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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of

**APPLICATION OF BELLSOUTH
CORPORATION, BELLSOUTH
TELECOMMUNICATIONS, INC. AND
BELLSOUTH LONG DISTANCE, INC.
FOR PROVISION OF IN-REGION,
INTERLATA SERVICES IN LOUISIANA**

CC Docket No. 98-121

**REPLY COMMENTS
OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

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August 28, 1998

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SUMMARY

The Telecommunications Resellers Association, a national trade association representing more than 650 entities engaged in, or providing products and services in support of, telecommunications resale, hereby replies to selected comments offered by Ameritech Corporation and U S WEST Communications, Inc. in support of the application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for authority to provide interLATA service "originating" within the BellSouth "in-region State" of Louisiana.

TRA demonstrates the following herein:

- BellSouth may not rely on providers of personal communications service to satisfy the threshold requirement that it faces facilities-based local exchange competition in the State of Louisiana. Not only are PCS and wireline local exchange service not comparably priced, but numerous fundamental differences between the two services ensure that PCS continues to largely complement, rather than substitute for, wireline local exchange service. Moreover, the presence of PCS providers in the State of Louisiana reveals nothing with respect to BellSouth's satisfaction of the statutory mandate that it open its local exchange/exchange access markets to competition.
- US WEST is mistaken in its belief that "where a [competitive local exchange carrier] CLEC or combination of CLECs provides service to both residential and business subscribers, Track A does *not* require that both classes of subscribers be served on a facilities basis." As made clear in its evaluation of the BellSouth Application, US WEST's contention that the U.S. Department of Justice supports US WEST's view is inaccurate. Moreover, the plain language of Section 271(c)(1)(A) and persuasive public policy considerations run counter to US WEST's position.
- Contrary to Ameritech's contentions, collocation is but one means of providing competitive LECs with access to unbundled network elements. While BellSouth is required to provide competitive LECs with physical collocation opportunities, it must also provide them with network access such that they may combine network elements to provide telecommunications services without introducing facilities of their own.

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**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Public Notice, DA 98-1364 (released July 9, 1998), and Public Notice, DA 98-1480 (released July 23, 1998), hereby replies to selected comments offered by Ameritech Corporation ("Ameritech") and U S WEST Communications, Inc. ("US WEST") in support of the application ("Application") submitted by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively "BellSouth") under Section 271(d) of the Communications Act of 1934 ("Communications Act"),¹ as amended by Section 151 of the Telecommunications Act of 1996 ("Telecommunications Act"),² for authority to provide interLATA service "originating" within the BellSouth "in-region State" of Louisiana.

¹ 47 U.S.C. § 271(d).

² Pub. L. No. 104-104, 110 Stat. 56, § 151 (1996).

Ameritech and U S WEST both argue that BellSouth may properly rely on providers of personal communications service ("PCS") to satisfy the threshold requirement that it faces facilities-based local exchange competition in the State of Louisiana.³ US WEST also argues that "Track A" does not require BellSouth to document the facilities-based provision of competitive local exchange service to both residential and business customers.⁴ Ameritech further asserts that "[b]ecause collocation is the only statutorily authorized method for a requesting carrier to obtain access to and combine unbundled network elements at the incumbent's premises, collocation by necessity satisfies an incumbent LEC's obligation under § 251(c)(3) to provide 'nondiscriminatory' access to unbundled network elements."⁵ TRA strongly disagrees with all three contentions.

³ Comments of Ameritech on Second Application by BellSouth to Provide In-region interLATA Services in Louisiana at 2 - 8 ("Comments of Ameritech"); Comments of U S WEST Communications, Inc. on Second Application by BellSouth to Provide In-region interLATA Services in Louisiana at 6 - 7 ("Comments of US WEST").

⁴ Comments of U S WEST at 3 - 5. While US WEST cites BellSouth's claim that facilities-based competitive local exchange carriers ("LECs") serve "a small number of residential lines over their own networks," this contention has been shown to be false. Comments of KMC Telecom, Inc., Exhibit 1, Affidavit of Wendell Register at ¶¶ 3 - 4.

