BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION5

In Re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996.	)	Docket No. 960786-TL Filed: September 23, 1997

THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525

Attorneys for the Florida Competitive Carriers Association

ORIGINAL

LAW OFFICES
McWHIRTER, REEVES, McGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866
FAX (813) 221-1854
CABLE GRANDLAW

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE
117 S. GADSDEN
TALLAHASSEE, FLORIDA 32301

TELEPHONE (904) 222-2525
FAX (904) 222-5606

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
HARRY LEE COE, IV
LINDA DARSEY HARTLEY
C. THOMAS DAVIDSON
STEPHEN O. DECKER
LINDA E. JORGE
VICKI GORDON KAUFMAN
JOSEPH A. McGLOTHLIN
JOHN W. McWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
DAVID W. STEEN
PAUL A. STRASKE

September 23, 1997

HAND DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 960786-TP, In re: Consideration of BellSouth Telecommunications, Inc. entry into InterLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the FCCA's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief in the above docket. Also enclosed is a disk containing the brief in WordPerfect 5.1 format.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525

Attorneys for the Florida Competitive Carriers Association

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PRELIMINARY STATEMENT

Pursuant to rule 25-22.056, Florida Administrative Code, the Florida Competitive Carriers Association files its Post-Hearing Statement of Issues and Positions and its Post-Hearing Brief.[1]

INTRODUCTION

A.

BellSouth's Failure to Comply With the Act and Implementing Rules

The Telecommunications Act of 1996 (Act) imposes on BellSouth the obligation to provide new entrants with the tools necessary to open the local market to competition via all three entry strategies -- UNEs, resale, and facility-based interconnection. These requirements are set out in the Act and in the FCC's implementing rules.

During the hearing, the Commission heard about two categories of problems that demonstrate BellSouth's lack of compliance with the Act and the rules. First, for those portions of the Act and rules which BellSouth has decided to accept, the Commission heard testimony from many carriers indicating that BellSouth is not living up to the promises it has made. For example, as to carriers with whom BellSouth has interconnection agreements, details of BellSouth's lack of compliance abound (i.e., failure to provide timely collocation, failure to provide timely firm order confirmation, failure to pay reciprocal compensation . . .).

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[1] The following abbreviations are used in this brief. The Florida Competitive Carriers Association is referred to as FCCA. BellSouth Telecommunications, Inc. is called BellSouth. The Florida Public Service Commission is referred to as the Commission. The Federal Communications Commission is called the FCC.

Second, and even more important, there are numerous provisions of the Act and binding implementing rules (which are critical to competition) which BellSouth refuses to recognize even exist. This lack of regard for the Act -- and the valid, binding rules implementing it -- is illustrated by BellSouth's failure to accept its obligation to provide nondiscriminatory access to unbundled network elements; its failure to accept its obligation to provide unbundled local switching; its failure to accept its obligation to provide unseparated network combinations; and as a consequence, its failure to accept its obligation to change customers between itself and new entrants in the same interval that it changes customers between IXCs, made possible by these tools.

BellSouth has failed to provide and support the unbundled local switching element as the Act and rules require. It cannot, or will not, provide usage sensitive bill detail, including the detail needed for new entrants to bill terminating and originating access charges to long distance carriers. It will require new entrants to "negotiate" to get such data and then pay an additional charge for it in contravention of the Act's requirements.

Further, BellSouth has absolutely refused to provide unseparated combinations of network elements to entrants without disruption, despite the clear FCC rules directly addressing this requirement. Rather, BellSouth has unequivocally testified that when entrants order unseparated network combinations, each network element will be provided separately and the entrant will be charged a "glue" charge to recombine them, thus disrupting service to the end user. BellSouth's refusal to provide network element combinations without disruption violates the FCC's rules and the requirements

of Ameritech.[2] This failure severely hampers, if not forecloses, the ability of new entrants to provide service using UNEs as the Act provides. Not only is such action not compliant with the Act, it directly contravenes it. These actions demonstrate that BellSouth is not Checklist compliant.

Because BellSouth insists on this unnecessary and unlawful separation of network elements before it will provide the entrant its requested access, BellSouth is inserting an unnecessary and costly manual process -- physical network disruption -- into what could otherwise be a fully automated, software-controlled event. Insisting on network disruption both forces the customer to accept a service-outage to change local providers and lengthens the interval to convert a customer, thereby assuring that the "PIC-parity" rule is violated.

Judging BellSouth's lack of compliance with § 271 is not even a "close call." (Tr. 1839).[3] BellSouth must comply with every Checklist item for every entry

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[2]FCC Memorandum Opinion and Order in 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, issued August 19, 1997 [hereinafter referred to as the Ameritech order].

In the Ameritech order, the FCC applied and interpreted its valid and binding rules. The FCCA acknowledges that the Commission has expressed concern about certain portions of the order where it can be construed to apply a vacated rule. While the FCCA does not agree with the Commission's interpretation of these portions of the Ameritech order, it should be noted that the portions of Ameritech relied on in this brief relate to FCC rules which were not vacated and which remain binding on BellSouth.

[3]Mr. Gillan testified: "This is a company [BellSouth], quite frankly, Commissioner, where you don't even have a close call here because this company isn't even accepting its responsibilities under the Act, much less how far along are they in implementing them." (Tr. 1839).

technique. It has failed to do so. The Commission should advise the FCC that BellSouth has failed to meet the requirements for interLATA entry.

B.

This Commission's Role

The Act provides this Commission with an important role to play in the development of local competition. Section 271(d)(2)(B) provides:

> CONSULTATION WITH STATE COMMISSIONS.--Before making any determination under this subsection, the Commission [FCC] shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c) [requirements for providing certain in-region interLATA services].

The FCC recently discussed its interpretation of the state commission's role:

> In order to fulfill this role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications. We believe that the state commissions' knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition.[4]

Thus, the state commission's role is that of a fact-consultant to the FCC. The Commission must determine through a practical and quantitative review of conditions in Florida whether BellSouth has fully and completely implemented the Competitive Checklist. (Tr. 1769). This Commission's empirical review is critical to the process

[4] Ameritech at ¶ 30.

because while the Act lays out a blueprint for how local competition should proceed, there is little practical experience. This Commission must critically evaluate the evidence before it and not depend on paper promises but on actual operation. (Tr. 1770).

As discussed below, BellSouth's ability to offer long distance service will be immediate and ubiquitous. Because of the speed and ease by which BellSouth can enter the long distance market, this Commission must require strict proof and be absolutely convinced that local markets are open before BellSouth is allowed to enter the long distance market. It will simply be too late[5] to try to establish local competition after BellSouth is already in the long distance market. (Tr. 1792).

ARGUMENT[6]

ISSUE 3

HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(c)(3) AND 252(d)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO 271(c)(2)(B)(ii) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. BellSouth has failed to provide nondiscriminatory access to unbundled switching, as a separate element. It has failed to provide unseparated network element combinations. BellSouth has failed

---

[5] Once BellSouth is in the long distance business, the proverbial "carrot" by which the Commission can force compliance will be gone. As the FCC recognized: "Section 271 thus creates a critically important incentive [long distance entry] for BOCs to cooperate in introducing competition in their historically monopolized local telecommunications markets." Ameritech at ¶ 14, footnote omitted.

[6] To address the issues on which the Association focused most of its efforts, the issues relating to network elements are addressed first.

to prove that it can provide billing for unbundled switching on terms of parity. BellSouth has failed to comply with the FCC rule requiring it to switch customers to a new local entrant in the same interval that it switches customers between IXCs using the local switching network element.•

ISSUE 7

HAS BELLSOUTH PROVIDED UNBUNDLED LOCAL SWITCHING FROM TRANSPORT, LOCAL LOOP TRANSMISSION, OR OTHER SERVICES, PURSUANT TO SECTION 271(c)(2)(B)(vi) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. BellSouth is not providing all the functionalities of local switching, including the ability to provide bill detail for local usage and access billing.•

ISSUE 13

HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO SUCH SERVICES OR INFORMATION AS ARE NECESSARY TO ALLOW THE REQUESTING CARRIER TO IMPLEMENT LOCAL DIALING PARITY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 251(b)(3) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(c)(2)(B)(xii) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. BellSouth has failed to provide nondiscriminatory access to all functions and features of unbundled local switching, including the ability to route 0-, 411, 611, and 811 calls to the entrants' operator, directory repair and business offices as required. Therefore, it has not actually provided the services necessary to implement dialing parity in accordance with the Act and applicable rules.•

Discussion[7]

A.

The Switch

BellSouth is required to provide an unbundled local switching element pursuant to the Act and FCC rules. The burden of proof to show compliance with the Act and the FCC rules falls squarely on the shoulders of BellSouth.[8]

Section 271(c)(2)(B)(vi) of the Act provides that BellSouth must provide "local switching unbundled from transport, local loop transmission, or other services." The FCC defines the unbundled local switching element as follows:

> . . . a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user.[9]

Thus, the unbundled local switch must contain all the features, functions and capabilities of the switch.[10]

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[7] The following discussion pertains to Issues 3, 7, and 13.

[8] Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied. . . .[T]he ultimate burden of proof with respect to factual issues remains at all times with the BOC. . . . [T]he BOC applicant retains at all times the ultimate burden of proof that its application satisfies section 271.

Ameritech at ¶43.

[9] FCC Order on Reconsideration.

[10] See FCC Second Report and Order at ¶s 46, 112, 114, 116, 151.

The collective effect of the Act, rules and FCC orders is to define a switching element that makes the purchaser of that element the local telephone company in all respects. (Tr. 1783). As the FCC said in Ameritech:

> We emphasize that Ameritech must establish by a preponderance of the evidence that it provides the entire switching capability on nondiscriminatory terms in order to comply with the competitive checklist. As part of this obligation, Ameritech must permit competing carriers to provide exchange access, to purchase trunk ports on a shared basis, and to access the routing tables resident in the switch.[11]

BellSouth has failed to meet this fundamental requirement because it refuses to provide billing information for local switch usage and for originating and terminating access. Thus, there is no dialing parity.

B.

Lack of Ability to Change Customers in Equivalent Intervals

The FCC rules require that when only a software change is needed to switch a customer from the BOC to a new entrant, the change must be accomplished in the same interval as a BOC transfers customers between IXCs. A software-controlled transfer occurs when an entrant purchases a preexisting loop/switch combination which is already serving an end user. In this situation, there is no need to physically reconfigure the end user's loop to change its service provider. (Tr. 1782).

