BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of the Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Service in Georgia and Louisiana	**CC Docket No. 01-277**

REPLY COMMENTS OF THE

CONSUMER FEDERATION OF AMERICA

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Respectfully submitted,

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I. SUMMARY OF ARGUMENT

The Consumer Federation of America (CFA) believes that the application of BellSouth to provide interLATA long distance telephone service in the Georgia and Louisiana should be denied. We share the concerns of the Department of Justice that the local market in neither of these states has been irreversibly opened to local competition. In our view, because BellSouth's application is premature and does not meet the requirements of the Telecommunications Act of 1996, granting it now would harm consumers and the prospect of authentic phone competition in

these two states.

In the case of Georgia which shares legacy BellSouth Operating Support Systems (OSS) with the state of Florida, we believe that the FCC could later grant BellSouth's application, once the company passed in Georgia the more rigorous test of OSS being conducted in Florida. The same cannot be said for Louisiana, where Bellsouth maintains distinct OSS.

II. INTEREST AND EXPERTISE OF COMMENTORS

The Consumer Federation of America (CFA) is a federation of 270 state and local consumer groups, whose purpose is to represent consumer interests at the Federal level.

CFA and its member groups have participated in virtually every section 271 proceeding that has come before the Federal Communications Commission, as well as several that continue at the state level. The Consumer Federation of America filed comments at the Federal Communications Commission in the Ameritech Michigan, BellSouth South Carolina and Louisiana, SBC Texas, and Verizon New York applications. CFA filed an *amicus* brief in the Wichita Falls case. CFA and its member groups participated in collaborative processes in California, Texas and New York, and has filed comments in Georgia, Florida, and Oklahoma.

III. THE BELLSOUTH APPLICATION SHOULD BE REJECTED

Evidence filed in this proceeding makes it abundantly clear that BellSouth has failed to comply with section 271 of the Telecommunications Act of 1996 and should not be allowed to begin selling interLATA long distance service within its service territory.

The Georgia Public Service Commission found that BellSouth cannot treat competitors at parity in opening its local market. It instituted fines, but BellSouth reports that it will not come into compliance for at least four months, if ever. Throughout the section 271 process, the FCC

and the Department of Justice have stood by the simple principle that promises to comply in the future are not an adequate basis for allowing entry. The FCC cannot change the rules of the game now.

Not only has BellSouth failed to demonstrate that it has irreversibly opened its market as demonstrated by non-discrimination, but it lacks a second element that the FCC and the DOJ have required to ensure ongoing compliance with the statute in the future: a reliable set of performance measures and penalties to discourage backsliding in the future. As described by the Department of Justice, BellSouth's performance measures are simply not stable and dependable.

In other words, BellSouth is not now in compliance with the statute and there is no way to know whether it will be in the future. The FCC simply cannot approve such an application based upon the framework, rules and procedures developed and consistently applied since the passage of the Act.

IV. COMPETITION MUST EXIST BEFORE ALLOWING THE BELLS TO ENTER THE LONG DISTANCE MARKET

If BellSouth is permitted to sell long distance before the local market is open, consumers would be denied hundreds of millions of dollars of local service savings. BellSouth will continue to exploit its monopoly status to subvert competition, and will be able to bundle local and long distance services while facing little price competition. It will grab market share in long distance, but long distance companies will be unable to grab market share in local. BellSouth will feel no pressure to lower its local prices or to offer attractive long distance packages. It will rely on the bundle to gain considerable market share.

Claims that competition can be promoted by just letting the Bells into the long distance market without properly opening their local markets do not pass close scrutiny. Two states —

Connecticut and Hawaii— experienced early entry because the principal statewide incumbent was not a Bell. Connecticut is particularly interesting in this regard, since it borders New York.

Although Verizon in New York resisted opening its local markets across its service territory, when regulators in New York and at the Department of Justice insisted on genuine market opening, Verizon was forced to comply. New York has proved different from other states' attempts at market opening because the New York Public Service Commission insisted on rigorous market opening conditions, implemented an effective performance assurance plan, provided detailed oversight over the process, and was committed to ensuring that pricing was fair.

New York has been extremely successful compared to the rest of the country in fostering competitive entry into the local exchange market. Competition is much more intense in New York than elsewhere, with almost 20 percent of residential customers having switched. It has among the highest number of zip codes with six or more competitors. It has among the fewest zip codes that are not being served by a competitor. We believe that this is the model toward which all states should strive.

