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Commenter: KMC Telecom Inc.
Applicant: BellSouth
State: Louisiana
Date: November 25, 1997

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Application by BellSouth	)	
Corporation et al. for Provision of	)	CC Docket No. 97-231
In-Region, InterLATA Services in	)	
Louisiana	)	

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF KMC TELECOM INC. IN OPPOSITION TO BELLSOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA

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Dated: November 25, 1997

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Commenter: KMC Telecom Inc.
Applicant: BellSouth
State: Louisiana
Date: November 25, 1997

EXECUTIVE SUMMARY

PCS providers are not "competing providers" for purposes of qualifying BellSouth for Track A treatment. The purpose of the "competing provider" requirement is to provide the Commission with evidence of operational experience from which it can assess the incumbent's compliance with the competitive checklist. The interconnection requirements of PCS providers are radically different than those of wireline CLECs, particularly with respect to the crucial issue of OSS. Thus the presence of PCS providers in the Louisiana market does not provide evidence of operational experience relevant to the crucial competitive checklist issues in this case.

Second, PCS serves a niche market: it provides a complement to wireline service, not a substitute.

BellSouth has said that it will not grant CLECs access to its network in order to reconnect network elements that it has disconnected, unless the CLECs obtain collocation. But collocation is not required by law, and imposes unnecessary costs. Collocation is a process for permanent placement of CLEC equipment on ILEC premises to achieve network interconnection. It was not designed, and is not required, for temporary access to reconnect disconnected elements.

BellSouth's OSS performance is inadequate because it involves significant manual intervention for CLEC orders but not for orders placed by BellSouth personnel. The performance data BellSouth has submitted are not a basis for meaningful comparisons.

Finally, BellSouth is violating the competitive checklist by refusing to pay reciprocal compensation for local calls to CLEC clients who are information service providers.

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COMMENTS OF KMC TELECOM INC. IN OPPOSITION TO BELLSOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA

KMC Telecom Inc.("KMC"), through undersigned counsel, hereby submits its comments on the Section 271 application for in-region interLATA authority in Louisiana, filed by BellSouth Corporation et al. ("BellSouth") on November 6, 1997.

KMC is a competitive local exchange carrier, authorized to provide local exchange service in 17 states, including such BellSouth states as Alabama, Florida, Georgia, Louisiana, and North Carolina. KMC currently provides local services on its own network, and also resells BellSouth local exchange service, in Alabama, Florida, Georgia, and Louisiana. In addition, KMC is starting the process to provide local exchange services over its own networks under development in Winston-Salem, Greensboro, and Hickory, North Carolina. KMC has a direct interest in ensuring that BellSouth meets its obligations under Section 271 of the Act.

I. PCS PROVIDERS DO NOT QUALIFY AS COMPETING PROVIDERS FOR PURPOSES OF TRACK A.

BellSouth relies on its interconnection agreements with three PCS providers in order to qualify for Track A treatment. To determine whether PCS providers are "competing providers" for purposes of section 271(c)(1)(A), the Commission must consider the purpose of the statute. Independent Bankers Association v. Smith, 534 F.2d 921, 940 (D.C. Cir. 1976) (in construing term "branch" as used in National Bank Act, court considers "the purpose of the statute . . . to maintain competitive equality"). The purpose of section 271(c)(1)(A) is to enable the State Commissions and this Commission to assess the RBOC's compliance with checklist items in light of actual experience in the marketplace by a competing facilities-based provider operating under an access and interconnection agreement with the RBOC. Congress thought that the presence of an "operational" competitor in the market would "assist" the State Commission and this Commission "in the explicit factual determination . . . that the requesting BOC has fully implemented the interconnection agreement elements set out in the 'checklist' under new section 271(c)(2)." Conf. Rep. No. 104-458 at 148, reprinted at 1996 U.S.Code Cong. & Adm. News 160-61.

In terms of this Congressional purpose, PCS providers are not "competing providers" because their access and interconnection needs differ so significantly from the needs of CLECs that their "operational" experience under an interconnection agreement with the RBOC is of no relevance in assessing whether the RBOC is fully implementing the competitive checklist.