The FCC rule requires that:

> An incumbent LEC shall transfer a customer's local service to competing carriers within a time period no greater than

[11] Ameritech at ¶ 329, emphasis added.

> the interval within which the incumbent LEC currently transfers end users between interexchange carriers, if such transfer requires only a change in the incumbent LEC's software.[12]

Compliance with this rule has two parts. BellSouth fails both. First, BellSouth must create OSS that allows it to move customers between itself and new entrants, using network elements,[13] in the same interval that BellSouth moves customers between IXCs as long as no network reconfiguration is required.[14] (Tr. 1841). BellSouth has not created any OSS system that allows it to do this. (Tr. 1844). BellSouth testified that it does not even have the OSS to permit an entrant to buy a loop/port combination without disruption (Tr. 1339), let alone transfer customers in appropriate intervals. Further, BellSouth intends to break all network elements apart.

Second, and more fundamentally, in order to gauge if BellSouth has met the requirements of this rule, BellSouth must establish and then measure the service interval for provisioning combinations. BellSouth's performance standards witness, Mr. Stacy, admits that BellSouth has not established such an interval:

> **Q.** Is it true that BellSouth has not proposed any provisioning intervals for combinations of unbundled network elements?
>
> **A.** To my knowledge we have not.

(Tr. 1584).

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[12] 47 C.F.R. § 51.319(c)(1)(ii).

[13] This rule is not a resale rule, but applies to the provision of service using the local switching network element.

[14] BellSouth is attempting to evade the requirements of this rule by suggesting that it is always necessary to reconfigure the network.

If BellSouth refuses to provision a combination and has no established service intervals, as required by the FCC rules, it is in direct violation of FCC rule 47 C.F.R. § 51.319(c)(1)(ii) and cannot be found to have met the requirements of § 271.

C.

Lack of OSS[15] to Support Local Switching Element

New entrants require two types of usage data, both of which are standard functions of the switch. First, BellSouth must record and bill network element usage to the new entrant. Second, BellSouth must provide the new entrant with usage data for originating and terminating access so that the new entrant can bill access charges to IXCs. BellSouth has testified that it will do neither, in direct contravention of the Act and implementing rules.

1. **Obligation to Provide Billing Information**

One of the most fundamental requirements of providing the unbundled local switching element is the billing. Without OSS, BellSouth cannot provide nondiscriminatory access to the unbundled local switching element as required by the Act. The Act makes this abundantly clear in its definition of "network element":

> NETWORK ELEMENT. The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information

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[15] In addition to the inability of BellSouth to bill for usage sensitive UNEs, BellSouth's systems are replete with other billing deficiencies which make it clear that BellSouth is far from meeting the requirement of parity. On these points, FCCA adopts the briefs of AT&T and MCI.

> sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.[16]

The FCC emphasized the importance of accurate billing information as early as its Interconnection Order, issued in August 1996:

> Incumbent LECs provide telecommunications services not only through network facilities that serve as the basis for a particular service, or that accomplish physical deliver, but also through information (such as billing information) that enables incumbents to offer services on a commercial basis to consumers.[17]

The importance of deploying OSS capable of providing accurate and timely usage data as a prerequisite to Checklist compliance is now beyond doubt (if it ever was in doubt) with the issuance of the FCC's Ameritech order. The FCC addressed this issue several times:

> . . . [B]ecause measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, equivalent access is the standard required by section 271 and section 251 of the Act for this billing subfunction. . . . [18]
>
> . . .
>
> . . . Deploying the necessary OSS functions that allow competing carriers to order network elements and combinations of network elements and receive the associated billing information is critical to provisioning those unbundled network elements.[19]

---

[16] § 3(45), emphasis supplied.

[17] Interconnection Order at ¶ 261, emphasis added.

[18] Ameritech at ¶ 140.

[19] Ameritech at ¶ 160, emphasis added.

. . .

> . . . Because competing carriers that use the incumbent's . . . unbundled network elements must rely on the incumbent LEC for billing and usage information, the incumbent's obligation to provide timely and accurate information is particularly important to a competing carrier's ability to serve its customers and compete effectively. . . .[20]

The Act requires BellSouth to have the capability to provide bill data so the new entrant may bill access to others. It also requires BellSouth to bill the new entrant for what BellSouth is selling to it, the switching element. BellSouth can do neither.

2. **Daily Local Usage Data**

The evidence in this proceeding demonstrates that BellSouth does not have the capability to render automated, accurate and timely bills for the usage sensitive portions of the switch function. And for most of the proceeding, BellSouth conceded this. In Mr. Milner's prefiled direct testimony, he said:

> If an ALEC purchases unbundled switching from BellSouth, BellSouth will either render a manually calculated bill or retain the usage bill until a system generated bill is available, whichever the ALEC elects.

(Tr. 783). See also, Milner deposition at 248 (Exh. 33). On cross-examination, Mr. Milner reiterated that BellSouth could not electronically bill for usage sensitive UNEs:

> Q. And in that passage there [in your prefiled testimony] you testify, do you not, that BellSouth currently does not have the ability to electronically bill for usage sensitive UNEs; is that right?
>
> A. That's correct. The term "electronically" was used yesterday. I prefer the term "mechanically" to imply

[20] Ameritech at ¶ 221.

something other than a manual process. But, yes, that's correct.

Q. So to just be clear, they don't have the ability to bill electronically or in a mechanized way for usage sensitive UNEs at this point in time?

A. That's correct. For I believe there are two unbundled network elements that have a usage sensitive element as part of that charge, that's correct.

Q. You heard Mr. Scheye testify yesterday, did you not, in the same vein, that today you do not have the ability to provide a mechanized bill for switching or transport, the usage element?

A. Yes, I heard that.

(Tr. 845-846).

When Mr. Scheye took the stand, he also testified that BellSouth could not bill for usage sensitive UNEs:

Q. Okay. Now Mr. Scheye, also as a part of unbundled network elements, there would be switching costs associated with this service; is that correct?

A. Correct.

Q. Okay. There is no switching cost contained on these [AT&T] bills; is that correct?

A. Correct.

Q. Is that because BellSouth is unable currently to render an electronic bill for switching of unbundled network elements; is that correct?

A. For the usage component we were unable to. The offer, or for any carrier purchasing it, we will either render a manual bill or hold the usage until we can bill it electronically. . . .

(Tr. 659).[21] BellSouth's failure to be able to bill usage sensitive UNEs means that it cannot provide nondiscriminatory access to unbundled network elements.

3. **Access Usage Billing Data**

The FCC defines the unbundled local switching element as:

> . . . a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local service, for that end user.[22]

These are standard switch features. Even Mr. Scheye testified that: "[t]he recording capability [for access] is built into the switch." (Tr. 1716). Thus, a new entrant purchasing unbundled local switching becomes the access provider for its subscribers.[23]

---

[21] Only a scant 68 pages later (with no break taken), Mr. Scheye contradicted his earlier sworn testimony (and Mr. Milner's) by saying that he thought BellSouth could provide mechanized bills for all UNEs. (Tr. 728). He was then asked to provide a late-filed exhibit on that topic. (Late-filed exhibit 31; Tr. 727). When the late-filed exhibit was provided, it said that BellSouth could provide mechanized bills and could do it as of August 14! (Note that was well before his testimony (and Mr. Milner's testimony) on September 2 where he testified under oath that bills could not be electronically rendered). Cross-examination on late-filed exhibit 31 revealed that Mr.Scheye got his "information" via hearsay twice removed. (Tr. 1738). Mr. Scheye has not personally seen this system in operation (Tr. 1740). He acknowledged that no actual bill has yet been rendered. (Tr. 1741). Because Mr. Scheye's sudden contradiction of his prior sworn testimony is based on uncorroborated hearsay, the Commission may not base a finding upon it. Section 120.57(1)(c), Florida Statutes.

[22] FCC Order on Reconsideration, emphasis added.

[23] > In these circumstances [where an entrant has purchased a network element], incumbent LECS may not assess exchange access charges to IXCs because the new entrants, rather than the incumbents, will be providing exchange access services. . . .

BellSouth is, at best, confused about this requirement. When asked whether a new entrant purchasing a loop and a port would become the access provider, Mr. Scheye responded: "They could be, certainly. That could be one possible use." (Tr. 557). Later, when asked if a new entrant buying local switching would become the access provider, Mr. Scheye said: "No, the new entrant is our subscriber to unbundled local switching." (Tr. 1712).

Further, Mr. Scheye testified that BellSouth has the ability to record access usage today (Tr. 1714) and that such recording is the same thing BellSouth does for an access charge call for itself today.

> **Q.** How are they going to provide that [access] information? How is BellSouth going to provide that information?
>
> **A.** Well, it's -- the recording itself would appear to be the same type of recording we move for an access charge call today.

(Tr. 1716). Just 30 pages later, Mr. Scheye directly contradicted himself:

> **Q.** Well, I thought I understood you to say that this would be the same information that BellSouth uses to render an access bill.
>
> **A.** No, sir, I never said that. Nobody asked me that question.

(Tr. 1745).

It is critical for new entrants to receive from BellSouth accurate bill detail which records the switched access traffic (both originating and terminating) of the new

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Ameritech at ¶ 300, incorporating Third Order on Reconsideration (see ¶ 52).

entrant's subscribers so that the new entrant can issue exchange access bills to IXCs. (Tr. 1810). Further, the billing records must accurately record this traffic so that BellSouth can stop billing IXCs for the access traffic now belonging to the new entrant. (Tr. 1810-1811).