Although Connecticut is a high income, low cost state with intensive telecommunications users, premature entry in Connecticut has been disastrous for consumers. Connecticut is well below the national average regarding the amount of competition available to residential consumers. Approximately six times as many residential consumers have switched in New York as in Connecticut. There has been little price competition in either the local or long distance market.

The root cause of the success in New York is not the mere fact of entry by incumbents into long distance. The cause of the success in New York is the irreversible market opening that took place prior to allowing the company entry into long distance.

Prematurely allowing incumbent local companies into the in-region long distance market undermines the prospects for competition. If the incumbents are allowed into long distance markets before their local markets are irreversibly open, local competition will not develop and long distance competition will not be vigorous. Bundling, or selling more than one telecommunications service to a particular customer (e.g. local and long distance), produces a much higher take rate for individual services and dramatically decreases churn rates, making it difficult for entrants to capture new customers. For example, Sprint long distance has a take rate of about 10% nationally. However, in regions where it sells local service, the take rates are approximately 40%. Similarly, when Southern New England Telephone entered the long distance market in Connecticut, it quickly captures about a 35 percent share of the residential market without offering prices that were more attractive than existing long distance competitors. It was the bundle of local and long distance that gave it the edge.

These examples and experiences make it clear that competition cannot be created by premature entry of the RBOCs into long distance. Competition was roaring in New York before RBOC entry because the market had been opened and it increased after entry. It was roaring in Texas before RBOC entry but it slowed down after entry. The key is market opening, not RBOC entry. If the local market is not irreversibly open, only the incumbent can effectively offer the local/long distance bundle and that badly distorts competition. The incumbents can capture long distance customers without having to compete on price because barriers have not been removed. They face little real local competition and their hold is reinforced by their unique ability to offer

a bundle of services. The risk that arises from a rush to approve 271 is that the incumbent can exploit the anticompetitive conditions, or "competitive imbalance," in the critical early days of the bundled telecommunications market. It can then rapidly capture long distance customers by bundling local and long distance service, while competitors are unable to respond with a competitively priced bundle.

V. THE FCC NEEDS TO PRESERVE THE INTEGRITY OF THE SECTION 271 PROCESS

BellSouth's failure to comply raises another important matter. How did the Georgia Commission, which has worked very hard over the years to push BellSouth to open it local market, get itself into the position of approving an inadequate application? The answer can be found in the design of the test of BellSouth's operating support systems. The test was not sufficiently rigorous or broad to detect significant failures to treat competitors at parity, as the law requires.

Fortunately, the Georgia Commission and the FCC do not have to "go back to the drawing board," as the Department of Justice points out. Since the state of Florida, which uses the same OSS and has the same OSS legacy systems is conducting a much more rigorous test, the fate of a future Georgia application can be tied to that of Florida.

Georgia does appear to be in compliance with all other aspects of section 271. Therefore, it would seem sensible for the FCC to determine that it could approve the BellSouth once the company produces evidence that it can deliver OSS at parity in Georgia under a properly designed and fully implemented test. Ever since our participation in the New York process, we have advocated an approach to fully-developed section 271 applications in which only *outstanding* issues are relitigated. Clearly, a lot of hard work has been done in Georgia, but the

process is not yet completed. The issues that have been resolved should be closed (subject only to the proviso that issue could be reopened only if commenters demonstrate that backsliding has occurred).

VI. LOCAL COMPETITION IN LOUISIANA IS IN A WORSE PREDICAMENT

While the above approach would work in Georgia, Louisiana must be handled differently. Louisiana does not share the same legacy OSS systems with Georgia and Florida. The FCC cannot rely on a Florida/Georgia application to conclude that Louisiana is also in compliance. BellSouth must be required to show, after compliance in Florida has been demonstrated, that there is a factual basis for concluding that Louisiana is also in compliance. Louisiana does not qualify for a “me-too” approval because it does not have the same legacy systems. There is also a much lower level of competition in Louisiana and considerable controversy over the pricing of unbundled network elements in Louisiana.

VII. CONCLUSION

For the above reasons, we urge the Commission to reject the application of BellSouth to sell long distance service in both Georgia and Louisiana.