

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

MAY 1 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 98-39

In the Matter of )  
)  
Competitive Telecommunications Association, )  
Florida Competitive Carriers Association, and )  
Southeastern Competitive Carriers Association )  
)  
Petition on Defining Certain Incumbent LEC Affiliates )  
As Successors, Assigns, or Comparable Carriers )  
Under Section 251(h) of the Communications Act )

**COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files comments in support of the Petition For Declaratory Ruling Or, In The Alternative, For Rulemaking ("Petition"), filed by the Competitive Telecommunications Association ("CompTel"), Florida Competitive Carriers Association ("FCCA"), and Southeastern Competitive Carriers Association ("SECCA") (collectively "Joint Petitioners") on March 23, 1998 in the above-captioned proceeding.<sup>1</sup> The Petitioners present a compelling factual and legal case for the FCC to establish that incumbent local exchange carriers ("ILECs") cannot avoid their statutory obligations by setting up in-region affiliates to operate as sham competitive local exchange carriers ("CLECs").

**I. INTRODUCTION AND SUMMARY**

CompTel, FCCA, and SECCA explain that several ILECs, most notably BellSouth, are transferring important resources to affiliated companies to provide local and other

<sup>1</sup> The Common Carrier Bureau issued a Public Notice establishing the pleading cycle for the Petition. Public Notice, DA 98-627, released April 1, 1998.

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telecommunications services within their service areas, essentially as deregulated "alter egos." While Petitioners stress that CLEC affiliates established by ILECs to operate solely outside the ILEC's service territory should not be treated as ILECs, the ILECs could establish in-region affiliates as a means to avoid complying with their obligations under Section 251(c) of the Telecommunications Act of 1996.<sup>2</sup> As a result, the Petitioners request that the Commission issue a declaratory ruling that an ILEC affiliate that operates under the same or a similar brand name and provides wireline local exchange or exchange access service within the ILEC's region will be considered a "successor or assign" of the ILEC under the 1996 Act, and consequently should be subject all ILEC obligations under Section 251(c) of the Act.<sup>3</sup> In the alternative, the Petitioners request that the Commission propose a rule establishing a rebuttable presumption that an ILEC affiliate that provides wireline local exchange or exchange access service within the ILEC's service area under the same or a similar brand name is a "comparable carrier" under Section 251(h)(2) of the Act, and thus would be subject to Section 251(c).<sup>4</sup>

WorldCom strongly supports the joint petition filed by CompTel, FCCA, and SECCA. The ILECs' current and proposed usage of lightly-regulated sham CLECs within their service territories appears to be yet another clever gambit aimed at avoiding binding legal and regulatory requirements and safeguards under the 1996 Act. If allowed to succeed, the ILECs will only further erode the chances for robust local competition by legitimate CLECs. WorldCom agrees with the Petitioners that ample legal authority exists for the Commission to

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<sup>2</sup> Petition at 3.

<sup>3</sup> Petition at 8-13.

<sup>4</sup> Petition at 13-15.

establish that such ILEC affiliates must be treated as ILECs under the Act.

## **II. THE COMMISSION SHOULD PROMPTLY GRANT THE JOINT PETITION**

### **A. The ILECs Appear To Be Using The Guise Of CLEC Status Within Their Regions To Avoid Their Statutory Obligations And Applicable Pro-Competitive Safeguards Under The 1996 Act**

The issue is a simple one. In the apt words of Dr. Joseph Gillan, a witness for the Petitioners in various state proceedings, "just how many BellSouths does it take to provide local service in its own territory?"<sup>5</sup> Rather than a mere rhetorical question, Dr. Gillan's query goes to the very heart of what the ILECs appear to be attempting across the country. In short, the ILECs are commandeering a statutory device intended to promote nascent competition, in an attempt to throttle it.

As Dr. Gillan's question implies, the Commission must ask itself why an ILEC would voluntarily choose to assume CLEC status within its region. Certainly an ILECs' historic, and continuing, role as the local exchange bottleneck, and sole provider of local services to residential and business customers, already gives it a certain unparalleled advantage in the marketplace. It would make little sense for an ILEC to establish an (apparently) separate entity whose sole purpose is to compete with the incumbent (and other CLECs). The only compelling reason an ILEC would seek to be classified legally (but not viewed in the market) as a CLEC is for the ILEC, by extension, to be able to avoid legal mandates that the ILEC itself is required to perform pursuant to the 1996 Act. Under the legal pretense of CLEC status, the

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<sup>5</sup> Petition Attachment, Direct Testimony of Joseph Gillan, Florida Public Service Commission, Docket No. 971056-TX at 2 ("Gillan Testimony").