When questioned about its capability to provide this bill detail, it became obvious that BellSouth does not intend to provide the information as a standard function of the local switching network element. This is despite the fact that BellSouth admitted that the recording of access usage data is a feature, function or capability of the switch, as described in the definition of "network element" noted above. (Tr. 1721-1722). BellSouth's refusal to include this information is a clear violation of the Act.[24]

Mr. Scheye testified that BellSouth would not provide the detail necessary to allow a new entrant to bill access charges to individual IXCs. He said that the information BellSouth would provide to ALECs would be merely an aggregate number. (Tr. 566). Mr. Scheye further testified that access detail information would not be part of the price of the local switch and that the ALEC would have to purchase it separately from BellSouth. (Tr. 1717, 1744). If the new entrant desires the information necessary to bill IXCs for access (and it is difficult to imagine a situation in which the new entrant would not want to do that), BellSouth will require the new

[24] BellSouth has not even tested this capability. (Tr. 879).

entrant to "negotiate that with BellSouth." (Tr. 567).[25]

Mr. Scheye's instruction to ALECs to "negotiate" for the needed access billing detail was no doubt a reference to BellSouth's long, drawn out bona fide request (BFR) process. Pursuant to that process, the carrier must submit a request to BellSouth. BellSouth responds in 30 days, providing an initial answer to the request. If the carrier wishes BellSouth to continue the process, a final offer is provided by BellSouth in 90 days. If the offer is not accepted, the carrier cannot receive the service. (Tr. 620). If the offer is unacceptable or unreasonable, the carrier must litigate the matter before a state commission. (Tr. 617-618).[26]

The new entrant has the right to bill for access and BellSouth has an obligation, pursuant to the definition of "network element," to provide the data to do so. (Tr. 1851). Such information is a standard switch function. Requiring entrants to use a BFR process does not comply with the Act.

Finally, Mr. Scheye testified that no new entrant had requested access billing data. (Tr. 1744). Mr. Gillan testified that carriers have been seeking this information. (Tr. 1928). BellSouth's assertion was further directly contradicted by Mr. Hamman:

> Q. Has AT&T requested the level of detail that it would need to bill access charges to other carriers?

---

[25] It is not hard to imagine what would happen to the new entrant's revenues as it tried to negotiate with BellSouth, since access revenues are an important part of a new entrant's revenue stream.

[26] Thus, at a minimum, the new entrant must wait 90 days. If BellSouth's offer is unacceptable, the wait could be much longer -- until the matter is resolved by a regulatory body.

> A. Yes, we have. A number of times we have asked for it. It began in October of '96 actually, where our people presented BellSouth with our understanding of what details would be necessary for usage billing, and it's a fairly thick document. . . . The response from BellSouth at that time was that they weren't ready to work through those details. We did not quite understand why they weren't ready to work through those details, because they used that usage themselves quite often for themselves to bill access.
>
> But, we continually worked for that, and with a series of letters throughout the first part of this year we continually asked to get to those details. We have yet to get those.
>
> . . .
>
> Q. . . . As we sit in the hearing room today, it's true, isn't that, AT&T has requested this bill detail to enable [it] to bill access to other carriers and that BellSouth has refused to provide it, is that correct?
>
> A. Yes, that's true.

(Tr. 2713-2714). The access detail necessary to bill IXCs has been requested. BellSouth has refused to provide it.

D.

BellSouth's Failure to Comply With Billing Requirements

BellSouth's inability to issue an automated bill for the local switching element (either local usage or access usage) as part of the purchase of that element precludes it from being Checklist compliant for a number of reasons. First, manual billing violates the requirement that network elements, including OSS systems like billing, be provided in a nondiscriminatory manner. (Tr. 1811). BellSouth issues its retail customers bills through a mechanized process, but will not do so for new entrants. (Tr. 847).

Second, the importance of the local switching element is due to its ability to support wide-spread competition for residential and small business customers. It is ridiculous to suggest that BellSouth can issue the hundreds of thousands of manual bills which will be required to support wide-spread competition. (Tr. 1811-1812).

Third, it is impractical for carriers to enter the market now and wait for bills in the future. This creates too much financial uncertainty. (Tr. 1812).

Fourth, there is no reason to believe that an IXC that terminates toll traffic to the ALEC will agree to wait for an access bill. Again, this creates financial uncertainty. (Tr. 1812).

Fifth, BellSouth has not proven that it has made the appropriate adjustments to its own access bills so that it does not bill for traffic belonging to the ALEC. (Tr. 1812). If BellSouth does not make these adjustments, IXCs will receive double bills.

And even assuming, for the sake of argument (an argument that FCCA rejects), that BellSouth does have the ability to render bills for usage sensitive UNEs that correct all the problems discussed above, such an alleged ability cannot support § 271 compliance in this case. The Ameritech order requires more than "paper promises."[27] It requires a demonstration that the "operations support systems supporting such functions are designed to accommodate both current demand and projected demand of competing carriers."[28] There has been no showing in this case

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[27] "Paper promises do not, and cannot, satisfy a BOC's burden of proof." Ameritech at ¶ 55, footnote omitted.

[28] Ameritech at ¶ 161.

that the system can support any demand. Given the many problems with the test bills BellSouth provided to MCI (Exh. 36) and AT&T (Exh. 27), BellSouth's unfounded assertion that it suddenly has the capability to render accurate bills is beyond belief.

Ameritech also requires the BOC to provide "data that compare its performance in delivering daily usage information for customer billing to both [the BOC's] retail operation and competing carriers."[29] In this case, while BellSouth admits that it bills its retail customers for some services on a usage basis (Tr. 847), it has provided no comparison of its performance in delivering such information to its retail customers as compared to its ALEC customers.

E.

Network Combinations

1. **Prohibition Against Separation**

As discussed above, FCC rule 47 C.F.R. § 51.319(c)(l)(ii) requires that a BOC switch a local customer to another provider in the same interval that the BOC processes a PIC change, so long as no network reconfiguration is required. This rule is directly linked to BellSouth's obligation to provide unseparated network combinations because such combinations permit a new entrant to become a local provider with no physical change in the network.

The FCC rule regarding the provision of unseparated network elements is unequivocal; incumbents must provide combined elements when requested and may not dismantle existing combinations unless requested to do so:

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[29] Ameritech at ¶ 221.

> (b) Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.[30]

This is a valid, binding rule which applies to BellSouth as a matter of law.

The FCC reiterated this legal requirement in its Interconnection Order:

> Under our [the FCC] method, incumbents must provide, as a single, combined element, facilities that could comprise more than one element.[31]

Finally, the Ameritech order erased any doubt that incumbents may not separate currently combined elements:

> We emphasize that, under our rules, when a competing carrier seeks to purchase a combination of network elements, an incumbent LEC may not separate network elements that the incumbent LEC currently combines.[32]

There is no scenario where BellSouth is permitted to break network elements apart and put them back together (Tr. 1927), unless the ALEC requests it to do so.[33]

Many entrants will have to obtain the loop and switch capacity as a combination of network elements to provide local service, particularly to offer service broadly. This combination is known as the "platform." It enables the new entrant to buy the network arrangement to form basic exchange service. (Tr. 1784, 1825). What is BellSouth's position on provision of the "platform" to new entrants in the face

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[30] 47 C.F.R. § 51.315. This rule was not disturbed by the 8th Circuit Court of Appeals.

[31] Interconnection Order at ¶ 295.

[32] Ameritech at ¶ 336, emphasis added.

[33]The Commission has already decided this issue in the arbitration dockets.

of the rules and orders described above? Amazingly, BellSouth continues to insist it need not provide the "platform." Mr. Scheye testified:

> Mr. Gillan (page 21), Mr. Hamman (page 28) and Mr. Wood (page 20) have again defined unbundled switching in terms of the "platform" approach, a concept that has not been endorsed by any Commission to date within the BellSouth region, nor is it a capability that the FCC Order, in defining unbundling, requires.

(Tr. 530). To put BellSouth's untenable position that it need not provide the "platform" to rest, it is necessary only to cite the FCC's ruling on this issue:

> Ameritech also must be able to provide combinations of network elements, including the combination of all network elements, which some parties refer to as the "UNE Platform" or "Platform".[34]

Further, BellSouth insists that when it does provide network elements that are already combined, it will separate those elements:

> Q. . . . If, in fact, you were serving a customer today and AT&T comes to you and wants to serve that customer using unbundled network elements and AT&T asks to use the loop and the port that you already have connected to that customer, are you going to disconnect the loop and port and require AT&T to reconnect it?
>
> A. If that's all that AT&T,or the carrier requested, yes, because at that point we would provide the loop and we would provide the port, and AT&T, or whoever the CLEC is in that case, would reconnect them; so they would have to be -- if they happened to be the same ones connected, they would have to be taken apart.

(Tr. 622, emphasis supplied). To add insult to injury, BellSouth will add a charge (to be negotiated at a later time) to "glue" the previously connected elements back

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[34] Ameritech at ¶ 160.

together. (Tr. 586).

The absurdity of BellSouth's position, and its direct contravention of the Act, is easily illustrated by an example accepted by Mr. Scheye. If a residential customer moves into an apartment previously served by BellSouth, that customer will pay about $35.00 for residential service. If the same customer decides later to switch to an ALEC, BellSouth will charge the ALEC a $140.00 non-recurring charge to get the loop and another $38.00 to get the port. Then to hook the two together, BellSouth will charge an as yet undetermined "glue charge." This $178.00 plus charge is to be compared to BellSouth's $35.00 charge to serve the same customer. (Tr. 633-634). It is difficult to imagine any company, no matter how innovative, which could compete in that situation.

BellSouth's "interpretation" that combined elements must be separated, must be rejected outright for another reason. It makes absolutely no sense in light of the fact the entire purpose of the Act is to foster local competition.[35] The FCC has plainly rejected the "interpretation" BellSouth puts forth:

> In addition to violating section 51.315(b) of our rules, such dismantling of network elements, absent an affirmative

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[35] The FCC recognized that allowing incumbents to separate already combined elements:

> would seriously inhibit the ability of potential competitors to enter local telecommunications markets through the use of unbundled elements, and would therefore significantly impede the development of local exchange competition. We further determined that incumbent LECs many not separate network elements that the incumbent currently combines.

Ameritech at ¶ 333.

> request, would increase the costs of requesting carriers and delay their entry into the local exchange market, without serving any apparent public benefit. We believe such actions by an incumbent LEC would impose costs on competitive carriers that incumbent LECs would not incur, and would violate the requirement under section 251(c)(3) that incumbent LECs provide nondiscriminatory access to unbundled elements.[36]

BellSouth claims that its obligation under 315(b) extends only to not separating the loop network element into subelements. Yet, the FCC's Third Order on Reconsideration directly applied this rule to prohibit separation of the elements themselves (in that case, switch and transport). Consequently, the FCC has already shown that BellSouth's interpretation of the FCC rule is wrong.

F.

Lack of Testing

The FCC requires more than internal testing regarding the readiness of OSS functions to support the provision of combinations of network elements.[37] This is because:

> Deploying the necessary OSS functions that allow competitive carriers to order network elements and combinations of network elements and receive the associated billing information is critical to provisioning these unbundled network elements.
>
> . . .
>
> Given the demand by competing carriers to purchase combinations of network elements, we would expect to

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[36] Ameritech at ¶ 300, incorporating ¶ 44 of Third Order on Reconsideration.