The affidavit of Robert W. Walker (Attachment 1 to these Comments) describes the significant differences between the manner in which PCS providers and wireline CLECs

interconnect with the ILEC network. As Walker explains, PCS operators have a very limited need to lease network facilities from the ILEC, since subscriber access is by radio. The need of PCS providers to lease ILEC facilities is limited to interoffice facilities to connect tower sites to the PCS switch, and the PCS switch to the ILEC network. Walker Aff't ¶ 5. In contrast, wireline CLECs lease ILEC local exchange cable pairs for purposes of achieving subscriber access. Id. In addition, because PCS providers connect to their subscribers by radio, most PCS providers do not resell ILEC services, while reselling is often a major part of market entry strategy for many CLECs. Id.

Walker also explains that trouble reporting and maintenance is a lesser issue for PCS providers than for CLECs, because they do not lease facilities to achieve subscriber access. Walker Aff't ¶ 6. In addition, PCS operators do not have the same number portability requirements that wireline CLECs have, and do not require the same degree of access to rights-of way, poles and conduits. Walker Aff't ¶ ¶ 7, 8.

In sum, "the typical CLEC has vastly more interplay with the ILEC than does the typical PCS operator." Walker Aff't ¶ 9. That is particularly important in a state like Louisiana, where the sufficiency of the ILEC's OSS compliance is a major issue. Particularly with respect to the OSS issue, BellSouth's interconnection agreements with PCS providers of residential and business service provide no relevant "operational" experience to "assist" this Commission "in the explicit factual determination . . . that [BellSouth] has fully implemented the interconnection agreement elements set out in the 'checklist' under new section 271(c)(2)." Conf. Rep. No. 104-458 at 148, reprinted at 1996 U.S.Code Cong. & Adm. News 160-61.

PCS providers are also not "competing providers' because, as Walker points out, "PCS is nearly always an adjunct to traditional wireline telephone service and few subscribers replace their wireline service with PCS." Walker Aff't ¶ 4. As this Commission has recently pointed out, PCS serves as a complement to traditional wireline service rather than a substitute:

> The overall price for wireless service is still well in excess of wireline telephony. . . .The services offered by the few operating broadband PCS carriers are currently priced closer to cellular service than to comparable wireline service and therefore it is too early to state that broadband PCS providers' offerings may be perceived as a wireline substitute.

Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, FCC 97-75, Second Report, Report WT 97-14, at 54 (released March 25, 1997).

II. BELLSOUTH IS PROPOSING TO EXERCISE ITS "RIGHT TO DISCONNECT" IN A MANNER THAT WILL VIOLATE THE CHECKLIST

Summary

The Eighth Circuit has held that the ILECs may disconnect unbundled network elements before providing them to a requesting carrier. Iowa Utilities Board v. F.C.C., Order on Petitions for Rehearing (8th Cir. Nos. 96-3321 et al., October 14, 1997). BellSouth has now made it clear that it intends to exercise its "right to disconnect," and that it intends to require requesting carriers to obtain collocation before they may obtain access to its network in order to recombine the disconnected elements.

But collocation is not required by law. And even if it were, BellSouth's present collocation procedures impose unnecessary costs that BellSouth's own personnel are not required to undergo when they reconfigure network elements for their own purposes. Accordingly,

BellSouth's proposed manner of exercising its "right to disconnect" violates its obligations under section 251(c)(3) and item (ii) of the checklist to provide access on a nondiscriminatory basis and provide elements in a manner allowing the requesting carrier to combine them to provide telecommunications service.

While the Eighth Circuit has ruled that the ILECs may disconnect, it has not defined the parameters governing the access they must afford to enable the requesting carriers to reconnect. The Commission has jurisdiction to define those parameters, since the ILECs' obligations under section 251(c)(3) are involved as well as compliance with item (ii) of the competitive checklist. This Commission has jurisdiction to define ILECs' obligations under section 251(c)(3), even under the Eighth Circuit's view of the Commission's jurisdiction.[1]

1. Collocation is not required for requesting carriers to obtain the access needed to reconnect unbundled elements that the incumbent carrier has disconnected. By insisting on collocation, BellSouth is imposing unneeded expenses in violation of section 251(c)(3) and the competitive checklist.

