

EX PARTE OR LATE FILED

BELLSOUTH

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September 13, 1996

The Hon. Reed E. Hundt, Chairman
The Hon. Rachele B. Chong
The Hon. Susan Ness
The Hon. James Quello
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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SEP 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 - EX PARTE

Dear Commissioners:

BellSouth is concerned that the Commission may be about to limit the ability of Bell operating company ("BOC") payphone service providers to have, as Congress directed, "the same right that independent payphone providers have" with respect to certain business opportunities provided through their payphones. If this is indeed the Commission's intention, BellSouth urges the Commission to reconsider its position on legal, public interest and policy grounds, and to issue an Order that reflects Congress's intent that "all discrimination between BOC and independent payphone providers" be eliminated.

On August 16, 1996, BellSouth submitted a white paper entitled "InterLATA Rights Discussion" for use in this proceeding. The white paper demonstrated that Congress intended the FCC to develop rules to establish a level playing field for the payphone industry by permitting BOC payphone units to have the same business opportunities that independent payphone providers ("IPPs") enjoy. In other words, in order for there to be true competition, BOC payphone units must be able to offer the same scope of aggregation, packaging and branding of long distance and operator services as provided by IPPs from their payphones, subject to the paramount rights of location providers. In return, Congress requires safeguards to ensure that no discrimination or cross-subsidies will occur in this new environment of regulatory parity, and provides for BOC payphone units to operate, financially, as stand-alone deregulated business units.

On August 28, 1996, Bell Atlantic submitted a letter asserting that Section 276 grants a right of interLATA carrier selection and negotiation that does not include the equal aggregation, packaging and branding rights as advocated by BellSouth. Their letter quoted a portion of the relevant text of Section 276(b)(1)(D), but the quotation did not include the following italicized language which precedes it:

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general

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public, the Commission shall . . . prescribe regulations that . . . provide for Bell Operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones. (emphasis added)

It is an essential and fundamentally fair principle that, in order for the public interest to be served by meaningful competition, each BOC payphone unit must be able to engage in the same range of business opportunities and activities that independent payphone providers do today. It is a matter of record that IPPs have long been able to operate as local and long distance traffic aggregators as well as bulk packagers of long distance and operator services to payphone location providers and end users. The Commission can and should determine that this is precisely the scope of "the same right" that Congress directs the Commission to provide to BOC payphone units in Section 276.

To the extent that the selection and negotiation right granted under Section 276 is limited, it is limited only by the scope of IPP aggregation, packaging and branding of long distance and operator services provided by IPPs from payphones today. In its white paper, BellSouth takes pains to describe these activities as "the same interLATA payphone service business opportunities as IPPs" and "[f]ull interLATA aggregation and packaging opportunities" (p. 5), "full interLATA carrier selecting and contracting rights coextensive with those of IPPs" (p. 6), "interLATA payphone service provision packaging" and "full interLATA payphone service provision opportunities" (p. 7). Aside from these circumscribed business opportunities, BellSouth never intended to advocate, as concluded by Bell Atlantic, "full [Section 271] interLATA authority in connection with its payphone business."

BellSouth is not seeking to gain "back door" facility-based interLATA permission or capabilities through Section 276. BellSouth is not seeking for its payphone unit to be able to select BellSouth Long Distance as its interLATA carrier prior to BellSouth meeting the 14-point Section 271 checklist requirements. To the contrary, BellSouth's payphone unit is simply asking the Commission to determine, based upon the record in this proceeding and the language of Section 276, that it has "the same right" that IPPs have (subject, at all times, to location providers' paramount approval) to negotiate with location providers and interexchange carriers with respect to aggregating, packaging and branding a full range of payphone services for end user customers.