[37] Ameritech at ¶ 161.

> examine evidence other than mere internal testing results in any future 271 application.[38]

Despite this, BellSouth has done no testing of network combinations at all, probably because BellSouth has declared its unwillingness to provide the "platform" combination. It blatantly admits that it has done no testing of loop/port combinations. (Tr. 878). Ms. Calhoun testified that she does not even know if the BellSouth ordering system can process a loop/port combination order. (Tr. 1339). Therefore, BellSouth cannot meet the Checklist item requiring it to provide undiscriminatory access to UNEs in compliance with the FCC rules.

Even the "testing" that BellSouth did perform was totally inadequate to demonstrate that BellSouth's systems function properly, so as to allow ALECs access to such systems at parity with BellSouth. For example, even the way the tests were conducted skewed the results toward BellSouth. BellSouth's Mr. Milner testified that when testing the systems, the orders to be tested were not entered in the way ALECs must enter their orders (through LENS or EDI), but rather were placed directly into BellSouth's system. (Tr. 874, 928). This is not comparable to the way an ALEC must use BellSouth's systems.

Further, BellSouth did not even actually install the service it was allegedly testing (Tr. 875), which is a critical part of any meaningful test. And only a single separate order was placed for each separate resold service or UNE for which that testing was performed. (Tr. 876). Once a single order flowed through the system one

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[38] Ameritech, ¶160, 161.

time, the "test" was considered complete. (Tr. 877). As mentioned, no loop/port combinations were tested. (Tr. 878). That is, the systems were in no way tested for the volume or types of combinations of orders that BellSouth can expect to receive from entrants. And no third party participation in the testing was permitted. (Tr. 878). Such testing is plainly inadequate.

G.

Conclusion

BellSouth has not complied with the requirement that it provide nondiscriminatory access to network elements. It has failed to provide the unbundled local switching element as required by the Act, FCC rules and orders as well as directly violating the requirement to provide unseparated network elements without disruption and achieve PIC parity.

ISSUE 3(a)

HAS BELLSOUTH DEVELOPED PERFORMANCE STANDARDS AND MEASUREMENTS? IF SO, ARE THEY BEING MET?

FCCA Position: *No. BellSouth has not developed sufficient performance standards and has not provided measurements of its own performance. Absent sufficient standards and information concerning BellSouth's own performance, neither new entrants or this Commission can begin to assess whether BellSouth is providing parity to its competitors, as required by the Act and FCC rules. For this reasons alone, the Commission must inform the FCC that BellSouth has not complied with § 271.*

Under the Act, new entrants are entitled to nondiscriminatory access to BellSouth's network. The Act's requirement of absolute parity has two dimensions. First, BellSouth must devise one set of systems with which to provide access to itself

and to competition. Second, the systems must yield results for competitors that are equivalent to the results that BellSouth achieves for itself.

The Act requires the Commission and the FCC to ask and answer the following question when evaluating § 271 compliance: Are new entrants in the local exchange market being afforded access to the incumbent's network that is equal to that which it provides to its own retail offerings? Before affected parties and this Commission can begin to answer the question posed by the Act, more information is needed.

With respect to each aspect of access, a demonstration of parity is required, but: What are the standards? What is BellSouth's own level of performance? How does that performance compare to the access it provides new entrants? Performance standards and measurements fully sufficient to employ in the evaluation of whether equality of access exists are, by definition, a condition precedent to BellSouth's ability to satisfy Issues 3(a) and 15(a). Such information is missing from this case.

Not surprisingly, the importance of performance standards to the issue of parity has been recognized in other § 271 proceedings. In proceedings related to Ameritech's application, the Department of Justice observed:

> Proper performance disclosures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to determining compliance with the Commission's "non-discrimination" and "meaningful opportunity to compete" Standards.

(Tr. 2500), emphasis added.[39]

[39] This language was adopted in Ameritech at ¶ 204.

And, in its consultation to the FCC in the same case, the Michigan Public Service Commission stated:

> The primary problem in assessing Ameritech's compliance with the nondiscrimination standards of the Act and specifically the OSS functions is that, for the most part, sufficient performance standards do not exist by which Ameritech's performance can be judged.[40]

In Ameritech, the FCC included an exposition of its minimum requirements in the area of performance standards and measurements:

> Ameritech should provide, as part of a subsequent section 271 application, the following performance data, in addition to the data that it provided in this application: (1) average installation intervals for resale; (2) average installation intervals for loops; (3) comparative performance information for unbundled network elements; (4) service order accuracy and percent flow through; (5) held orders and provisioning accuracy; (6) bill quality and accuracy; and (7) repeat trouble reports for unbundled network elements. In addition, Ameritech should ensure that its performance measurements are clearly defined, permit comparisons with Ameritech's retail operations, and are sufficiently disaggregated to permit meaningful comparisons.[41]

BellSouth's official position with respect to the role of performance standards and measurements can perhaps best be characterized as a state of denial. During issue identification in this docket, BellSouth disputed whether it would even be appropriate to consider performance measurements and standards in the context of Issues 3 and 15. In his testimony, BellSouth witness William Stacy referred to performance standards and measurements as matters that are not enumerated in any

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[40] Exhibit No. 82, p. 23.

[41] Ameritech at ¶ 212, footnote omitted.

of the Checklist items, as though to argue that they are unrelated to BellSouth's § 271 burden of proof. Mr Stacy said:

> The performance measures, to the best of my knowledge, are not required at any point in the Checklist, they have been suggested by various parties as being a useful addition to the Checklist items.

(Tr. 1559).

Such a view is directly contradicted by Ameritech:

> Because the duty to provide access to network elements under section 251(c)(3) and the duty to provide resale services under section 251(c)(4) include the duty to provide nondiscriminatory access to OSS functions, an examination of a BOC's OSS performance is necessary to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv). . . . [T]he duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.[42]

BellSouth's attempts to downplay the significance of performance standards and measurements are understandable. BellSouth's "case" on the subject consists of an attachment to the interconnection agreement between BellSouth and AT&T that is, by its own terms, non-final and incomplete. (Tr. 1559). In fact, Mr. Stacy says of it:

> You will hear our opponents suggest that the proposed measures described are just a starting point, and I agree.

(Tr. 1537), emphasis added.

Mr. Stacy is right. The attachment on which BellSouth relies does not include many measurements that are necessary to a showing of parity. Examples of missing

[42] Ameritech at ¶131, 132.

measurements include:

- Interim number portability cut over duration (Tr. 1549);
- Average installation interval for resale (Tr. 1560);
- Average installation interval for loops (Tr. 1560);
- Percent of orders requiring manual intervention (Tr. 1561);
- Fallout to manual processing (Tr. 1561);
- Average installation interval for unbundled local switching (Tr. 1562);
- Percent of orders rejected (Tr. 1562);
- Percent jeopardy (Tr. 1563);
- System down time (Tr. 1564);
- Completion notification (Tr. 1564);
- Provisioning intervals for combinations of unbundled network elements (Tr. 1584);
- Percent of local service requests processed in 48 hours (Tr. 1592).

Further, with respect to the parameters that BellSouth has identified, it is only now beginning to collect the empirical data that will be necessary to apply them. (Tr. 1500).

BellSouth's recalcitrance in the area of performance measures and standards is not unique. Like BellSouth, other RBOCs have been unwilling or unable to provide data regarding their own performance criteria. As a result, it has not been RBOCs who have taken the initiative to develop appropriate standards and measurements; instead frustrated new entrants have done so. A task force consisting of representatives of

the Local Competition Users Group (LCUG), the members of which are LCI, Sprint, AT&T, MCI and WorldCom, have developed proposed standards and metrics. (Tr. 2501, Exh. No. 82). Because of the dearth of information regarding the RBOCs' actual performance, LCUG's proposed values are based on "best of class," pending the ability to refine them. At LCUG's request, the FCC recently published a notice of rulemaking to consider the proposals. While this activity perhaps shows that BellSouth is not unique, it underscores the premature nature of BellSouth's bid to obtain interLATA authority. (Tr. 2500).

The Commission must conclude that adequate performance measures have not been identified, and that BellSouth has failed to provide sufficient data regarding its own performance. Consequently, the Commission must also conclude -- again, virtually by definition -- that BellSouth has not demonstrated nondiscriminatory access within the meaning of the Act.

ISSUE 1A

HAS BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(c)(1)(A) OF THE TELECOMMUNICATIONS ACT OF 1996?

FCCA Position: *No. The evidence in this proceeding demonstrates that BellSouth has not met the requirements of Track A. For example, BellSouth has not provided nondiscriminatory access to network elements and combinations of network elements. BellSouth is not appropriately provisioning resale and BellSouth does not have in place OSS systems that provide new entrants with parity. See Issues 3, 7, 13, 15.*

ISSUE 1A(a)

HAS BELLSOUTH ENTERED INTO ONE OR MORE BINDING AGREEMENTS APPROVED UNDER SECTION 252 WITH UNAFFILIATED COMPETING PROVIDERS OF TELEPHONE EXCHANGE ACCESS SERVICE?

FCCA Position: *Yes. BellSouth has acknowledged that it has received "qualifying" requests.*

BellSouth has acknowledged that it has entered into various arbitrated agreements that, if fully implemented, would meet all the requirements of the Competitive Checklist. *See Exh. 16 (MCI Request for Admissions).* However, as demonstrated by the evidence in this hearing, BellSouth has failed to comply with those agreements.

ISSUE 1A(b)

IS BELLSOUTH PROVIDING ACCESS AND INTERCONNECTION TO ITS NETWORK FACILITIES FOR THE NETWORK FACILITIES OF SUCH COMPETING PROVIDERS?

FCCA Position: * Though BellSouth is providing some interconnection, it is primarily on a small test basis which has identified numerous problems. This does not meet the Act's requirements.*

ISSUE 1A(c)

ARE SUCH COMPETING PROVIDERS PROVIDING TELEPHONE EXCHANGE SERVICE TO RESIDENTIAL AND BUSINESS CUSTOMERS OVER THEIR OWN TELEPHONE EXCHANGE FACILITIES OR PREDOMINANTLY OVER THEIR OWN TELEPHONE EXCHANGE FACILITIES?