BellSouth has stated that it plans to insist that a requesting carrier obtain collocation before its technicians gain the temporary access they would need in order to reconnect combined elements that BellSouth has disconnected before providing them to the carrier. BellSouth Brief at 48. But BellSouth is wrong in arguing that such access requires collocation as a matter of law. The only reason for such collocation is for BellSouth to impose unnecessary costs on the CLECs, in violation of section 251(c)(3).

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[1] By reviewing the Commission's unbundling rules on the merits under section 251(c)(3), the Eighth Circuit recognized that rules defining carriers' obligations under section 251(c)(3) are a legitimate part of the Commission's jurisdiction. Iowa Utilities Board v. F.C.C., 120 F.3d 753, 813-15 (8th Cir. 1997).

Section 251(c)(6) of the 1996 Act governs the collocation process. Both the statutory language and the legislative history show that collocation is intended to deal with the physical placement of CLEC equipment on ILEC premises in order to interconnect the CLEC network to the ILEC network. Collocation was not intended, and is neither required nor appropriate, for the temporary entry that would be required for CLECs to reconnect formerly combined network elements that the ILEC has disconnected prior to providing them to the CLEC.

Section 251(c)(6) imposes on ILECs the duty to provide "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier." 47 U.S.C. § 251(c)(6) (emphasis added). Because "equipment" takes space, section 251(c)(6) provides that physical collocation is not required if "space limitations" preclude it. None of this has the slightest relevance to the process of reconnecting disconnected unbundled elements, which would require temporary access of CLEC technicians to the ILEC network -- not physical placement of CLEC equipment on ILEC property.

Section 251(c)(6) resulted from a court decision ruling that the FCC was not authorized by the Communications Act to require physical collocation. Bell Atlantic Telephone Companies v. F.C.C., 24 F.3d 1441 (D.C.Cir. 1994), discussed in House Rep. No. 104-204, 104th Cong. 1st Sess., at 73, reprinted at 1996 U.S. Code Cong. & Adm. News at 39. That decision interpreted "physical collocation' to mean "a license to exclusive physical occupation of a section of the LECs' central offices." Id., 24 F.3d at 1446 (emphasis added). The court concluded that conferring an "exclusive right of physical occupation" on the CLECs "would seem necessarily to

'take' [the ILECs'] property," requiring just compensation under the Constitution. Id. The court cited a Supreme Court decision drawing a distinction between "permanent occupation" and "temporary physical invasion" -- with only the former requiring just compensation. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434 (1982), discussing PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980).

Temporary access of a CLEC technician to the ILEC network, to reconnect network elements the ILEC has disconnected, is a "temporary physical invasion" rather than a "permanent occupation" of ILEC premises. As such, it does not require compensation, either under the Constitution or the statutory collocation procedure.

This Commission's regulations confirm that the collocation procedure is a procedure for the permanent placement of CLEC equipment on ILEC premises -- not for temporary access of CLEC technicians to the ILEC network. For example, the regulations address the types of CLEC equipment that may be collocated (47 C.F.R. § 51.323(b), (c), (d)(3), (d)(4)); allocation of space (§ 51.323(f)); denial of physical collocation because of space limitations (§ 51.321(e), (f)); construction of physical collocation arrangements (§ 51.323(j)); interconnection between the equipment of different collocating carriers (§ 51.323(h); and connection of the CLEC's equipment to leased unbundled network transmission elements (§ 51.323(g)). None of this has the slightest relevance to the temporary access of a CLEC technician to reconnect network elements the ILEC has disconnected.

The regulations also provide -- as does the statute -- for denial of collocation for reasons of space or technical feasibility. 47 U.S.C. § 251(c)(6); 47 C.F.R. § § 51.323(a)-(f). But space is

not a problem when the only issue is temporary access of a CLEC to reconnect disconnected elements. And if the elements were previously connected in the ILEC network, then technical feasibility also should not be a problem -- unless the ILEC has disconnected them in a manner rendering reconnection infeasible, in which case the ILEC would have violated its duty under section 251(c)(3) to provide unbundled elements in a manner allowing the CLEC to combine them.

