

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

mary.henze@bellsouth.com

**Mary L. Henze**  
Executive Director  
Federal Regulatory Affairs

202 463-4109  
202 463-4631 Fax

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 5, 2001

Ms. Magalie Roman Salas  
Secretary  
445 Twelfth Street, SW  
Room TW-A325  
Washington, DC 20554

**Re: *Petition of US West Communications, Inc., for a Declaratory Ruling  
Regarding the Provision of National Directory Assistance, CC Dkt. 97-172***

Dear Ms. Salas,

On October 5, BellSouth sent the attached letter to Michele Carey, Chief of the Policy and Program Planning Division. The letter provides additional information regarding BellSouth's pending Petition for Limited Reconsideration filed in the above captioned proceeding.

This notice is being filed pursuant to Sec. 1.1206(b)(2) of the Commission's rules. If you have any questions concerning this filing, please do not hesitate to contact me.

Sincerely,



Mary L. Henze

Attachment

cc: M. Carey

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BellSouth Corporation  
Legal Department  
675 West Peachtree Street  
Suite 4300  
Atlanta, GA 30375-0001

angela.brown@bellsouth.com

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Angela N. Brown  
Regulatory Counsel

404 335 0724  
Fax 404 614 4054

October 5, 2001

Ms. Michelle Carey  
Division Chief  
Policy & Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 5-C122  
Washington, D.C. 20554

**Re: BellSouth Written *Ex Parte*  
*Petition of U S WEST Communications, Inc. for a Declaratory Ruling  
Regarding the Provision of National Directory Assistance*  
(CC Docket No. 97-172)**

Dear Ms. Carey:

Pursuant to your request, BellSouth respectfully submits this written *ex parte* to provide additional information regarding BellSouth's pending Petition for Limited Reconsideration<sup>1</sup> and subsequent *ex partes*<sup>2</sup> filed in the above-captioned proceeding.

On September 5, 2001, BellSouth met with the Common Carrier Bureau staff to discuss the Company's most recent written *ex parte* submitted on August 24, 2001.<sup>3</sup> In that *ex parte* letter, BellSouth asked the Commission to act on its petition seeking partial reconsideration of an order in which the Commission concluded that the provision of nonlocal Directory Assistance ("DA") service constitutes a permissible incidental interLATA service under Section 271(g)(4)

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<sup>1</sup> BellSouth Petition for Limited Reconsideration, CC Docket No. 97-172 (filed Oct. 27, 1999) ("BellSouth Petition").

<sup>2</sup> See Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172 (filed August 24, 2001); Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172 (filed May 17, 2001); Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172 (filed April 19, 2001).

<sup>3</sup> Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172 (filed September 6, 2001).

of the 1996 Telecommunications Act ("1996 Act"). See *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, CC Docket No. 97-172, *Memorandum Opinion and Order*, 14 FCC Rcd 16252 (1999) ("NDA Order").

During several *ex parte* meetings and in its petition, BellSouth urged the Commission to reconsider its conclusion that Section 271(g)(4) requires a Bell Operating Company ("BOC") to "own" the information storage facilities used to provide DA service. Specifically, BellSouth requested that the Commission find that Section 271(g)(4) permits BOCs to provide nonlocal DA through less restrictive means than full and exclusive ownership of the storage facilities. For example, BellSouth recommended that shared ownership, leasing, and/or contracting with third parties for access be authorized as permissible methods by which carriers could use storage facilities to provide nonlocal DA. As BellSouth demonstrated, an overly restrictive interpretation of Section 271(g)(4) precludes the development of new and innovative services and unfairly imposes significant costs on a particular class of carriers, the BOCs. BellSouth therefore urged the Commission to reconsider its narrow interpretation of Section 271(g)(4) and instead adopt an interpretation that provides broader flexibility in the ways by which carriers may use storage facilities to provide nonlocal DA.

In its August 24, 2001 written *ex parte*, BellSouth not only set forth compelling legal grounds for changing the Commission's restrictive ownership requirement but also detailed significant public interest benefits that could prevail under a more flexible framework. For example, BellSouth demonstrated that a less restrictive ownership requirement was necessary to enable BOCs to provide expanded DA services such as international DA. BellSouth explained how significant operational and regulatory barriers preclude the establishment of a single international DA database that would comply with the Commission's ownership requirement.