FCCA Position: *Though a tiny amount of service is being provided, as the testimony demonstrated, it is on a test basis with many problems.*

The testimony in this case demonstrates that though BellSouth does have

numerous interconnection agreements, it is providing access and interconnection only on a very limited basis (with numerous problems) which cannot satisfy the Act's standards.

For example, as AT&T testified, there are fundamental differences between the words on paper in AT&T's interconnection agreement and its real world experience with BellSouth. (Tr. 2695-2696). Just for AT&T alone, over 60 projects and 900 hundred work items have been identified that must be completed to implement the agreement. (Tr. 2696).

AT&T also described the many problems it is having in interconnecting with BellSouth. Despite the existence of an interconnection agreement, BellSouth insisted that AT&T use the BFR process to accomplish the interconnection. This has resulted in significant delays. (Tr. 2700). At this point, AT&T is not providing services to these customers. (Tr. 2702).[43]

AT&T's experience with BellSouth is not unusual or unique. Other carriers have had similar problems. For example, BellSouth is late in providing collocation to MCI. (Tr. 3160). Intermedia is also experiencing problems with its interconnection agreement with BellSouth. (Tr. 2448). These problems, and all the others the Commission heard about at hearing, dramatically demonstrate that BellSouth is not meeting its obligations under the Act.

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[43] AT&T described its experience in Georgia. Because BellSouth uses the same processes in all states, AT&T is understandably reluctant to move forward in Florida until it can obtain actual interconnection in Georgia.

ISSUE 1B

HAS BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(c)(1)(B) OF THE TELECOMMUNICATIONS ACT OF 1996?

FCCA Position: *No. BellSouth has received requests for access and interconnection; therefore, it is ineligible to proceed under Track B. The plain language of the Act clearly establishes that the two tracks are mutually exclusive. Further, as a practical matter, if these two tracks are not mutually exclusive an incumbent would have no incentive to open its market to competition.*

ISSUE 1B(a)

HAS AN UNAFFILIATED COMPETING PROVIDER OF TELEPHONE EXCHANGE SERVICE REQUESTED ACCESS AND INTERCONNECTION WITH BELLSOUTH?

FCCA Position: *Yes, see Issue 1(A)(a).*

A.

BellSouth's Admissions

As a practical matter, the question of which track BellSouth will pursue is moot. BellSouth has stated, through sworn testimony in this case, that it is proceeding under Track A. (Tr. 274; Exh. No. 22, Scheye deposition at 114; Exh. No. 5, Varner deposition at 25; Exh. 16). Thus, BellSouth has resolved this issue itself. Further, even if BellSouth attempts to keep Track B open, it is obvious that it is foreclosed.

B.

Plain Meaning

It is a cardinal, time-honored rule of statutory construction, that the plain, unambiguous meaning of a statute controls:

> There is no safer or better settled canon of interpretation

> that when language is clear and unambiguous it must be held to mean what it plainly expresses, and no room is left for construction.

Swarts v. Siegel, 117 F. 13, 18 (8th Cir. 1902). See also, Sutherland, Statutory Construction § 46.01 (4th Ed.).

In this case, the mutual exclusivity of the two tracks is apparent. Section 271 (c)(1) states:

> (c) REQUIREMENTS FOR PROVIDING CERTAIN IN-REGION INTERLATA SERVICES.--
>
> (1) AGREEMENT **OR** STATEMENT.--A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) [presence of a facilities-based competitor] **or** subparagraph (B) [failure to request access]. . . .

Emphasis provided. Similar language in the alternative is found in § 271(c)(2). The language of § 271 provides two alternative ways for BellSouth to meet the Competitive Checklist requirements--through agreements with facilities-based providers under Track A **or** if there are no such agreements, by a Statement of Generally Available Terms (SGAT), under Track B. The use of the word "or" twice indicates that the two paths are separate, independent and may not be combined.

C.

SBC Decision

In the SBC decision, the FCC rejected SBC's comparable claim that it could proceed under Track B.[44] The FCC said:

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[44] Even assuming that BellSouth could proceed under Track B, it still would have to offer and bill for the unbundled local switching element, which it cannot do. (Tr.

> SBC may not obtain authorization to provide in-region interLATA services in Oklahoma pursuant to Track B of the Act at this time because SBC has received, at the very least, several requests for access and interconnection within the meaning of section 271(c)(1)(B).[45]

The FCC determined in SBC that if a BOC has received a "qualifying request," it may not proceed under Track B. The FCC defined "qualifying request" as a "request for negotiation to obtain access and interconnection, which if implemented, would satisfy the requirements of section 271(c)(1)(A)."[46]

Just like SBC, BellSouth has received "qualifying requests." In response to MCI's request for admissions (Exh. 16), BellSouth stated:

> BellSouth admits that it has received requests from firms that BellSouth believes are capable of providing telephone exchange service to residential and business subscribers in Florida.

Congress intended to preclude a BOC from proceeding under Track B when it receives an appropriate request for access and interconnection.[47] Because BellSouth has received such requests, it may not proceed under Track B.

D.

Practical Significance

Though reference to the plain language of the statute and the FCC's orders

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1813).

[45]In the Matter of Application by SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Oklahoma, issued June 26, 1997, ¶ 1 [hereinafter SBC].

[46]SBC at ¶ 27.

[47]SBC at ¶ 34.

should be sufficient to demonstrate that Track A and Track B are mutually exclusive, and that Track B is closed to BellSouth, there are obvious practical reasons why BellSouth's interpretation of its ability to use Track B must be rejected. BellSouth apparently thinks that Congress gave new entrants a narrow window (of only 10 months) within which to become full-fledged local providers, following which BellSouth could get into the long distance business, regardless of whether it made the tools necessary for local competition to occur available. (Tr. 1816). The FCCA believes that Congress had a far better appreciation for the ambitious promise of the Act than BellSouth suggests. (Tr. 1816). It took 15 years for barriers to the interexchange market to be reduced. It is totally unreasonable to believe that Congress expected the same thing to occur in the local market in a short ten months. (Tr. 1816-1817).

In essence, BellSouth's insistence on its ability to use Track B merely demonstrates the lack of credibility of its claim that it meets Track A. Track A requires that BellSouth's claims be tested by practical real world experience, a test which BellSouth wants to avoid at all costs. If BellSouth can avoid the requirements of Track A, it will not have to prove, through market experience, that it is providing the required Checklist items.

BellSouth attempts to blame the lack of competition in Florida on potential entrants. This is nothing more than a smoke screen to hide its own shortcomings. Entrants are desperately trying to enter the local market. (Tr. 1818, 1925).

Finally, BellSouth's claim that forcing it to comply with Tract A would create a

"black hole" (Tr. 109), fails a reality check. If the conspiracy BellSouth alleges really existed (a conspiracy by all competitors to keep BellSouth out of the long distance market), it would involve every potential entrant into BellSouth's region, including other LECs. (Tr. 1817). BellSouth presented no evidence of any conspiracy.

ISSUE 1B(b)

HAS A STATEMENT OF TERMS AND CONDITIONS THAT BELLSOUTH GENERALLY OFFERS TO PROVIDE ACCESS AND INTERCONNECTION BEEN APPROVED OR PERMITTED TO TAKE EFFECT UNDER SECTION 252(f)?

FCCA Position: *No. No final SGAT was filed in this case until after the close of hearing, much less approved or permitted to take effect. Further, the SGAT does not meet the required standards for approval because its prices are not cost-based and because many are interim in nature.•

A.

Procedural Objection

In this case, BellSouth filed a draft SGAT with its prefiled testimony on July 8, a revised SGAT on August 25, 1997, a "final" SGAT on September 11, 1997 (2 days after the conclusion of the hearing) and another "Final Final Final" SGAT on September 18.[48] That is, the Commission did not even receive the final document(s) BellSouth wishes it to consider until after the hearing ended. The FCCA renews its objection to this procedure and incorporates herein by reference the Joint Motion to Strike or Sever and the argument thereon. (Tr. 2001-2079). The SGAT should be rejected on this

[48]The final SGAT filed on September 11 was supposed to be identical to the revised SGAT -- it wasn't. BellSouth filed another "Final Final Final" SGAT on September 18. FCCA received it on September 19.

basis alone. However, recognizing the Commission's ruling on this issue at hearing, the FCCA will not reiterate its arguments in this brief.

B.

The Proposed SGAT Should Be Rejected

Even if the Commission considers the substance of the proposed SGAT, there are several reasons why the proposed SGAT cannot be approved in this proceeding. The first reason was discussed in Issue 1(B) and Issue 1(B)(a) above. An SGAT is irrelevant to a Track A application, which is what BellSouth says it has filed in this case. Even a cursory reading of § 271 indicates that an SGAT is appropriate only when there have not been qualifying requests for access and interconnection. Since there have been such requests made to BellSouth, it cannot proceed under Track B and an SGAT is of no use in demonstrating § 271 compliance.

Second, the proposed SGAT may not be approved pursuant to section 252(f) (the SGAT section) because it does not comply with the requirements of that section. Particularly, BellSouth's SGAT (draft, revised, final or final, final, final) does not comply with section 252(d) which requires SGAT prices to be nondiscriminatory and cost-based. In order to approve an SGAT, this Commission must specifically find that the SGAT complies with § 252(d). It would be impossible for the Commission to make such a finding based on the record in this case because there is not one cost study submitted in this docket to support the prices in the SGAT. As BellSouth testified:

> Q. Has BellSouth filed any cost studies in this docket to support the prices in its SGAT?

A. No, we have not.

(Tr. 312).

Rather, BellSouth is attempting to rely on a hodgepodge of prices, none of which is supported by the evidence. As to some prices, BellSouth attempts to rely on prices that were arbitrated in other proceedings. (Tr. 313). However, these were arbitration proceedings in which only BellSouth and the arbitrating party were permitted to intervene.[49] Prices reached in other proceedings, where all the parties to this case were not joined, cannot bind parties to this case. The parties who could not intervene in the arbitration proceedings have had no opportunity to examine the cost studies submitted in those proceedings and cannot be bound by those decisions.[50]

Other prices (such as per line charge for loop distribution, charge for network interface devices) are only interim prices from the arbitration proceedings. (Tr. 576). These interim rates are the subject of an upcoming cost proceeding which has not yet been held. (Tr. 576, 612-613). As Mr. Wood testified:

> We've got rates that were set by the Commission as interim rates and explicitly interim rates because BellSouth has not provided cost studies, and I understand they have now provided these, but we haven't had a proceeding to evaluate them.