Even where the present collocation regulations address the security issue -- an issue which might also arise in situations of temporary access for CLEC technicians -- the Commission's regulations address only "security arrangements to separate a collocating telecommunications carrier's space from the incumbent LEC's facilities." 47 C.F.R. § 51.323(i). This confirms that the collocation procedure addresses only the physical location of CLEC equipment in ILEC space -- not the temporary access of CLEC technicians.

If collocation is not required, then its only impact can be to impose unnecessary costs and inconvenience that are not incurred when BellSouth, for its own internal purposes, reconfigures its network, or disconnects lines for other reasons. Indeed, as we now show, many of the costs presently imposed by BellSouth for collocation are costs imposed for construction of collocation space, which are unnecessary where temporary access, rather than permanent placement of equipment, is at issue. Imposition of unnecessary costs, which are not incurred internally and are not legally required, violates BellSouth's nondiscrimination obligation under section 251(c)(3).

2. If collocation is required, the Commission must impose limitations to ensure that the collocation procedures are consistent with BellSouth's obligation to provide the CLECs with an opportunity to recombine disconnected network elements.

In the BellSouth - South Carolina proceeding, KMC, in its reply comments, submitted an affidavit of Robert Walker (Attachment 2 to these comments), explaining a number of problems which would arise if BellSouth were to require the collocation procedure in its present form as a precondition to the temporary access CLEC technicians would need to reconnect disconnected network elements. A copy of this affidavit is attached ("Walker South Carolina Aff't"). This Commission's undoubted authority to define the ILECs' obligations under section 251(c)(3) includes the authority to require collocation procedures that resolve these problems in order to insure that CLECs receive a realistic opportunity to recombine disconnected network elements in a manner that enables them to provide telecommunications service.

Walker explains that if collocation were required for the temporary access CLEC technicians need to reconnect elements disconnected by the ILECs, there will be a vast increase in the number of collocation sites required -- since each CLEC will require collocation not only at the point where its network interconnects with the ILEC's network, but also at any other point where unbundled combined elements it has purchased might interconnect. Walker South Carolina Aff't ¶ 5. With the proliferation of collocation sites will come an increase in space shortages at ILEC wire centers -- particularly if BellSouth (like the other ILECs) follows its present practice of requiring each collocated site to be at least 100 square feet. Walker South Carolina Aff't ¶¶ 6, 7. Under present rules, if space runs out the ILEC must offer virtual collocation. 47 C.F.R. § 51.323(e). But as Walker points out, while virtual collocation may be

perfectly feasible for interconnection between the CLEC and ILEC networks, it would be useless when the need is to reconnect a loop and a switch -- in that case, physical access to the ILEC wire center is absolutely required. Walker South Carolina Aff't ¶ 8.

In addition, as Walker points out, the collocation process typically has taken three to four months. That a period of time may be tolerable where collocation is a one-time event that occurs when the CLEC first enters the local market. But it is not tolerable if the procedure must be repeated every time a CLEC seeks to sign up a customer requiring service at a new location reachable only through a combination of unbundled elements. Walker South Carolina Aff't ¶ 10.

Finally, as Walker points out, physical collocation typically involves significant nonrecurring charges. BellSouth's fee schedule for physical collocation in Louisiana requires an "application fee" of $4,910. Statement Atch. A at 11. That is excessive even when assessed as a one-time event in each local market. It is outrageous if assessed every time the CLEC places an order for combined network elements involving an ILEC wire center not involved in its previous orders -- particularly since it is unrelated to any costs incurred when construction of a physical space at ILEC premises is not needed.

III. BELLSOUTH'S PROVISION OF OSS TO COMPETITIVE CARRIERS DOES NOT COMPLY WITH THE COMPETITIVE CHECKLIST.

BellSouth's application must be denied on the ground that it has not demonstrated that its provision of OSS to competitive carriers complies with its checklist obligation to provide "[n]ondiscriminatory access to network elements." 47 U.S.C. § 271(c)(2)(B)(ii). With respect to resale services, BellSouth has not shown that the access it offers is "equivalent to the access

[BellSouth] provides to itself." Ameritech Michigan Order[2] ¶ 128. With respect to provisioning of unbundled loops and other network elements, it has not shown that its level of OSS support offers competitors "a meaningful opportunity to compete." Id. ¶ 141.

