA appears to be asking for, in contrast, is delay of or limitation on the benefits of competition to consumers. SECCA again raises BellSouth's DSL policy again, calling it "questionable anticompetitive activities," while ignoring the FCC's holding in *Georgia/Louisiana Order* that expressly held that BellSouth's policies are not a violation of section 271. The other allegations are pure supposition, as evidenced by SECCA's own admission that it has no idea whether its allegations are true. *See Motion,* at 13 ("*if true,* this permits a BellSouth sales representative…). None of these conclusory allegations constitute grounds for reconsideration of the Commission's decision.

CONCLUSION

For the reasons set forth herein, BellSouth respectfully requests that the Commission deny the Motion for Rehearing and Reconsideration.

This 24th day of May, 2002.

Respectfully submitted,

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