⁵ Comments of Ameritech at 14 - 16. Ameritech also urges the Commission to "address the proper classification of Internet calls as part of evaluating BellSouth's satisfaction of the competitive checklist." Comments of Ameritech at 9 - 12. TRA submits that the instant proceeding is not the appropriate forum in which to resolve this critical issue. As Ameritech acknowledges, the question of the proper jurisdictional classification of Internet calls is currently pending in CCB/CPD Docket No. 97-30, Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic. Moreover, the Commission has recently called for public comment on the regulatory treatment and classification of advanced telecommunications services used to provide Internet access in several other proceedings. *E.g.*, Deployment of Wireline Services Offering Advanced Telecommunications Capability (Memorandum Opinion and Order and Notice of Proposed Rulemaking), CC Docket No. 98-147, FCC 98-188 (released Aug. 7, 1998); GTE Telephone Operators (Order Designating Issues for Investigation), CC Docket No. 98-79 (released Aug. 20, 1998). Given that there are numerous other grounds for denial of the BellSouth Application, the Commission need not and should not determine the proper jurisdictional classification of Internet calls in this limited context.

1. **PCS in the State of Louisiana Cannot be Used by BellSouth To Demonstrate "Track A" Compliance**

Ameritech argues vigorously that "the language and structure of the Act and the Commission decisions uniformly indicate that PCS providers do in fact provide 'telephone exchange service' under Section 3(47)(A)," and predicated on this assertion alone, contends that "PCS providers must be able to qualify as 'facilities-based competitors' under Section 271(c)(1)(A)."⁶ U S WEST goes one step further, adding that it "agrees with BellSouth that 'in Louisiana, PCS is a viable alternative to wireline local service, and that through this service alone, BellSouth satisfies Track A'."⁷

With respect to Ameritech's argument, the Commission has made clear that an applicant that seeks to rely on PCS for "Track A" compliance must not only demonstrate that PCS "satisfies the statutory definition of 'telephone exchange service' in section 3(47)(A)," but that PCS is "an actual commercial alternative to the BOC," rather than a "complementary telecommunications service."⁸ Recognizing this requirement, U S WEST references claims by BellSouth that PCS is priced competitively with wireline local exchange service in the State of Louisiana. As TRA demonstrated in its Opposition to the BellSouth Application, however, not only are PCS and wireline local exchange service not comparably priced, but numerous fundamental differences between the

⁶ Comments of Ameritech at 2, 8.

⁷ Comments of U S WEST at 7.

⁸ Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana (Memorandum Opinion and Order), 13 FCC Rcd 6245, ¶¶ 72 - 73 (1997).

two services ensure that PCS continues to "largely complement, rather than substitute for, wireline local exchange service."⁹

As the Commission has recently reported, "wireline service currently costs between \$0.05 and \$0.20 per minute," while "the price of mobile telephone service . . . rang[es] between \$0.25 and \$0.73 per minute."¹⁰ Thus, "the ratio between wireless and wireline pricing" is still nearly five to one.¹¹ Indeed, as TRA pointed out in its Opposition, BellSouth was unable to demonstrate even arguable price comparability between PCS and wireline local exchange service without first creating a "high-end" wireline local exchange service offering, inclusive of not only a wide array of vertical features, but short-haul long distance. And even with this gerry-rigged analysis, the best BellSouth could claim was that only those "BST customers with 'low' to 'medium' usage of local and intraLATA toll services" would be candidates "to switch to PCS offerings if minimum cost were the sole criterion for doing so."¹²

⁹ Application of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries (Memorandum Opinion and Order), 12 FCC Rcd. 19985, ¶ 90 (1997).

¹⁰ Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 12 Comm. Reg. (P&F) 623, 637 (1998).

¹¹ Id.

¹² BellSouth Application at Appendix A, Tab 1, Affidavit of Aniruddha Banerjee at 21. For example, as TRA demonstrated in its Opposition, a small business user in New Orleans would pay Sprint PCS for a plan inclusive of only 100 minutes of airtime usage an amount comparable to that he or she would pay to BellSouth for unlimited wireline local exchange service calls, with excess *inbound, outbound and toll free calls* billed at \$0.35 a minute. A residential user in New Orleans would actually pay Sprint PCS more for 15 minutes of airtime usage than he or she would pay BellSouth for unlimited wireline local exchange service calls, with excess *inbound, outbound and toll free calls* billed at \$0.40 a minute.

As TRA pointed out in its Opposition, however, cost is not the sole criterion in determining whether PCS is an actual commercial alternative to wireline local exchange service. Thus, TRA noted for example that the predominant trait of PCS -- *i.e.*, its mobility -- renders it unsuitable as a substitute for wireline local exchange service because the removal of the PCS handset from a residence would deny the household phone service, including the ability to call police and other emergency services. Other critical differences between PCS and wireline local exchange service which undermine claims that the former is an actual commercial alternative to the latter include the substantial cost differential between PCS handsets and traditional residential telephones, the limitation of calling plans to individual PCS handsets, and the chargeable portion of 800 and 888 calls made from PCS handsets.