The Commission has stated that "the most probative evidence that OSS functions are operationally ready is actual commercial usage." Ameritech Michigan Order ¶ 138. The Commission "may consider carrier-to-carrier testing, independent third-party testing, and internal testing" where commercial usage is not available, but where commercial usage is available, it remains "the most probative evidence." Id.

BellSouth "uses the same processes with respect to checklist items in all of its nine States." BellSouth Brief at 39. In this respect, this case is like Ameritech Michigan, where the Commission considered evidence from Illinois as well as Michigan, because "Ameritech provides access to OSS functions on a regional basis from a single point of contact." Ameritech Michigan Order ¶ 156. For the same reason, BellSouth's actual performance in other states in its region is the "most probative evidence" concerning BellSouth's OSS performance overall.

In its initial comments in the South Carolina proceeding, KMC submitted the declaration of Larry Miller ("Miller South Carolina Decl., appended as Attachment 3 to these comments), which explained how BellSouth discriminates against KMC in Alabama in regard to providing access to OSS functions. Mr. Miller detailed the ways in which BellSouth provides inferior service to purchasers of wholesale local services, such as KMC, and offered specific data

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[2] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (rel. August 19, 1997) ("Ameritech Michigan Order").

showing the provisioning delays that KMC experiences. BellSouth does not process CLEC LSRs in anywhere near the time that it processes its own LSRs. Miller South Carolina Decl. ¶ 13. KMC has trouble simply obtaining an acknowledgment from BellSouth that an LSR has been received, much less obtaining an FOC from BellSouth. Id. In addition, KMC presented data showing that BellSouth can take more than several weeks to issue an FOC. Miller South Carolina Decl. Exh. A.

KMC's experience in Louisiana confirms that BellSouth's OSS performance is inadequate. The attached declaration of Lynn W. Davis, KMC's Customer Service Manager in Shreveport (Attachment 4 to these comments), describes how BellSouth has stopped providing billing information which it previously provided although such information is available to BellSouth's own personnel (¶ 4); how Ms. Davis' attempts to use LENS were frustrated because she was unable to obtain help in resolving error messages (¶ 7); and how she was unable to get prompt order confirmation from faxed orders (¶ 5). Ms. Davis also describes how BellSouth's own procedures for notifying the CLEC when an order is placed on missed appointement status are not being followed, with the result that KMC may not know when one of its orders is missed. (¶ 6).

Other evidence of OSS inadequacies is described in the opinion of the Administrative Law Judge. The Administrative Law Judge found (in reliance on the testimony of BellSouth's own witness) that "competitors are limited by LENS to reserving six lines at a time" while BellSouth itself is not so limited. Recommended Decision (August 14, 1997) at 26. The Administrative Law Judge also pointed out that the LENS system "is not set up to interact

directly with a competitor's own operational support systems, and, instead, requires manual input," while "many of BellSouth's own operational support systems can communicate with each other, without manual intervention." Recommended Decision (August 14, 1977) at 26-27.

The decision of the Louisiana Public Service Commission, reversing the Administrative Law Judge on the issue of OSS performance, is entirely unconvincing, because it gives no reasons addressing the issues raised by the Administrative Law Judge. The Commission merely brushed aside the Administrative Law Judge's findings with the unexplained assertion that "[f]ollowing careful consideration and analysis, the Commission concludes that the Operational Support Systems do in fact work and operate to allow potential competitors full non-discriminatory access to the BellSouth system." Lousiana Decision at 15. An agency's decision that would otherwise be entitled to deference is "vulnerable" if it reverses its ALJ while "fail[ing] to reflect attentive consideration of the ALJ's decision." Dodson v. National Transp. Safety Board, 644 F.2d 647, 651 (7th Cir. 1981).

