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

In the matter of)
)
Joint Application by BellSouth Corporation,) CC Docket No. 02-35
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc.)
)
For authorization to provide in-region,)
interLATA service in the States of Georgia)
and Louisiana)

COMMENTS IN OPPOSITION OF TRITON PCS LICENSE COMPANY, L.L.C.

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MARCH 4, 2002

SUMMARY

On January 30, 2002, BellSouth informed Triton of a new interconnection policy. Under this new policy, BellSouth will not provide direct interconnection to NXX codes with rating points outside BellSouth's franchise area, even for calls from BellSouth customers directly to Triton customers. This new policy is contrary to the requirements of sections 251(c)(2) and (e) of the Communications Act and to the Commission's implementing rules. Consequently, BellSouth does not meet items one and nine of the "competitive checklist," and its application for interLATA authority in Georgia and Louisiana must be denied.

The new BellSouth policy violates section 251(c)(2) and the implementing rules because it denies Triton the ability to interconnect at any technically feasible point and, specifically, the ability to adopt a single point of interconnection with BellSouth in any LATA. The new policy also is discriminatory because BellSouth will interconnect with incumbent LECs that hold NXX codes with rating points outside the BellSouth area, but will not do so for other carriers. While BellSouth's memorandum announcing the policy claims this treatment is required by state law, there are no state decisions requiring this policy and, in any event, any such decisions would be superseded by federal law. Consequently, BellSouth fails checklist item one.

BellSouth's new policy also causes it to fail checklist item nine, which requires adherence to industry numbering guidelines and Commission numbering rules. By denying interconnection for NXX codes assigned by NeuStar, BellSouth usurps the authority given solely to NeuStar by the Commission. Further, the new BellSouth policy is contrary to both industry guidelines and the Commission's rules for NXX code assignments, which require carriers only to be authorized to serve a specific area before receiving an NXX code. Triton is unequivocally authorized to provide CMRS service in the geographic area where BellSouth is denying interconnection.

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Triton PCS License Company, L.L.C. (“Triton”), by its attorneys, hereby submits these comments in opposition to the above-referenced application (the “Application”) of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, “BellSouth”).¹ As described below, BellSouth is not meeting its obligations to provide interconnection consistent with the requirements of Section 251(c)(2) of the Communications Act of 1934 (the “Act”) and to comply with the Commission’s rules governing numbering administration. Thus, BellSouth fails the first and ninth items on the “competitive checklist” under Section 271(c)(2)(B) and its joint application currently cannot be granted.

I. INTRODUCTION

Triton is a mid-sized provider of commercial mobile radio (“CMRS”) wireless services with a regional presence in the southeastern United States. Triton’s service area has a total population of approximately 13.5 million people and includes the states of North Carolina, South Carolina and Georgia. Triton exchanges traffic with BellSouth in each of these states via direct interconnection arrangements

¹ See Comments Requested on the Joint Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana, *Public Notice*, CC Docket No. 02-35, DA 02-337 (rel. Feb. 14, 2002).

established under interconnection agreements between the parties. Triton obtains numbering resources to serve its customers through the normal application process administered by NeuStar, and obtains codes in compliance with the Commission's rules and the Central Office Code Assignment Guidelines adopted by the Industry Numbering Committee.²

Until recently, Triton had no significant interconnection disputes with BellSouth. On January 30, 2002, however, BellSouth sent a memorandum to Triton (and, presumably, other interconnecting carriers) outlining a new policy it will apply immediately across all its landline markets, including in Georgia and Louisiana, concerning the routing of calls to NXX codes with rating points outside the BellSouth franchise area.³ Under this new policy, "BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth."⁴ Following receipt of this memorandum, Triton inquired as to its meaning and was informed that, effective on the date of the memorandum, BellSouth no longer would activate any new NXX code in its switches if the rating point for NXX code was outside the BellSouth franchise area.⁵ Further, if BellSouth identifies any currently-activated NXX code with a rating point outside the BellSouth franchise area, it will stop routing calls to that code directly from its switches. In either case, BellSouth expects the carrier holding the NXX code to establish direct interconnection with the incumbent LEC serving the location of the rating point and, apparently, BellSouth will then route its calls to that NXX through the other incumbent LEC's facilities.