In short, PCS continues to complement, rather than substitute for, wireline local exchange service. More critically, as TRA stressed in its Opposition, the presence of PCS providers in the State of Louisiana reveals nothing with respect to BellSouth's satisfaction of the statutory mandate that it open its local exchange/exchange access markets to competition. As TRA pointed out, in "enact[ing] the sweeping reforms contained in the 1996 Act, . . . Congress . . . sought to open local telecommunications markets to *previously precluded competitors* not only by removing legislative and regulatory impediments to competition, but also by reducing inherent economic and operational advantages possessed by incumbents."¹³ PCS providers do not fall within the universe of "previously precluded competitors." Indeed, market entry by PCS providers would have occurred

¹³ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20543, ¶ 13 (1997) (emphasis added).

in a "situation . . . largely unchanged from what prevailed before passage of the 1996 Act," with or without compliance by the BOCs with the "competitive checklist."¹⁴ Certainly, "remov[al] of legislative and regulatory impediments" and "elimination of economic and operational barriers to entry" were not necessary to allow for the provision of service by PCS providers within the State of Louisiana.¹⁵

In other words, U S WEST and Ameritech are simply wrong in their claim that "through . . . [PCS] alone, BellSouth satisfies Track A."¹⁶

2. BellSouth Must Document the Facilities-based Provision of Competitive Local Exchange Service to Both Residential and Business Customers

US WEST is also mistaken in its belief that "where a [competitive local exchange carrier] CLEC or combination of CLECs provides service to both residential and business subscribers, Track A does *not* require that both classes of subscribers be served on a facilities basis."¹⁷ In so asserting, US WEST relies heavily on statements made by the U.S. Department of Justice ("DOJ") in recommending denial of BellSouth's original Application for in-region, interLATA authority in the State of Louisiana. US WEST contends that "DOJ . . . recognized that the choice made by a facilities-based new entrant to provide service to only one class of customers,

¹⁴ Id. at ¶ 18.

¹⁵ Id. at ¶ 11.

¹⁶ Comments of U S WEST at 7 (emphasis in original).

¹⁷ Id. at 3 - 4.

i.e., business customers, but not residential customers does not deprive the BOC of its ability to proceed under Track A."¹⁸

Initially, US WEST has misinterpreted DOJ's position. As DOJ explains in its Evaluation:

BellSouth's reliance on . . . [an Addendum filed to the DOJ's Oklahoma Evaluation] is misplaced. The Department's addendum stands only for the proposition that whether an individual provider is facilities-based is to be determined based upon that provider's activities as a whole, and that a provider does not have to be both facilities-based for business customers and separately facilities-based for residential customers to satisfy Track A. *It does not stand for the proposition that a facilities-based provider serving business customers and a reseller serving residential customers can be combined to meet the statutory requirements.*¹⁹

DOJ's assessment accurately reflects the plain language of Section 271(c)(1)(A) which requires a BOC to document the presence of "one or more unaffiliated competing providers of telephone exchange service . . . to *residential and business subscribers*" which are providing "such telephone exchange service . . . either *exclusively* over their own telephone exchange service facilities or *predominantly* over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."²⁰ Moreover, as TRA emphasized in its Opposition, given the differing economics, as well as operational requirements, involved in the provision of service to residential versus business customers, it makes eminent sense from a

¹⁸ Id. at 4.

¹⁹ Evaluation of the United States Department of Justice at 7, fn. 13 (emphasis added) ("Evaluation of DOJ").

²⁰ 47 U.S.C. § 271(c)(1)(A) (emphasis added).

public policy perspective to require as part of a BOC's "Track A" showing documentation of the presence of both facilities-based business and facilities-based residential competition. As TRA argued, a local market cannot be said to be truly open to competitive entry until the various economic and operational impediments to the provision of service to all market segments have been eliminated and alternative providers are able to offer service to not only business, but residential, customers. An absence of residential customers among facilities-based providers strongly suggests the continued presence of economic and operational barriers to the provision of service to this critical market segment.

3. Collocation is But One Means by Which Competitive LECs May Combine Unbundled Network Elements

Ameritech contends that "collocation is not only *an* authorized method for requesting carriers to combine unbundled network elements at the incumbent's premises, it is the *only* method."²¹ Thus, Ameritech continues, BellSouth has satisfied its obligation under § 251(c)(3) to provide nondiscriminatory access to unbundled network elements merely by offering collocation opportunities to competitive LECs. Ameritech predicates its view on the simple notion that collocation was statutorily mandated and other means by which unbundled network elements could be assembled by competitive LECs were not expressly identified by Congress. Ameritech's reading of Section 251(c) is unduly restrictive.