ILEC can retain all the market advantages of incumbency, while at the same time gaining backdoor deregulation. In WorldCom's view, the 1996 Act was never intended to allow the ILECs to avoid their statutory obligations merely by creating a plethora of deregulated twins.

The threat to local competition demonstrated in the Petition certainly is not hypothetical. The Petitioners note that many of the ILECs are busy filing requests for in-region CLEC status all across the country. BellSouth, in particular, recently has achieved CLEC classification in at least three of its states:

### **South Carolina**

On December 23, 1997, the Public Service Commission of South Carolina issued a certificate of public convenience and necessity authorizing "BellSouth BSE" to provide local exchange service in the State of South Carolina.<sup>6</sup> The South Carolina PSC determined that BellSouth BSE meets the State's statutory criteria by demonstrating that it "possesses the technical, financial, and managerial resources sufficient to provide the services requested," given "the vast experience and financial qualifications of its ultimate parent, BellSouth Telecommunications, Inc." and the fact that the parent company "furnished independent employees for BSE."<sup>7</sup> The PSC determined that granting the certificate would not adversely affect the public interest, citing BSE's claim that it would "benefit consumers by increasing competition."<sup>8</sup>

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<sup>6</sup> Public Service Commission of South Carolina, Order No. 97-1063, Order Approving Certificate to Provide Local Service, Docket No. 97-361-C, December 23, 1997 ("South Carolina BellSouth BSE Order").

<sup>7</sup> South Carolina BellSouth BSE Order at 5.

<sup>8</sup> Id. at 7.

In response to MCI's argument that BSE should not be certificated as a CLEC because of BSE's affiliate relationship to its parent BellSouth company, the PSC stated that South Carolina law defines a LEC as an incumbent or new entrant based solely on the date it receives its certificate. Because BellSouth BSE would be granted its certificate after December 31, 1995, the PSC found, it is by definition a "new entrant LEC" in South Carolina.<sup>9</sup> As a result, the PSC granted the certificate to "provide all forms of local telephone service in the State of South Carolina."<sup>10</sup> The order does not mention federal law, nor does it indicate whether BSE will be required to comply with federal law as an ILEC.

### **Georgia**

On March 5, 1998, the Georgia Public Service Commission agreed to grant "BellSouth BSE" an "interim certificate of authority to provide competitive local exchange telecommunications services."<sup>11</sup> Acting pursuant to State law, the Georgia PSC found that the personnel staffing BellSouth BSE possess the technical capacity to provide local exchange services, especially given the fact that "[m]any, if not all, of these personnel who transferred to the Applicant's organization came from BellSouth Telecommunications, Inc."<sup>12</sup> The PSC also noted that BSE "will rely upon the resources of its parent, BellSouth Corporation for

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<sup>9</sup> Id. at 8-9.

<sup>10</sup> Id. at 9.

<sup>11</sup> Georgia Public Service Commission, Interim Certification of Authority to Provide Competitive Local Exchange Telecommunication Services, Docket No. 8043-U, Certificate No. L-068, issued March 9, 1998 ("Georgia BellSouth BSE Order").

<sup>12</sup> Georgia BellSouth BSE Order at 2.

financial support in the initial phase of its provision of competitive local exchange service."<sup>13</sup>

The Georgia PSC observed that the critical issue in the proceeding is BellSouth BSE's relationship with "the predominant incumbent local exchange carrier in Georgia."<sup>14</sup> However, "[t]hat the parent affiliate of the Applicant is also the parent affiliate of the incumbent local exchange carrier is not a fact, which will disqualify the Applicant from certification."<sup>15</sup> The PSC essentially agreed with BellSouth BSE's view that the question of its affiliation should not even be considered because "the law in Georgia governing the certification of competitive local exchange carriers requires certification upon the applicant's meeting the technically and financially capable standards."<sup>16</sup> The PSC made no mention of federal law in its order.

### Alabama

On February 20, 1998, the Alabama Public Service Commission, over the dissenting vote of its president, granted an application by BellSouth for a certificate of public convenience and necessity for "BellSouth BSE."<sup>17</sup> The PSC limited its factual findings to whether BellSouth "possesses the technical, managerial, and financial resources to provide the services proposed," and determined that "the public interest would be best served by [BellSouth BSE's] operations."<sup>18</sup> Based on these findings, the PSC granted a certificate to BellSouth BSE

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<sup>13</sup> Id.

<sup>14</sup> Id. at 2.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Alabama Public Service Commission, Report and Order, Docket 26192, February 20, 1998 ("Alabama BellSouth BSE Order").