(Tr. 1975). Interim rates cannot meet the cost-based standard because they are not

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[49] For example, FCCA tried to intervene in an arbitration proceeding and its petition to intervene was denied.

[50] To do so would violate the requirements of due process.

cost-based. (Tr. 1976). Further, the rates in the SGAT are not even based on the cost studies which were just recently submitted to the Commission. (Tr. 614).

Still other rates are from negotiated contracts (such as the AIN per message rates). (Tr. 580-581). And for still other rates (for example, loop distribution),there is no price at all, but simply a note that the entrant must go through the BFR process. (Tr. 581). This process, as described earlier, takes some 90 days to complete (if the ALEC agrees with BellSouth). (Tr. 617). A BFR process is not a firm price.

For still other rates, BellSouth used a proposed price list, tariffs, or license agreements. (Tr. 611). As for the unbundled network element rates contained in the SGAT, no cost study was done. (Tr. 615). Some prices (such as selective routing, non-sent prepaid report system, OLEC daily usage bill) were not arbitrated and BellSouth has simply supplied unilateral prices. There have been no cost studies filed for these prices. (Tr. 576-580).

In addition, the fact that the SGAT rates are not cost-based was illustrated when the proposed SGAT rates were compared with a Commission audit of ESSX loop rates. (Exh. 26). A new entrant, pursuant to the proposed SGAT, would pay a non-recurring charge of $140 for each loop it orders from BellSouth. (This is to be compared with the $19.05 it actually costs BellSouth. Tr. 755). In addition, the new entrant must pay BellSouth $17.00 a month for the loop. This is to be compared to the $5.68 per month that the loop actually costs BellSouth. (Tr. 638). Such a comparison belies any notion that the SGAT prices are cost-based.

Finally, there are no rates for combinations. As the Commission found in the

arbitration proceedings, the cost studies BellSouth filed in those proceedings raised issues as to whether there may be double recovery of costs or recovery of costs that are not necessary. The Commission instructed the parties to go back and negotiate this issue. It still has not been resolved. (Tr. 1977).

The mixture of prices put together at BellSouth's whimsy cannot meet the requirement of § 252(d), which requires that SGAT prices must be cost-based and nondiscriminatory.

Finally, the majority of the SGAT terms, conditions, and prices are not even final. Mr. Milner testified that the 86 binders of material which BellSouth filed in this docket support the SGAT. (Tr. 928). BellSouth contends that the material in the 86 binders contains all the procedures and methods needed for an ALEC to order resold services or unbundled network elements. (Tr. 929). However, many of those documents are labelled "draft" or "temporary." (Tr. 929).[51] They are subject to unilateral change by BellSouth and cannot support a final SGAT.

The SGAT should be rejected.[52]

ISSUE 1C

CAN BELLSOUTH MEET THE REQUIREMENTS OF SECTION 271(C)(1) THROUGH A COMBINATION OF TRACK A (SECTION 271(c)(1)(A)) AND TRACK B (SECTION 271(C)(1)(b))? IF SO, HAS BELLSOUTH MET ALL THE

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[51] In addition, there is a large amount of duplication in the binders. (Tr. 935). Some documents are duplicated as many as 50 times. (Tr. 936).

[52]The Commission should make it clear that BellSouth's SGAT (all versions) has been rejected in this proceeding so there can be no argument made that it has been permitted to take effect without approval.

REQUIREMENTS OF THOSE SECTIONS?

FCCA Position: *No. Track A and Track B are mutually exclusive.*

To the extent that BellSouth continues to argue that it may proceed under Track A, but fulfill some of Track A's requirements with an SGAT from Track B, this argument has been laid to rest in the recent Ameritech decision. In Ameritech, the FCC found that the two tracks were separate and that an SGAT (which is relevant only to Track B) could not be used to meet the requirements of Track A. Track A can be met only through the use of state-approved interconnection agreements. The FCC said:

> Like the Department of Justice, we emphasize that the mere fact that a BOC has "offered" to provide checklist items will not suffice for a BOC petitioning for entry under Track A to establish checklist compliance. To be "providing" a checklist item, a BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item.
>
> . . .
>
> Reading the statute as a whole, we think it is clear that Congress used the term "provide" as a means of referencing those instances in which a BOC furnishes or makes interconnection and access available pursuant to state-approved interconnection agreements [Track A] and the phrase "generally offer" as a means of referencing those instances in which a BOC makes interconnection and access available pursuant to a statement of generally available terms and conditions. [Track B] A statement of generally available terms and conditions on its face is merely a general offer to make access and interconnection

available. . . .[53]

The Ameritech decision makes clear that an SGAT is a document pertinent only to a Track B case. It cannot be used to meet the requirements of Track A because it is simply a general offer not a state-approved interconnection agreement. BellSouth's attempt to do so must be rejected.

ISSUE 2

HAS BELLSOUTH PROVIDED INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(c)(2) AND 252(d)(1) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO 271(c)(2)(B)(i) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of the individual carriers in this case demonstrates that BellSouth is not providing interconnection in accordance with the Act and applicable rules.*

Section 251(c)(2) requires BellSouth to provide interconnection for the transmission and routing of telephone exchange service and exchange access at any technically feasible point that is at least equal in quality to that which it provides to itself at rates, terms, and conditions that are just, reasonable and nondiscriminatory. Section 252(d)(1) requires interconnection charges to be cost-based.

FCCA will not recap all the problems which new entrants described at hearing. However, just a brief review of some of the carriers' evidence will demonstrate that BellSouth is far from meeting the standard set out in this Checklist item.

For example, the order approving the MCI interconnection agreement with BellSouth states:

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[53]Ameritech, ¶s 110, 114, footnotes omitted.

> Upon consideration, we conclude that maximum time periods for the establishment of physical of three months and virtual collocation of two months are reasonable for ordinary conditions. If MCI and BellSouth cannot agree to a required time for a particular collocation request, BellSouth must demonstrate why additional time is necessary.[54]

MCI's Mr. Gulino established that BellSouth has failed to comply with its agreement for collocation. On every collocation request which MCI has pending, more than four months have passed. (Tr. 3160, 3195). This does not meet the requirements of this Checklist item.

Intermedia testified that although it has had an interconnection agreement with BellSouth since June 21, 1996, BellSouth has not provided it with the unbundled data elements which Intermedia has requested. (Tr. 2448). As Ms. Strow said:

> In fact, this commission has experienced over the last week [of hearing] what Intermedia has experienced over the last four months. BellSouth has continually vacillated in its position providing Intermedia with confused and contradictory promises. In this proceeding, three of BellSouth's witnesses have provided contradictory testimony on what network elements BellSouth is actually providing to Intermedia, what BellSouth [and] Intermedia['s] interconnection agreement requires, and even whether BellSouth is obligated to provide unbundled elements for digital and data services.

(Tr. 2449).

. . .

> [W]hat was available [to Intermedia] is nothing more than words on paper and a price list. There have been no final service descriptions provided to Intermedia verifying that what BellSouth is willing to provide is what Intermedia

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[54] Order No. PSC-96-1579-FOF-TP at 102.

> requested. No end-to-end test of the elements when used in combination with Intermedia's network to ensure that they work as requested by Intermedia.

(Tr. 2453). Again, this is a real world demonstration of noncompliance.

Finally, Sprint provides one more example of BellSouth's dismal failure to comply with the Act. As Sprint testified, despite the fact that it is attempting to serve customers in the Orlando area, Sprint has incurred numerous problems:

> With respect to the type of problems that SMNI is currently experiencing, I would like to provide some examples. First, BellSouth regularly misses its commitment to notify SMNI of order problems within 48 hours of their receipt. There have also been incomplete cutovers due to provisioning, equipment or network capacity issues. There have also been numerous customers who have been taken out of service in error during the cutover process.

(Tr. 2576).

The examples FCCA delineated above are not the only ones the new entrants described. They are merely illustrative of the obvious fact that BellSouth has not lived up to its commitments and is not providing interconnection as the Act requires.

ISSUE 4

HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO THE POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY OWNED OR CONTROLLED BY BELLSOUTH AT JUST AND REASONABLE RATES IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 224 OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO 271(c)(2)(B)(iii) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provided nondiscriminatory access to these items as required by the Act.*

BellSouth must provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by it at just and reasonable rates. The testimony of individual carriers establishes that BellSouth has not complied with this Checklist item.

For example, as AT&T's Mr. Hamman explained, nondiscriminatory access means, at a minimum, that terms and conditions are offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which BellSouth provisions the elements to itself. While BellSouth claims that it provides such access now pursuant to licensing agreements with IXCs, access in the local market will be different from what BellSouth currently offers. For example, access will be needed in many more locations for local service. (Tr. 2657).

At this point in time, AT&T has only an implementation guide regarding the way AT&T can request access to poles, ducts, conduits, and rights-of-way. Until the procedures have been tested and implemented, BellSouth cannot show compliance with this Checklist item. (Tr. 2657).

ISSUE 5

HAS BELLSOUTH UNBUNDLED THE LOCAL LOOP TRANSMISSION BETWEEN CENTRAL OFFICE AND THE CUSTOMER'S PREMISES FROM LOCAL SWITCHING OR OTHER SERVICES, PURSUANT TO SECTION 271(c)(2)(B)(iv) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. It is clear from the testimony of individual carriers that BellSouth has not fully implemented the provisioning of unbundled loops.*

Again, FCCA relies on the testimony of the individual carriers to this proceeding

who have clearly demonstrated that this Checklist requirement has not been met. For example, it is clear from the testimony of Intermedia, quoted in part in Issue 2 above, that Intermedia is not being provided with unbundled loops. Intermedia has been unable to acquire the necessary elements to provide frame relay service, despite repeated requests to BellSouth and has been forced instead to resell another service in the interim. (Tr. 2460). And in fact, BellSouth does not even admit that Intermedia has requested something which it is required to offer. (Tr. 322). At the time of hearing, it was still not clear that BellSouth is going to provide the necessary components to Intermedia. (Tr. 2461).

Further, as discussed earlier, BellSouth's OSS systems do not support the provision of unbundled loops and loops are not provisioned to competitors in the same time that they are provisioned to BellSouth.