Ameritech is correct that Section 251(c)(6) imposes on incumbent LECs "[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network

²¹ Comments of Ameritech at 15.

elements at the premises of the local exchange carrier.”²² Section 251(c)(3), however, imposes on incumbent LECs a far broader obligation, that is “[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point . . . in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.”²³ While the provision of collocation opportunities is a means of meeting the latter obligation, the statute nowhere indicates that an incumbent LEC satisfies its Section 251(c)(3) duty merely by providing collocation opportunities and certainly does not preclude the Commission from mandating other more viable means for combining unbundled network elements.

Aware that appellate courts had concluded that the Commission lacked the statutory authority to mandate physical collocation,²⁴ Congress incorporated Section 251(c)(6) into the Act to ensure that the Commission had at its disposal the authority necessary to provide for physical intrusion by competitive LECs into incumbent LEC central offices. In so doing, Congress provided competitive LECs with a choice, not a directive. The authority to require collocation is a tool to be used by regulators to implement Section 251(c)(3)’s network unbundling requirements, not a safe harbor for incumbent LECs. Above all, Section 251(c)(6) is not a license for incumbent LECs to render network unbundling more costly and complex.

²² 47 U.S.C. § 251(c)(6).

²³ 47 U.S.C. § 251(c)(3).

²⁴ Bell Atlantic Telephone Companies v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

Such a reading of the Act is fully consistent with the decision of the U.S. Court of Appeals for the Eighth Circuit ("Eighth Circuit") in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir.), *cert granted* 118 S.Ct. 879 (Jan. 26, 1998). In that decision, the Eighth Circuit confirmed that a competitive LEC need not "own or control some portion of a telecommunications network before being able to purchase unbundled elements."²⁵ Moreover, the Eighth Circuit made clear that Section 251(c)(3) requires incumbent LECs to provide competitive LECs with "access to their networks" for purposes of combining network elements delivered to them on an unbundled basis.²⁶ While collocation is one means of accessing a network, it necessarily involves the introduction of facilities by the competitive LEC, which as succinctly stated by the Florida Public Service, "would impose on an ALEC seeking unbundled access the very obligation the court held to be inappropriate under the Act, *i.e.*, to own or control some portion of the network."²⁷

In short, while BellSouth is required to provide competitive LECs with physical collocation opportunities, it must also, contrary to Ameritech's claims, provide them with network access such that they may combine network elements to provide telecommunications services without introducing facilities of their own. As the Commission has recognized, "Congress did not intend section 251(c)(3) to be read to contain any requirement that carriers must own or control some

²⁵ Id. at 814.

²⁶ Id. at 814.

²⁷ AT&T Communications of the Southern States, Docket No. 971140-TP, Order No. PSC-98-0810-FOF-TP, PUR 4th, slip opin. (Flor. Pub. Serv. Comm. June 12, 1998).

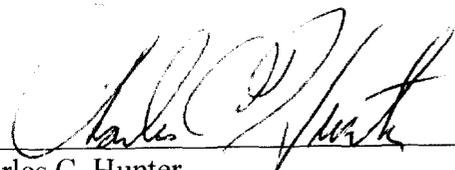
of their own local exchange facilities before they can purchase and use unbundled elements to provide a telecommunications service."²⁸

4. **Conclusion**

By reason of the foregoing and its earlier-filed Opposition, the Telecommunications Resellers Association once again urges the Commission to deny the Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. to provide interLATA service within the BellSouth "in-region State" of Louisiana.

Respectfully submitted,

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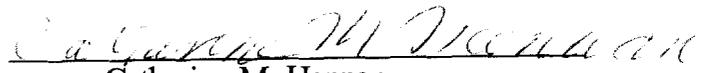
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²⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 15499, ¶ 328 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, 12 FCC Rec. 12460 (1997), *aff'd/vacated in part sub. nom. Iowa Util. Bd v. FCC*, 120 F.3d 753 (1997), *writ of mandamus issued* 135 F.3d 535 (8th Cir. 1998), *cert. granted* 118 S.Ct. 879 (Jan. 26, 1998)(Nov. 17, 1997), *pet. for rev. pending* Case No. 97-3389 (Sept. 5, 1997).

CERTIFICATE OF SERVICE

I, Catherine M. Hannan, hereby certify that a true and correct copy of the foregoing Reply of the Telecommunications Resellers Association has been served this 28th day of August, 1998, by United States First Class Mail, postage prepaid, to the individuals shown on the attached service list.


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