<sup>18</sup> Alabama BellSouth BSE Order at 1.



resale and unbundled network elements ("UNEs"), and the virtual elimination of the already slim resale margin. In particular, as Joe Gillan recently attested to in Florida, the ability of ILECs to set up sham CLECs will destroy the gross resale margins available to CLECs in the marketplace.<sup>20</sup> Under these circumstances, the Commission has no choice but to step in and enforce the Act.

**B. The Commission Has The Requisite Legal Authority To Rule That ILEC Affiliates Providing Local Service Within Region Are Subject To All ILEC Obligations, Including Section 251(c) Of The 1996 Act**

WorldCom wholeheartedly agrees with the Petitioners that an ILEC affiliate providing local service within the ILEC's region is subject to all pertinent ILEC legal and regulatory requirements, including Section 251(c) of the 1996 Act.<sup>21</sup> Section 251(h)(1) of the 1996 Act includes in its definition of an ILEC "any person or entity that, on or after the date of enactment, became a successor or assign" of an ILEC that provides telephone exchange service in an area, and was a member of the National Exchange Carrier Association ("NECA").<sup>22</sup> Certainly in the circumstances described in South Carolina, Georgia, and Alabama, BellSouth BSE is a "successor" or "assign" of BellSouth, and should be subject to the same Section 251 obligations as the ILEC itself.

Alternatively, the Commission should establish a rule clarifying the criteria under which an ILEC's affiliate would be considered a "comparable" carrier to the ILEC under Section

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<sup>20</sup> See Attachment A (Hearing Exhibit of Joseph Gillan, Number 5, Florida Public Service Commission, Docket 97-1140-TP, submitted April 23, 1998).

<sup>21</sup> Petition at 8-13.

<sup>22</sup> 47 U.S.C. Section 251(h)(1)(B)(ii).

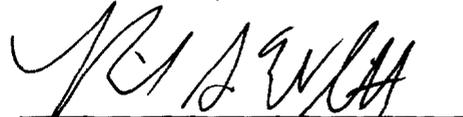
251(h)(2).<sup>23</sup> If, as in the case of BellSouth BSE, (1) an ILEC's affiliate provides local service in the same geographic area as the ILEC, and (2) the ILEC has transferred to the affiliate anything of value, including brand names, financial resources, or human capital, the affiliate should be deemed a "comparable" carrier under Section 251(h)(2).<sup>24</sup>

### III. CONCLUSION

The Commission promptly should issue a declaratory ruling that an ILEC affiliate providing local service within the ILECs' service territory is subject to all pertinent ILEC legal and regulatory requirements, including Section 251(c) of the Telecommunications Act of 1996.

Respectfully submitted,

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May 1, 1998

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<sup>23</sup> Petition at 13-15.

<sup>24</sup> 47 U.S.C. Section 251(h)(2).

**ATTACHMENT A**

Hearing Exhibit Number 5 of Joseph Gillan  
Florida Public Service Commission  
Docket 97-1140-TP  
(April 23, 1998)

**Comparing Economics of Service Resale**

**Typical Business (non-PBX) Customer<sup>1</sup>**

	BSE	BST	BellSouth
Resold Revenues	\$57.66		\$57.66
Cost of Resold Services	(\$49.34)	\$49.34	\$0.00
Access Revenue		\$13.02	\$13.02
Network Cost		(\$28.14)	(\$28.14)
			<hr/>
Gross Margin			\$42.54

**Reseller-Entrant**

Resold Revenues			\$57.66
Cost of Resold Services			(\$49.34)
			<hr/>
Gross Margin			\$8.32

**Typical Residential Customer<sup>1</sup>**

	BSE	BST	BellSouth
Resold Revenues	\$24.69		\$24.69
Cost of Resold Services	(\$20.06)	\$20.06	\$0.00
Access Revenue		\$10.61	\$10.61
Network Cost		(\$26.33)	(\$26.33)
			<hr/>
Gross Margin			\$8.97

**Reseller-Entrant**

Resold Revenues			\$24.69
Cost of Resold Services			(\$20.06)
			<hr/>
Gross Margin			\$4.63

<sup>1</sup> Typical residential and business customer revenue profile from BellSouth Exhibit AJV-1. Docket 97-1140-TP (Testimony of Alphonso Varner).

**CERTIFICATE OF SERVICE**

I, Cecelia Y. Johnson, hereby certify that I have this 1st day of May, 1998, sent a copy of the foregoing "Comments of WorldCom, Inc." in CC Docket No. 98-39, by hand delivery, to the following:

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