Indeed, the conclusory decision of the Louisiana Public Service Commission on the OSS issue is in dramatic contrast to the detailed findings of the Florida Public Service Commission, which recently held that BellSouth had not complied with the checklist because, among other reasons, it discriminates against competing carriers by requiring them to use OSS systems involving significant manual intervention, while BellSouth's own representatives obtain the same access electronically.[3]

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[3] The Florida Commission found:

The amount of manual intervention required when placing a non-complex order

Nor does the performance data offered by BellSouth refute the experience of KMC and others, or the Administrative Law Judge's findings. BellSouth's application fails to present any data on order confirmation time for resale orders. All it presents is a commitment to establish performance standards and collect future data; and even as to future data, for the crucial issue of the time it takes to accept or reject an order, BellSouth states that "sufficient BST data do not exist, and the CLEC results will be produced without direct comparison to BST." Stacy Performance Aff't ¶ 25 and Exh. WNS-6 (emphasis added). Moreover, BellSouth's commitment to collect future data will apply only to resale of POTS, which omits a significant segment of the competitive market demanding complex services. Stacy Performance Aff't Exh. WNS-6.

BellSouth's performance data for ordering and provisioning unbundled loops is also, by its own admission, "limited" and lacks the data requested by DOJ to assist in comparing UNE performance results between BellSouth and the CLECs. Stacy Performance Aff't ¶ 26. BellSouth's performance data on provisioning unbundled loops show only the time intervals that occur after "the issue date of the service order received from the CLEC." Stacy Performance

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> via the EDI interface is far in excess of how BellSouth would place the same order. The primary problem is that Bell South does not provide a pre-ordering interface that is integrated with an ordering interface that provides these functions in essentially the same time and manner as BellSouth's internal systems.

Florida Public Service Commission, Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Dkt. 960786-TL (Nov. 19, 1997) at §§ VI.B.3.j, VI.M.4 (emphasis added).

Aff't ¶ 45 and Exh. WNS-11. But these data do not address the problems that arise at the preordering stage.

Given the serious questions raised about the adequacy of BellSouth's OSS performance, the Commission cannot accept a commitment to develop bettter systems in the future, and to collect performance data which may or may not show adequate performance. There needs to be a demonstrated history of adequate OSS performance before the Commission can conclude that the local exchange market in Louisiana is realistically open to competition. That history does not yet exist.

IV. BELLSOUTH FAILS THE COMPETITIVE CHECKLIST BY REFUSING TO PROVIDE RECIPROCAL COMPENSATION FOR LOCAL CALLS TO ISP PROVIDERS

The competitive checklist requires Regional Bell Operating Companies ("RBOCs") requesting interLATA authority to provide "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." 47 U.S.C. § 271(c)(2)(B)(xiii). Section 252(d)(2) requires RBOCs to comply with section 251(b)(5), which in turn requires reciprocal compensation arrangements for transport and termination of "telecommunications." 47 U.S.C. §§ 251(b)(5) & 252(d)(2). BellSouth, following the lead of other RBOCs, has taken the position that it will not provide reciprocal compensation for local calls terminating with an information service provider ("ISP"), including Internet service providers. BellSouth Brief at 64. But the obligation to pay reciprocal compensation for transport and termination of "telecommunications" contains no exception for calls to ISPs. Consequently, BellSouth's refusal to pay reciprocal compensation for such calls violates the competitive checklist.

Section 251(b)(5) requires local exchange carriers to establish reciprocal compensation arrangements for "the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). It does not expressly limit this obligation or exclude any particular category of "telecommunications." To be sure, Section 251(g) requires continued enforcement of the existing access charge regime, which provides for an alternative system of compensation for the transport and termination of telecommunications carried by two or more carriers. 47 U.S.C. § 251(g). In its Local Competition Order, the Commission explained that the existing regulatory regime, in which interstate and intrastate interexchange traffic was subject to access charges, was to be maintained pursuant to Section 251(g) of the Act.[4] Traffic not subject to access charges would be subject to reciprocal compensation obligations.[5] The simple logic drawn from the Act was that access charges and reciprocal compensation were intended to dovetail to cover all types of traffic carried by two or more carriers; such traffic was to be treated either through reciprocal compensation or access charges. No traffic was to incur both types of treatment. Thus, the Commission clearly established that, under the Act, the termination of traffic carried by two or more carriers not otherwise subject to access charges would be subject to reciprocal compensation. Since local calls to ISPs (whether or not they happen to be CLEC customers) are not subject to access charges, they are subject to reciprocal compensation.