Further, BellSouth explained how it proposed to provide international DA in light of the current regulatory environment and existing technology.<sup>4</sup> See Attachment A (Network Diagram). BellSouth indicated that it would load onto its database storage facility all of the foreign listings it was able to acquire. However, due to the foreign regulatory obstacles detailed in the August 24, 2001 *ex parte*,<sup>5</sup> the only such listings that BellSouth has been able to obtain to date are Canadian listings. For those foreign listings not housed on our database storage facility, the BellSouth operator would launch a query to the international DA database aggregator. Next,

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<sup>4</sup> As technology continues to advance, there may be new and different ways to access international DA listings in the future. For example, carriers may some day be able to access international listings via the Internet in lieu of or in addition to the current method of relying on foreign database aggregators.

<sup>5</sup> See *supra* note 2.

the information obtained from the foreign database would be delivered to the BellSouth operator, who would provide the international listing to the caller.

BellSouth estimates that the number of calls that would necessitate exiting the BellSouth platform in order to obtain international listings through a foreign database aggregator would constitute 0.01% of BellSouth's total DA call volume.<sup>6</sup> Thus, the use of foreign databases in order to provide this expanded nonlocal DA service would be *de minimis*.

The Commission has routinely applied *de minimis* standards in various contexts in order to strike a balance between the need to protect consumers and competition and to limit the restrictions and burdens placed on carriers. For example, one of the most recognized *de minimis* standards adopted by the Commission involves the jurisdictional separations treatment of mixed use special access lines. The Commission has repeatedly concluded that "the amount of interstate traffic carried on a circuit is deemed to be *de minimis* if it amounts to ten percent or less of the total traffic on a special access line." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplemental Order Clarification*, 15 FCC Rcd 9587, 9601, ¶ 26 (2000). See also *MTS and WATS Market Structure; Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, *Decision and Order*, 4 FCC Rcd 5660 (1989). The Commission adopted this *de minimis* standard in order to "recognize[ ] state and federal regulatory interests and foster[ ] administrative simplicity and economic efficiency." *Id.* at 5660, ¶ 6.

The following examples further illustrate the Commission's use of its long standing authority to adopt *de minimis* standards:

- In its recent collocation order, the Commission exempted ILECs from the requirement to provide cross-connects between collocators and other carriers where less than a *de minimis* amount (less than ten percent) of interstate traffic will be transmitted through the cross-connect. See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Fourth Report and Order*, FCC 01-204, ¶ 78 (rel. Aug. 8, 2001).

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<sup>6</sup> Based on current call volumes and projected growth rates over the next five years, BellSouth anticipates that the number of times we will have to exit our platform to obtain international listings will increase from the initial figure of 0.01% of total DA call volume to approximately 1% of total DA call volume.

- In developing rules to facilitate the clearing of certain spectrum in order to transition from analog to digital television (“DTV”), the Commission established a *de minimis* standard for interference protection. Specifically, the Commission determined that it might allow non-conforming DTV applications where interference would affect less than two percent of the population served by another station. *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules; Carriage of the Transmissions of Digital Television Broadcast Stations; Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, WT Docket No. 99-168, CS Docket No. 98-120, and MM Docket No. 00-39, *Third Report and Order*, 16 FCC Rcd 2703, 2713, ¶ 22 (2001).
- The Commission adopted a *de minimis* exception to its affiliate transaction rules for services. Specifically, the Commission exempted carriers from the requirement to make a good faith determination of the fair market value of a service where the total annual value of transactions for that service were *de minimis* (i.e., less than \$500,000). The Commission reasoned that adopting this *de minimis* standard would reduce the burden to carriers without lessening the effectiveness of its affiliate transaction rules. *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1*, CC Docket No. 99-253, *Report and Order*, 15 FCC Rcd 8690, 8700-01, ¶¶ 18-20 (2000).

As demonstrated above, the Commission’s use of *de minimis* standards is commonplace. The Commission has relied on *de minimis* exceptions in order to balance the interests of the relevant stakeholders – the public, the policymakers, and the carriers. Moreover, the Commission has used *de minimis* standards in those situations where an all-or-nothing approach would not advance the public interest. Clearly, application of a *de minimis* standard in the instant case would be fully consistent with Commission precedent and policy. It would promote competition by allowing BOCs and other carriers to provide expanded DA services such as international DA. Accordingly, BellSouth urges the Commission to find that the limited use of foreign databases in order to provide international DA is permissible under Section 271(g)(4) of the 1996 Act.

## CONCLUSION

BellSouth respectfully requests that the Commission reconsider its interpretation that total and exclusive ownership of information storage facilities is required in order to comply with Section 271(g)(4) of the 1996 Act. A less narrow reading of Section 271(g)(4) is not only consistent with the plain language of the statute but also would serve the public interest by fostering competition and providing customers with expanded services. BellSouth therefore urges the Commission to find that shared ownership, leasing, and/or contracting with third

Ms. Michelle Carey  
October 5, 2001  
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parties for access are permissible methods by which carriers may use storage facilities to provide nonlocal DA. In addition, BellSouth urges the Commission to find that the limited use of non-BOC storage facilities to provide incidental interLATA services is permissible under Section 271(g)(4) of the 1996 Act.