Congress expressly provided in Section 276(b)(1)(D) that BOC payphone service providers are to have "the same right" as IPPs with respect to interexchange carrier selection and negotiation. The House Report on H.R. 1555 makes clear that judicial limitations on BOC interexchange carrier selection rights are removed for BOC payphone units. House Report at 88. The House Report plainly states that the new legislation:

terminates the current system of payphone regulation. The Commission is directed to adopt rules that eliminate all discrimination between BOC and independent payphones

The Hon. Reed E. Hundt, et al.
September 13, 1996
Page 3

and all subsidies or cost recovery for BOC payphones from regulated interstate or intrastate exchange or exchange access revenues. *Id.*

This same directive was explicitly affirmed by the House and Senate in Congress' Joint Explanatory Statement of the Committee of Conference.

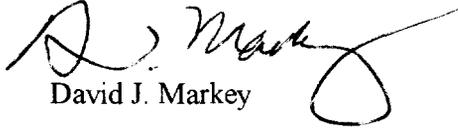
The record in this proceeding further demonstrates that the payphone services market, unlike the local exchange and exchange access market, is characterized by hundreds of providers, including the largest interexchange carriers ("IXCs"). In fact, the payphone services market has been highly competitive for more than ten years. In addition to these hundreds of providers, the growth of commercial mobile radio services ("CMRS") places additional competitive pressures on the payphone services industry. Therefore, BOC payphone business units, in order to compete with hundreds of other IPPs, IXCs, CMRS providers and alternative local exchange carriers, must be able to aggregate and package long distance and operator services from their payphones, just as each of their competitors do today.

If Section 276 is not so construed, discrimination between IPPs and BOCs will result, contrary to the stated intent of Congress. For example, given four hypothetical payphones standing side by side and belonging, respectively, to an out of region BOC, an IXC, an IPP, and the in-region BOC, all of them except the in-region BOC payphone services provider will be able to compete by offering consumers lower prices resulting from the efficiencies gained in aggregation and packaging long distance and operator services from payphones. This is simply not the result that Congress intended when it directed the Commission to "adopt rules that eliminate all discrimination between BOC and independent payphones."

BellSouth respectfully urges the Commission to conclude and rule that it is in the public interest for BOC payphone service providers to have "the same right" as IPPs to negotiate with, and on behalf of, payphone location providers with regard to selecting and contracting with interLATA carriers, and that this right, of necessity, includes the ability to aggregate and package long distance and operator services from their payphones.

Please include this correspondence in the public record of the above captioned proceeding.

Sincerely,



David J. Markey

cc: Ms. Regina Keeney
Ms. Mary Beth Richards
Mr. John Muleta
Mr. Michael Carowitz

John Nakahata, Esq.
Lauren J. "Pete" Belvin, Esq.
Daniel Gonzales, Esq.
James L. Casserly, Esq.

**BELLSOUTH TELECOMMUNICATIONS
PAYPHONE ISSUES, DOCKET 96-128
EX PARTE -- SEPTEMBER 13, 1996**

Section 276 of the Act states that:

“In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, the Commission shall . . . prescribe regulations that . . . provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the locations provider’s selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones. . . .” [emph. added]

“The same right,” in order to achieve Congressionally-directed competitive parity, necessarily includes the ability to aggregate and package long distance and operator services, as IPPs do today.

BellSouth is not seeking to gain “back door” facility-based interLATA permission or capabilities through Section 276. BellSouth is not seeking for its payphone unit to be able to select BellSouth Long Distance as its interLATA carrier prior to BellSouth meeting the 14-point Section 271 checklist requirements.

InterLATA payphone rules must give the same business opportunities to all payphone providers. To do otherwise would create the sort of discrimination that Section 276 directs the Commission to eliminate.

Ex: Of four payphones standing outside a convenience store in Detroit belonging, respectively, to an out-of-region RBOC, an IXC, an IPP, and the in-region RBOC, all of them except the in-region RBOC payphone unit would be able to compete by offering consumers the benefits of efficiencies gained in aggregation and packing long distance and operator services.