BellSouth argues that in this proceeding its position is protected by the decision of the Louisiana Public Service Commission ("PSC") approving its rates for transport and termination.

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4 Local Competition Order, ¶ 1034.

5 Id., ¶¶ 1034-1035.

BellSouth Brief at 64. But neither the Louisiana Commission's decision approving BellSouth's Statement of Generally Available Terms and Conditions ("SGAT"),[6] nor its final Pricing Order,[7] do anything other than approve the level of rates. There is nothing in the PSC's decisions discussing or approving BellSouth's proposal not to pay any transportation or termination charges for calls to CLEC customers that happen to be ISPs. .

Moreover, Congress specifically conferred on this Commission, rather than state commissions, the jurisdiction to make a final determination of checklist compliance. Although this Commission must "consult" with state commissions under Section 271(d)(2)(B) of the Act, it alone — and not the Louisiana Commission — has the duty and authority to make the final decision. Ameritech Michigan Order, ¶ 285. Thus, the Commission is not bound by the Louisiana Commission's findings.

BellSouth's position on reciprocal compensation also bears on the public interest issue. If CLECs cannot recover their costs for the transport and termination of calls to ISPs, they would face enormous, uncompensated costs, since the overwhelming majority of ISP traffic is incoming, and the overwhelming majority of the incoming traffic comes from BellSouth's customers. The result could well be to force CLECs out of the ISP market, giving BellSouth a de facto monopoly of this market and resulting in increased costs to ISPs and ultimately their

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[6] BellSouth's SGAT sets forth its rates for reciprocal compensation. See SGAT Atch. A p. 7. (A copy of the SGAT appears as Exh. AJV-1 to the Varner Affidavit, App. A Tab 14.)

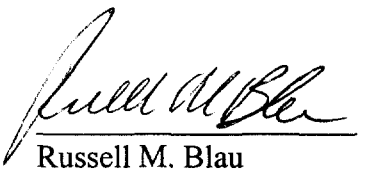
[7] Louisiana PSC, Order No. U-22022/22093-A (Oct. 22, 1997), which appears in Appendix C-3, Tab 285.

customers. The result would be totally at variance with the public interest that Congress has declared in preserving "the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." 47 U.S.C. § 230(b)(2).

CONCLUSION

BellSouth's application for interLATA authority in Louisiana should be denied.

Respectfully submitted,



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Dated: November 25, 1997

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Commenter: KMC Telecom Inc.
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State: Louisiana
Date: November 25, 1997

Attachment 1

Affidavit of Robert W. Walker
on PCS

AFFIDAVIT OF ROBERT W. WALKER

I, Robert W. Walker, being first duely sworn, do hereby depose and state as follows:

1. I am an independent consultant, engaged by KMC and others to assist in the technical aspects of interconnection agreements with the Incumbent local exchange carriers (ILECs). I have my own company, Comsource, Inc., based in Glen Ellyn, Illinois. During the last year I've worked on such agreements with Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Puerto Rico Telephone Company, Sprint, Southwestern Bell and US West.

   I have thirty-eight years experience in the telecommunications industry, with thirty-three of those years with Illinois Bell and Ameritech in a wide range of executive and technical positions. My assignments included Director of Advanced Technology Deployment, Director of Technology for Ameritech Development Corporation Director of Transmission for Illinois Bell and finally, Director of Transport Planning, for Illinois Bell the position I held prior to my departure from Ameritech in 1993.

2. BellSouth has argued that there exists a high degree of similarity between wireline based Competitive Local Exchange Carriers (CLECs) and wireless Personal Communications Service (PCS) operators because both types of providers must interconnect with the Public Switched Network using the Incumbent Local Exchange Carrier (ILEC). A closer and more comprehensive view of the two service providers, makes it clear that the opposite is true and that PCS operators and wireline CLECs are quite different, especially in their dealing with the ILECs. This results from several fundamental differences in the business focus and in dependency on the ILEC.

