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BELLSOUTH

BellSouth
Suite 900
1133-21st Street, N.W.
Washington, D.C. 20036-3351

kathleen.levitz@bellsouth.com

Kathleen B. Levitz
Vice President-Federal Regulatory

202 463-4113
Fax 202 463-4198

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FEDERAL COMMUNICATIONS COMMISSION
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January 20, 2000

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th St. S.W.
Washington, DC 20554

Re: CC Docket No. 96-149

Dear Ms. Salas:

On January 19, 2000, Mary Jean Dennis, Cynthia Ford and I, all representing BellSouth, met with Ann Stevens, Stacy Pies, and Michael Jacobs of the Common Carrier Bureau's Policy and Program Planning Division. The purpose of the meeting was to discuss BellSouth's opposition to a petition filed by the Commercial Internet eXchange ("CIX") and the Information Technology Association of America ("ITAA"). That petition asked the Commission to postpone the date on which the structural separation requirement and other provisions of section 272 of the Communications Act of 1934, as amended, that apply to in-region interLATA information services provided by Bell Operating Companies are to sunset.

In its comments and reply comments in response to the CIX petition, BellSouth presented the reasons why the Commission should deny the petition. During the January 19 meeting, the BellSouth representatives reiterated those reasons and discussed with the staff the safeguards against anticompetitive behavior that would continue to exist even after the date on which the extraordinary requirements would sunset. Attached is the document that formed the basis for that presentation.

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January 20, 2000
Ms. Magalie S. Roman
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As required by Section 1.1206(b)(2) of the Commission's rules, I am filing two copies of this notice and ask that you place this notification in the record of the proceeding identified above. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen B. Levitz".

Kathleen B. Levitz

Attachment

cc: Ann Stevens
Stacy Pies
Michael Jacobs

BellSouth

Ex Parte Presentation

CC Docket No. 96-149

CIX and ITAA Request for Extension of Sunset Date of the Structural, Non-Discrimination, and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services

SUMMARY

- There is no legal or policy basis for extending the 272(f)(2) sunset governing BOC provision of interLATA information services.
- BOCs have no market power in the interLATA information services market.
- Nonstructural safeguards have effectively protected competition in the intraLATA information services market and will be more than sufficient in the interLATA information services market.

Section 272(f)(2) Sunset is Not Tied to Section 271 Relief

- Contrary to the arguments raised by CIX and ITAA, Section 272(f) of the Act contains two *distinct* sunset provisions. The plain language of the Act clearly shows that only one of the sunset provisions is tied to local competition and Section 271 relief.
 - The sunset for 272(f)(1) regarding manufacturing and long distance is tied to 271 relief.
 - The sunset for 272(f)(2) regarding interLATA information services is *four years after enactment*.

BOCs Have No Market Power in InterLATA Information Services

- BOCs have participated in the information services marketplace for more than a decade without harming competition.
- The information services marketplace has experienced tremendous growth, especially with respect to the Internet.
- It should be obvious even to a casual observer that the “giants” in the Internet and interLATA information services market are not the BOCs.

Nonstructural Safeguards are More than Sufficient

- Commission has recognized that a number of safeguards will be available to prevent discrimination after the separate affiliate requirements of Section 272 cease to apply:
 - Section 251 (c)(5)
 - Section 251(g)
 - Section 251(c)(3)
 - Sections 201 and 202
 - Commission rules imposing network disclosure and equal access requirements

* Paragraph 271 of First Report and Order in CC Docket No. 96-149, December 24, 1996
BellSouth, January 19, 2000

Nonstructural Safeguards are More than Sufficient

- Commission has repeatedly reaffirmed its position that nonstructural safeguards adequately protect competition in a variety of markets.
- Computer III nonstructural safeguards govern BOC provision of intraLATA information services.
 - Comparably Efficient Interconnection
 - Network Disclosure
 - Cost Allocation

Nonstructural Safeguards are More than Sufficient

- Commission has indicated that it expects ISPs to monitor BOC compliance with Computer III safeguards.
- ISPs may use the Section 208 complaint process to address any noncompliance concerns.
- Commission has indicated it “...will not hesitate to use its enforcement authority.” *

* Paragraph 15 of Report and Order in CC Docket Nos. 95-20 and 98-10, March 10, 1999

Other Claims by CIX and ITAA are Irrelevant

- References to DSL in this proceeding are misplaced. Moreover, contrary to claims by CIX and ITAA, DSL related promotions by BellSouth are entirely proper.
 - BellSouth's Complete Choice® service is available to all customers at its tariffed rate, regardless of whether a customer buys BellSouth® FastAccessSM Internet access service.
 - BellSouth's ADSL service is available to all ISPs pursuant to tariff on a nondiscriminatory basis.
 - CLECs may resell Complete Choice in combination with their own Internet access service and competing ISPs can, and do offer free installation and modems with their Internet access services.

Conclusion

- CIX and ITAA fail to make a case for extending the Section 272(f)(2) sunset.
- The CIX and ITAA request should be denied.
- The provisions of 272(f)(2) should sunset as scheduled on February 8, 2000.