

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETY)	
OF INTERLATA SERVICES BY BELLSOUTH)	CASE NO.
TELECOMMUNICATIONS, INC., PURSUANT TO)	2001-105
THE TELECOMMUNICATIONS ACT OF 1996)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO AT&T'S MOTION TO CONTINUE HEARING

BellSouth Telecommunications, Inc. ("BellSouth"), by and through undersigned counsel, respectfully files its Response to the Motion on Behalf of AT&T Communications of the South Central States, Inc., and TCG of Ohio, Inc. to Continue the October 22, 2001, Section 271 Hearing as follows:

AT&T's motion for delay is clothed in a mantle of concern for judicial economy and anticipates that BellSouth will respond with arguments that AT&T's real motivation is delay to avoid an affirmative recommendation by this Commission supporting BellSouth's Section 271 application. BellSouth certainly has its suspicions about AT&T's motives regarding the application of any RBOC to enter the interLATA market. It is indisputable that any delay in a 271 proceeding is in AT&T's self interest. Based on its experience in numerous dockets, BellSouth doubts that

there would even be a time that AT&T would agree that it is appropriate for a Bell Operating Company ("BOC") to bring a 271 application to state and federal agencies for approval.

Nevertheless, BellSouth need not speculate on AT&T's motives to respond to the motion for delay that is before this Commission.

The Telecommunications Act of 1996 (the Act) clearly indicates that it is the BOC's right to determine when it believes it has met the requirements of 47 U.S.C. 271 and when it will petition the FCC for authorization to provide interLATA services. See 47 U.S.C. 271(d). Therefore, the Act makes clear that the timing of a 271 application is in the hands of the BOC and is not controlled by an intervener.

On or about April 17, 2001, BellSouth advised the Kentucky Public Service Commission at an informal conference that it intended to take a 271 application for Kentucky to the FCC in the fall of 2001. Based on this representation, the Commission, on its own motion, opened Case NO. 2001-105 to receive evidence from BellSouth concerning its compliance with the requirements of Section 271 in order for the Commission to be prepared to fulfill its consultative role to the FCC under Section 271(d) (2) (B). The Commission incorporated into this docket the record of Case No. 96-608 in which it has previously determined that BellSouth had met seven of the fourteen checklist items outlined in Section 271(c) (2) (B).

Thereafter, with input from all interested parties, including AT&T, the Commission set out a procedural schedule that included the filing of written testimony by BellSouth and intervenors, the opportunity for written discovery by the Commission and intervenors, and a hearing in which the parties would present their witnesses for cross-examination. The Commission later determined that it would bifurcate the hearing into two parts: a proceeding to review proposed performance measures and penalties which concluded the week of September 24 and a proceeding to review evidence regarding the presence of facilities-based competition, Section 271(c)(2)(A), and compliance with the competitive checklist, Section 271(c)(2)(B), to commence on October 22, 2001.

Throughout this proceeding, BellSouth has stated that it intends to rely in part on third party testing conducted by KPMG Consulting in Georgia and parity data from regional and Kentucky-specific results based on measures approved by the Georgia Commission. BellSouth has produced this evidence and is prepared to defend it through its witnesses at the October 22, 2001, hearing.

At no time during the Commission's determination of a procedural schedule did AT&T suggest that the Commission should postpone its hearing until the FCC made a determination of an application for interLATA relief by BellSouth for the State of

Georgia. In fact, the Georgia proceeding has been under way for a considerable time when this Commission set its procedural schedule, and AT&T was fully aware that a decision from the Georgia Commission would likely occur during the proceedings by this Commission in Kentucky. Only after the Louisiana Commission found that BellSouth has met the requirements of Section 271 and the Georgia staff made a similar recommendation¹ did AT&T file for delay in the Kentucky proceedings that are ready for hearing on October 22. The Commission should reject AT&T's motion for delay.

BellSouth has the right to proceed with its 271 application and is prepared to defend its evidence of 271 compliance. AT&T offers no reason why it cannot present its case in opposition. Throughout this proceeding, AT&T has argued that this Commission should await the Florida test results. No Commission in the BellSouth region has delayed a Section 271 review to await the final results of the Florida third party tests. In fact, as stated earlier, in Louisiana, relying in part on the Georgia testimony of KPMG, that Commission found BellSouth compliant with Section 271 requirements. Nothing prevents AT&T from presenting its case regarding its view regarding the relevancy of the Florida test at the October 22, 2001, hearing.

¹ Five days after AT&T filed its motion for delay in Kentucky, the Georgia Commission voted 4-0 to approve its staff's recommendation that BellSouth has met the requirements of Section 271.

Finally, BellSouth's conduct of its 271 proceeding in Tennessee is not a basis for delay in Kentucky. BellSouth's 271 case in that state did not commence until July 30, 2001, and the posture of the proceedings in that state has developed on a different track than those in other states. BellSouth's suggestion to the Tennessee Regulatory Authority that multiple hearings spread over several months be consolidated into one hearing in February 2002 makes sense in the context of that state's proceeding. It is not, however, a basis for delay in Kentucky where all evidence and discovery have been submitted and everything is in place for the October hearing.

CONCLUSION

Without question, this Commission has control of its dockets and all procedural matters pertaining thereto. Nevertheless, it is BellSouth, not an intervenor, that has the option under 271 to determine when it is ready to defend its compliance with the requirement of Section 271 of the Act. BellSouth has filed its evidence, is prepared to present its witnesses for cross-examination on October 22, 2001, and to have the Commission make its determination regarding that evidence. AT&T presents no compelling basis as to why it cannot make its case in opposition on the date set by this Commission. For the

foregoing, BellSouth respectfully requests that AT&T's motion be denied.

Respectfully submitted,

Creighton E. Mershon, Sr.
General Counsel-Kentucky
601 W. Chestnut Street, Room 407
P. O. Box 32410
Louisville, KY 40232
Telephone No. (502) 582-8219

Fred J. McCallum, Jr.
Lisa Spooner Foshee
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375
Telephone No. (404) 335-0793

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

414219