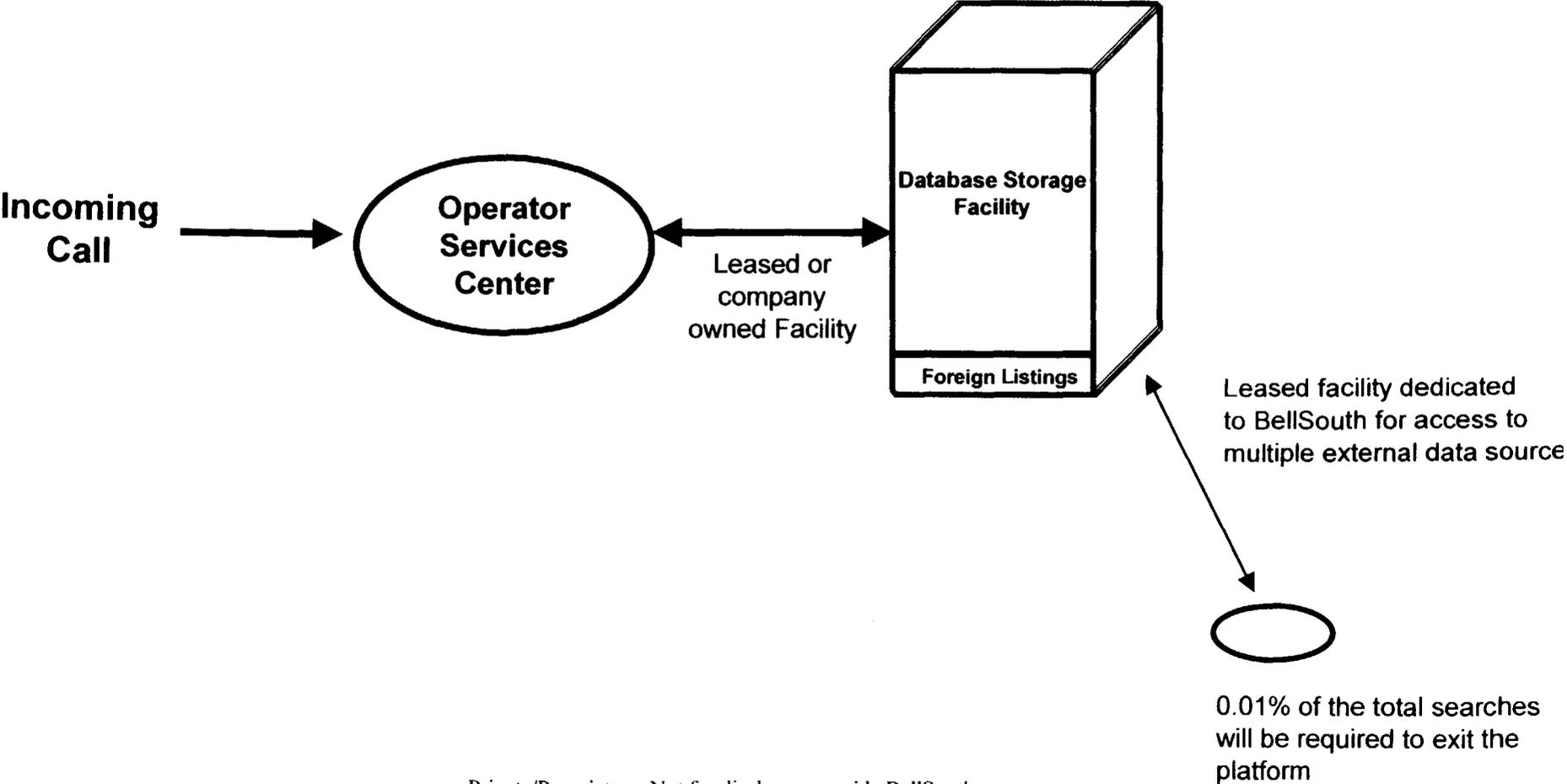
Respectfully submitted,

  
Angela N. Brown

Ex Parte  
CC Docket No. 97-172  
October 5, 2001  
Doc. No. 414334

# Non-Local DA

## ATTACHMENT A



Private/Proprietary: Not for disclosure outside BellSouth.