3. Listed below are a number of areas common to both wireless PCS providers and wireline CLECs with a short summary of the similarities and differences between the two providers in each area.

4. Target Market

   Wireless PCS:

   The PCS provider targets the existing or new mobile telephone customer. PCS is nearly always an adjunct to traditional wireline telephone service and few subscribers replace their wireline service with PCS. While the PCS operator may be competing against the ILEC, such competition is usually with a separate subsidiary or affiliate company and not with the wireline ILEC.

   Wireline CLEC:

   The CLEC is directly competing against the ILEC for the same customers with the same services.

5. Leasing of Unbundled Network Elements

Wireless PCS:

PCS's operators have a very limited need to construct local exchange plant since subscriber access is via radio. PCS providers' need to lease ILRC facilities is usually limited to interoffice facilities to connect tower sites to the PCS switching machine and to connect the PCS switching machine to the ILEC network. Most PCS providers do not resell ILEC services.

Wireline CLEC:

In contrast, wireline CLECs commonly resell ILEC services and lease ILEC local exchange cable pairs as unbundled network elements (UNEs). Indeed, most CLECs are highly dependent on ILEC exchange plant and the pricing and provisioning of such facilities has been a serious contention between the parties from the start. CLECs often lease two and 4-wire exchange cable to provide point-to-point data services.

Reselling is often a significant part of market entry strategy for many CLECs.

6. Trouble Reporting and Maintenance

Wireless PCS:

PCS operators require timely response and rapid correction of ILEC trouble conditions within facilities leased from the ILEC. In order of complexity and magnitude, such facilities are small in comparison to most CLECs because PCS operators lease only interoffice and inter-network facilities while the CLECs also lease facilities to achieve subscriber access.

Wireline CLEC:

Since it is the CLEC's customer that may be out of service, timely response and rapid correction of ILEC troubles on leased facilities is critical to the CLECs since the lack of prompt resolution can reflect badly on the CLEC. Moreover, the CLEC's leased facilities often run the gamut of network elements from simple twisted pair to highly advanced fiber optics requiring a cooperative effort to isolate and identify the trouble. Prompt correction of ILEC troubles on CLEC leased facilities is one of the clearest indications of compliance with the Communications Act.

7. Number Portability

Wireless PCS:

At the current time, PCS operators have no number portability requirements.

Wireline CLEC:

Since many business and residence subscribers are reluctant to change their phone numbers, it is not surprising that number portability is a major

issue with the CLECs. However, to change local service providers while retaining the existing phone number, requires a high degree of coordination and cooperation between the ILEC and the CLEC to achieve a successful transition. The benefit of such cooperation is usually on the side of the CLEC; a situation evident to the ILEC and its employees. Failure to implement number portability promptly on a conversion will cause a service disruption. Thus, timing and coordination of such conversions requires close attention.

8. Ancillary Functions

Wireless PCS:

While PCS providers may dot the landscape with radio towers, it is rare for such providers to build extensive landline facilities. Thus, ancillary functions, such as access to right-of-way, pole attachment and conduit clauses of PCS/ILEC agreements have limited application to most PCS operators.

Wireline CLEC:

The right-of-way, pole attachment and conduit portion of CLEC/ILEC agreements are frequently exercised and are often the basis for the CLEC's facility deployment strategy. Such ancillary elements are often critical to the CLEC's success in the marketplace.

9. Summary and observations:

It's clear that the typical CLEC has vastly more interplay with the ILEC than does the typical PCS operator. This fact alone argues that whether an ILEC performs well with a wireless PCS operator has little, if any, bearing on how well the ILEC reacts with wireline CLECs.

I hereby swear that the forgoing is true and correct to the best of my information and belief.

Robert W. Walker

Subscribed and sworn to before me this
24 day of November, 1997

Notary Public

"OFFICIAL SEAL"
FATIMA A. KHAN
Notary Public, State of Illinois
My Commission Expires 11/29/98