ISSUE 6

HAS BELLSOUTH UNBUNDLED THE LOCAL TRANSPORT ON THE TRUNK SIDE OF A WIRELINE CARRIER SWITCH FROM SWITCHING OR OTHER SERVICES, PURSUANT TO SECTION 271(c)(2)(B)(v) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provisioned unbundled local transport in Florida in compliance with the Act and applicable rules.*

ISSUE 8

HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO THE FOLLOWING, PURSUANT TO SECTION 271(c)(2)(B)(vii) AND APPLICABLE RULES PROMULGATED BY THE FCC:

(a) 911 AND E911 SERVICES;
(b) DIRECTORY ASSISTANCE SERVICES TO ALLOW THE OTHER TELECOMMUNICATIONS CARRIER'S CUSTOMERS TO OBTAIN TELEPHONE NUMBERS AND,
(c) OPERATOR CALL COMPLETION SERVICES?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provided these items in Florida as required by the Act and applicable rules.*

ISSUE 9

HAS BELLSOUTH PROVIDED WHITE PAGES DIRECTORY LISTINGS FOR CUSTOMERS OF OTHER TELECOMMUNICATIONS CARRIER'S TELEPHONE EXCHANGE SERVICE, PURSUANT TO SECTION 271(c)(2)(B)(viii) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provided these items in Florida as required by the Act and applicable rules.*

ISSUE 10

HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO TELEPHONE NUMBERS FOR ASSIGNMENT TO THE OTHER TELECOMMUNICATIONS CARRIER'S EXCHANGE SERVICE CUSTOMERS, PURSUANT TO SECTION 271(c)(2)(B)(ix) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provided these items in Florida as required by the Act and applicable rules.*

ISSUE 11

HAS BELLSOUTH PROVIDED NONDISCRIMINATORY ACCESS TO DATABASES AND ASSOCIATED SIGNALING NECESSARY FOR CALL ROUTING AND COMPLETION, PURSUANT TO SECTION 271(c)(2)(B)(x) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provided these items in Florida as required by the Act and applicable rules.*

ISSUE 12

HAS BELLSOUTH PROVIDED NUMBER PORTABILITY, PURSUANT TO SECTION 271(c)(2)(B)(xi) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. The testimony of individual carriers demonstrates that BellSouth has not actually provided these items in Florida as required by the Act and applicable rules.*

ISSUE 14

HAS BELLSOUTH PROVIDED RECIPROCAL COMPENSATION ARRANGEMENTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 252(d)(2) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(c)(2)(B)(xii) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: * No. The testimony of individual carriers demonstrates that BellSouth has not actually provided this item in Florida as required by the Act and applicable rules.*

Several carriers testified that BellSouth has recently in mid-August (and unilaterally) refused to pay compensation for the termination of local internet traffic. (Tr. 2466; Exh. 17). Ms. Strow succinctly summarized the situation:

> The reciprocal compensation provisions of the interconnection agreement [which Intermedia has with BellSouth] does not, however, place any limitation on the type of local traffic terminated by either party. To that end, BellSouth has recently notified Intermedia that it intends to breach its contract with Intermedia by placing a limit on reciprocal compensation for Internet traffic terminated by either party, thus making such traffic not subject to reciprocal compensation. It is Intermedia's belief that this is not only a breach of the reciprocal compensation and dispute resolution provisions of the contract but is in fact

> an act of bad faith on BellSouth's part. This action has been taken without any change in either the Florida or FCC rules and without regard for the Florida PSC's jurisdiction over changes to Section 251 interconnection contracts. This action, if implemented by BellSouth, would result in inadequate and unfair reciprocal compensation arrangements.

(Tr. 2344). Other carriers, including WorldCom (Tr. 3397) and TCG (Tr. 3526-3527) expressed dismay over BellSouth's unilateral and unwarranted change in the reciprocal compensation requirements. (See Exh. 17). Based on this problem, as well as problems expressed by other carriers in the area of reciprocal compensation, BellSouth is not in compliance with this item.

ISSUE 15

HAS BELLSOUTH PROVIDED TELECOMMUNICATIONS SERVICES AVAILABLE FOR RESALE IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 251(c)(4) AND 252(d)(3) OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION 271(c)(2)(B)(xiv) AND APPLICABLE RULES PROMULGATED BY THE FCC?

FCCA Position: *No. ALECs have demonstrated that the operational support systems necessary to support resale are insufficient to provide parity or nondiscriminatory access.*

The Act envisions that competition in the local exchange market can develop through three "entry mechanisms:" interconnection of facilities; use of the incumbent's unbundled network elements (singly or in combination); and resale of the incumbent's services. Recently, the FCC stressed that an RBOC has not opened its network to competition -- and does not qualify for entry into the interLATA market --

unless and until all three means of entering the local market are "truly available."[55]

As the Commission is aware, resellers contributed to the development of robust competition in the long distance market, the success and benefits of which motivated Congress to foster the development of competition in all markets. The inclusion of the resale mechanism in the § 271 Competitive Checklist reflects Congress' belief that resellers can contribute to the development of competition in the local exchange market as well.

Some of FCCA's members are in the process of attempting to enter the local exchange markets though resale of BellSouth's services. Further, included in FCCA's membership is the Telecommunications Resellers Association (TRA), which withdrew its separate intervention in this case to participate through FCCA. FCCA has an interest in ensuring that the criteria of the Act are applied to BellSouth's compliance efforts in the resale area as rigorously as they are applied to the other entry mechanisms.

Certain parallels exist in the application of the Act to UNEs and to resale. The most important and obvious one is that the standard or test for each is equality of access, or parity. Another parallel underlies the reason for this standard. In each case, the potential competitor's ability to compete is wholly dependent on having access to the network equivalent to that of the RBOC. As in the case of UNEs, failure of the RBOC to support the resale competitor with performance equivalent to that with which the RBOC supports its own retail activities would cripple the new entrant's

[55] Ameritech, ¶ 21.

ability to compete -- fundamentally, inferior service is not competitive service.

A third parallel is the impact that premature entry by BellSouth into the interLATA market would have on resellers as well as others in the interexchange telecommunications services market. Following a series of pro-competitive initiatives adopted by the Congress, the courts, the FCC, and state regulatory bodies, such as this Commission, the interexchange market has developed robust competition, in which resellers large and small plays a significant role. However, all competition in the long distance market is vulnerable to the type of anticompetitive advantages and the potential for abuses that would be associated with premature entry by BellSouth. The timing and conditions of competitive entry by BellSouth into the in-region, interLATA market will be critical to the continued viability of the telecommunications resale industry. For all of these reasons, the Commission must gauge the efforts of BellSouth to comply with the Checklist items relating to resale as assiduously as it evaluates the other aspects of BellSouth's application.

The Commission's task in the resale area is perhaps more straightforward than in others, because BellSouth has more of a track record in this arena. The record in this case includes real world examples of attempts to compete through resale. The record is replete with instances of real world deficiencies.

For example, Intermedia witness Lans Chase explained that the systems in place for converting BellSouth customers to Intermedia resale customers are "complex, cumbersome, time-consuming and prone to errors." (Tr. 3046). As a result, Intermedia has experienced numerous delays in the processing of both "as is" and

"move, add, or change" orders. For each 100 orders for "as is" changeovers that Intermedia sends BellSouth, some 30 to 40 result in backlogs of untimely firm order commitments, requiring Intermedia to incur additional unnecessary costs in working with BellSouth's service center to untangle and move backlogged orders. (Tr. 3052). Too frequently, the initial delays are followed by billing problems, when Intermedia finally enters billing data for firm order commitments worked months. This results in an initial large bill to new customers -- hardly a way to win customer satisfaction. (Tr. 3053-3054). Certain "as-is" changes involving ISDN or Centrex services result in billing problems of a different kind. BellSouth routes these orders to a center other than the LCSC for processing. Yet, the LCSC sometimes renders firm order commitments before the changeover service is in place, meaning the customer may receive bills from both Intermedia and BellSouth. (Tr. 3054).

Similar error and delays occur with "move, add, or change" orders. (Tr. 3055). The complications lead to complaints and customer dissatisfaction -- the unhappy and unacceptable result of lack of parity. (Tr. 3056).

Exhibit No. 84 (containing late-filed exhibits 2 and 3 to the deposition of FCCA witness Douglas Kinkoph, which were requested by Staff), reinforces Mr. Chase's testimony. They show that LCI, by whom Mr. Kinkoph is employed, has experienced similar problems flowing from the inadequacy of BellSouth's OSS systems to support resale of BellSouth's services. Requests for customer service records have required from 7 to 29 days to process. Some 90% of BellSouth's responses to such requests are incomplete or otherwise flawed. BellSouth has not met a 48 hour timeframe for

the completion of firm order commitments, and at times provides no completion notifications, whether the request is being provisioned manually or through EDI. A copy of late-filed exhibits 2 and 3 to Mr. Kinkoph's deposition is attached as an Appendix.

The record demonstrates that resellers' efforts to compete with BellSouth have been hamstrung by BellSouth's inability to support resale with processes that will enable resellers to offer provisioning and billing services on a par with BellSouth's own. It further shows that the touted EDI and LENS systems have not overcome the problems experienced by resellers. Until BellSouth can demonstrate that it can fully support resale on terms of parity, it has not satisfied the Checklist requirements of § 271.

It is also clear that testing of OSS for resale has been inadequate. Numerous problems were identified in regard to the application of appropriate discount levels. In "testing" to see that backup line service was being resold with the proper discount rate, one account was reviewed to verify the correct billing. BellSouth "verified" a discount rate of 12%, despite the fact that the Florida discount rate for that resold service is 16.81%. (Tr. 902). The same is true for flexible call forwarding and directory white pages listing. (Tr. 902). When confronted with these obvious errors, BellSouth responded that "work is in progress to properly reflect those discount levels in the billing process." (Tr. 902). Similar errors for directory assistance resale reveal that BellSouth is billing the business rate rather than the residential rate on a residential line. It will require future software changes to correct. (Exh. 37, p. 12).

In addition, even when BellSouth corrects the discount billing problem to be able to bill two separate discounts for directory assistance in December, the detailed itemization of the bill will continue to show incorrect charges. (Tr. 907). BellSouth admitted that this will cause confusion for ALECs' customers. (Tr. 926). BellSouth does not experience similar problems when it bills its retail customers. (Tr. 908).[56]

These deficiencies were aptly illustrated on "real world" bills generated by BellSouth today. For example, Exhibit 36C is a bill rendered by BellSouth for MCI. On that bill, BellSouth failed to discount the nonrecurring charge for service installation as required by this Commission. (Tr. 910). Similarly, the monthly service charge was discounted at 18% not 21%. (T. 911). Again and again, future correction of these problems was promised. (Tr. 910-911, 912).

The Ameritech order finds that promises of future correction of problems are not sufficient for § 271 compliance. However, future promises are all that BellSouth has offered in this case.

ISSUE 15(a)

HAS BELLSOUTH DEVELOPED PERFORMANCE STANDARDS AND MEASUREMENTS? IF SO, ARE THEY BEING MET?

FCCA Position: *No. BellSouth has not developed sufficient standards and has not provided measurements of its own performance. Absent sufficient standards and information concerning BellSouth's own performance, neither ALECs or this Commission can begin to assess whether BellSouth is providing parity to its competitors as required by

[56] BellSouth expects its ALEC customers to put up with this problem until 1998. (Tr. 927).

the Act and FCC rules. For this reason alone, the Commission must inform the FCC that BellSouth has not complied with § 271.*

See Issue 3(a).

ISSUE 16

BY WHAT DATE DOES BELLSOUTH PROPOSE TO PROVIDE INTRALATA TOLL DIALING PARITY THROUGHOUT FLORIDA PURSUANT TO SECTION 271(e)(2)(A) OF THE TELECOMMUNICATIONS ACT OF 1996?

FCCA Position: *FCCA is without sufficient information to formulate a response to this issue.*

ISSUE 17

IF THE ANSWER TO ISSUES 2-15 IS "YES", HAVE THOSE REQUIREMENTS BEEN MET IN A SINGLE AGREEMENT OR THROUGH A COMBINATION OF AGREEMENTS?

FCCA Position: *Because the answer to Issues 2-15 is not yes, there is not need to reach this issue.*

The answer to Issues 2-15 is not yes. BellSouth has not complied with the 14-point Checklist. Thus, this issue becomes moot and there is no need for a decision on it.

ISSUE 18

SHOULD THIS DOCKET BE CLOSED?

FCCA Position: *The Commission should advise the FCC that BellSouth has not complied with the requirements of § 271 and should then close the docket.*

After this Commission provides its consultation to the FCC, this docket should be closed. As the evidence in this case so clearly demonstrates, BellSouth is very far from compliance. While BellSouth's next application may answer some issues raised

in this proceeding, it will also raise new ones. The Commission should avoid making any findings which would limit its review of a future § 271 application. (Tr. 1821-1822).

CONCLUSION

As the Commission reviews the evidence in this case, it should bear in mind the consequences of permitting BellSouth to prematurely enter the long distance market. BellSouth's entry into the long distance market will fundamentally change all telecommunications markets, both local and long distance. (Tr. 1792).

In essence, BellSouth's entry will eliminate long distance as a separate market. Because it is clear that consumers prefer "one-stop shopping"[57], there must be competition for all services or competition in all telecommunications markets will suffer. The most important piece of any such package, and the most difficult to provide as evidenced by the testimony in this record, is local phone service. (Tr. 1794).

The struggle to enter the local market is evidenced by the fact that so few providers have been able to enter the local market to date. For example, the competitive share of new entrants' unbundled switching in Florida is .0001%. Their share of interconnection trunks (.0828%) and unbundled loops (.0164%) is similarly infinitesimal. (Tr. 1771).

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[57] While BellSouth will have to offer long distance service through a different entity, it will not be perceived as different by consumers. Thus, BellSouth will essentially operate as a full service provider. (Tr. 1793).

BellSouth makes vague claims as to "benefits" which will flow to consumers from its entry into the long distance market in Florida. (Tr. 112). Interestingly, however, BellSouth has failed to bring these "benefits" to consumers in the other 41 states where it is not prohibited from providing interLATA service. (Tr. 1833). BellSouth has consciously and deliberately limited its entry plans to its own region where it will have an advantage over conventional IXCs. (Tr. 1819-1820). BellSouth's entry will bring benefits only if there are other providers who can compete with BellSouth by offering packages of local and long distance services broadly across the market. (Tr. 1818-1819).

The future of all competition in the telecommunications industry depends on the success of local competition. (Tr. 1974). BellSouth cannot be permitted to provide long distance service until other providers can just as easily offer local service. Otherwise, Congress' vision of real competition in all telecommunications markets will never materialize.

In passing the Telecommunications Act of 1996, it was Congress' intent to bring to the local market the benefits which consumers received from competition in the long distance market after the divestiture of AT&T. To achieve this goal, Congress required, through the Act, that the local market be open to competitive providers of local service on a nondiscriminatory basis before BOCs are permitted to enter the long distance market. This requires that BellSouth provide nondiscriminatory access to its network in all of its roles. Only when that network is practicably available to others on nondiscriminatory terms may BellSouth be permitted to offer

long distance services. (Tr. 1769). As the evidence in this case demonstrates, BellSouth is far from opening its market to new entrants and thus far from compliance with the Act's requirements.

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525

Attorneys for the Florida Competitive
Carriers Association

APPENDIX

Docket No. 960786-TL (continued)

Late Filed Exhibit Two

Q2 Has BellSouth resold facilities in accordance with LCI's requirements?

A2 Since LCI began providing resold service in April of this year, the Company has documented its concerns with BellSouth regarding recurring problems that it has experienced with BellSouth's operations support systems (OSS) with respect to limited access to the support systems for pre-ordering, ordering, and delays in the provisioning of service and billing information.

In the instance of pre-ordering, LCI handled pre-ordering via facsimile because BellSouth had not yet (as of June 15) provided plans for developing an electronic interface for customer service record retrieval. The lack of on-line customer service information created significant obstacles to retrieving customer records in a timely fashion. For example, in May, customer service records were retrieved by LCI within 7 days and in some instances, as long as 29 days. In addition, approximately 90% of the customer service records were submitted by BellSouth incompleted or abbreviated to the extent that they could not be processed by LCI.

With respect to order processing, BellSouth introduced Web-based on-line ordering that requires specialized training on processing procedures that was requested by LCI, but at the time, not accommodated by BellSouth. BellSouth's apparent general lack of knowledge of operational processes unique to wholesale markets contributed to the delay of firm order commitments beyond a 48 hour time frame.

In addition, under manual provisioning,(and at times with electronic data interface or EDI testing for provisioning) BellSouth does not provide completion notifications, informing LCI when customers are migrated or installed. The lack of completion notifications, compounded with the problems and time delays outlined herein, result in inferior service provided to LCI end users.

Throughout the months of April, May and June, approximately 28% of all call records transmitted to LCI from BellSouth were 4 days old or older. Access to billing data from BellSouth switches required that LCI establish multiple network data mover facilities that included up to 9 circuits to enable the electronic transmission of wholesale billing information, which represents a substantial resource and financial commitment to timely access critical customer data necessary for accurate and timely billing.

Last, despite several requests, BellSouth has not provided LCI with comprehensive electronic USOC information. This information is essential for LCI to successfully build an OSS infrastructure to BellSouth's systems.

Docket No. 960786-TL (A2 continued)

To date, LCI has been testing an EDI interface with BellSouth and has experienced significant delays in problems with the interface. The interface provided by BellSouth is not fully automated, and manual intervention is required. LCI requires a system to system application to ensure parity of access to required support systems for ordering.

Docket No. 960786-TL (continued)

Late Filed Exhibit Three

Q3 Is BellSouth providing resold services to LCI within the same intervals for LCI as that which it provides itself?

A3 As of June, BellSouth has refused to provide intervals or benchmarks that are used internally to evaluate the standard of service that it provides to its retail customers. LCI therefore can not provide a comparative analysis to determine whether resold services are provided in the same manner to LCI as that which BellSouth provides itself.

During the months of April, May and June BellSouth failed to provide LCI upon request with service interval commitments or benchmarks for pre-ordering and service provisioning specifically, for customer record retrieval, firm order commitments, service conversions "as is" and "with changes", suspensions and restoration of service, and directory listing changes. LCI requested this information on four separate occasions between February and June of this year.

The lack of service interval commitments pose serious problems for LCI at the outset of sales efforts. The average interval between the time LCI submits the request for the customer service records (CSRs) and the time BellSouth sends them to LCI is approximately 7 days. About 90% of the records for CSRs are forwarded to LCI more than two days later following LCI's request. In other instances, BellSouth has lost CSR requests or has submitted records in abbreviated formats that could not be used by LCI. Firm order commitment information is published by BellSouth within a 48 hour turn around time. To date, LCI has experienced delay intervals of up to 10 business days (with an average of 6 business days). LCI does not believe that BellSouth is providing service to its retail customers within the delayed time frames as described herein.

Currently, with daily usage files, BellSouth is providing 89% of all call detail records to LCI within 4 days. In comparison, such records are available to BellSouth immediately.

As of this month, LCI has obtained some internal benchmark data from BellSouth however, comprehensive interval information has not yet been submitted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **FCCA's** foregoing **Post-Hearing Statement of Issues and Positions and Post-Hearing Brief** has been furnished by U. S. Mail, by hand delivery(*) or by overnight delivery(**) on this **23rd** day of **September, 1997**, to the following:

*Monica Barone
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Richard D. Melson
Hopping Green Sams & Smith
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Floyd R. Self
Messer, Caparello & Self
Post Office Drawer 1876
Tallahassee, Florida 32302-1876

Robert S. Cohen
Pennington Law Firm
Post Office Box 10095
Tallahassee, Florida 32302-2095

**Nancy B. White
BellSouth Telecommunications, Inc.
Museum Tower Building, Suite 1910
150 West Flagler Street
Miami, Florida 33130

Patrick K. Wiggins
Donna L. Canzano
Wiggins & Villacorta, P.A.
Post Office Box 1657
Tallahassee, Florida 32302

Thomas K. Bond
MCI Telecommunications Corp.
780 Johnson Ferry Road
Suite 700
Atlanta, Georgia 30342

Marsha E. Rule
AT&T Communications
101 North Monroe Street
Suite 700
Tallahassee, Florida 32301

Benjamin W. Fincher
Sprint Communications Company
3100 Cumberland Circle
Atlanta, Georgia 30339
Mailstop: GAATLN0802

Laura Wilson
Florida Cable Television Association
310 North Monroe Street
Tallahassee, Florida 32302

*Nancy H. Sims
Southern Bell Telephone Company
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood,
Purnell & Hoffman
215 South Monroe Street, Suite 420
Tallahassee, Florida 32301-1841

John E. Canis
Kelley Drye & Warren
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Vicki Gordon Kaufman

Vicki Gordon Kaufman