These new requirements are in violation of BellSouth's existing interconnection agreements with Triton, which allow Triton to interconnect directly with BellSouth for transmission of all intra-MTA traffic originating in BellSouth territory. They also violate BellSouth's obligation to provide "just,

² See Declaration of Donna Bryant (the "Bryant Declaration"), attached hereto as Exhibit 1, at 2; *see also* Central Office Code (NXX) Assignment Guidelines, INC 95-0407-0008, Jan. 7, 2002 (the "CO Code Guidelines").

³ A copy of the BellSouth memorandum is attached hereto as Exhibit 2.

⁴ Exhibit 2 at 1.

⁵ Exhibit 1 at 1.

reasonable and nondiscriminatory” interconnection at “any technically feasible point” on BellSouth’s network under Section 251(c)(2) of the Communications Act and the Commission’s rules. Further, BellSouth’s failure to activate NXX codes assigned to Triton by NeuStar in its role as administrator of the North American Numbering Plan is a violation of the Commission’s rules governing numbering administration.

This proceeding marks the first opportunity for Triton to bring these issues to the attention of regulators. BellSouth did not issue its memorandum until well after the Georgia and Louisiana commissions had completed their consideration of BellSouth’s Section 271 applications and, further, Triton was unable to confirm that BellSouth intended to deny interconnection for certain NXX codes until after the Application was filed. Because BellSouth changed its interconnection policy only after the Georgia and Louisiana commissions had acted, they had no opportunity to consider BellSouth’s new interconnection policy in their analysis of checklist compliance.

II. CHECKLIST ITEM 1: BELLSOUTH’S NEW INTERCONNECTION POLICY VIOLATES THE REQUIREMENTS OF SECTION 251(C)(2) OF THE COMMUNICATIONS ACT AND THE COMMISSION’S IMPLEMENTING RULES.

As the Commission has explained, “Section 271(c)(2)(B)(i) requires the BOC to provide equal-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements sections 251 and 252.”⁶ To meet this requirement, a BOC must, among other things, provide interconnection at any technically feasible point on its network and, in particular, must offer interconnecting carriers the opportunity to interconnect at a single point in each LATA if they so choose.⁷ A BOC also must comply with Commission rules governing termination of local telecommunications traffic, including those rules specifically applicable to CMRS providers such as Triton. BellSouth’s new interconnection policy violates these requirements for a number of reasons.

⁶ Application of Verizon Pennsylvania Inc. *et al* for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, *Memorandum Opinion and Order*, 16 FCC Rcd 17419, 17473 (2001) (footnote omitted).

⁷ *Id.* at 17474; *see also* Joint Application by SBC Communications *et al.* Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, 16 FCC Rcd 20719, 20762 (2001).

First, BellSouth's policy violates the obligation to provide interconnection at a single point in each LATA if the interconnecting carrier so requests. Under the BellSouth policy, if a carrier chooses to locate the rating point for an NXX outside the BellSouth franchise area, it is not possible to interconnect directly with BellSouth to complete calls to that NXX. Rather, a carrier will have either to connect directly with BellSouth for some of its calls and indirectly for other calls, or interconnect indirectly with BellSouth for all of its calls.⁸ Not only is this policy contrary to Commission requirements, it also imposes great inefficiencies and unnecessary costs on CMRS providers. BellSouth is effectively requiring direct interconnection with smaller incumbent LECs, even where call volume cannot justify the investment in direct facilities.

The new policy also violates BellSouth's obligation to interconnect with Triton (and other carriers) at any technically feasible point on BellSouth's network. It plainly is technically feasible for BellSouth to route calls from its customers to all Triton NXX codes associated with Triton's switch, regardless of the rating points associated with those NXX codes. Indeed, BellSouth has, up until now, followed Triton's routing instructions for all Triton's NXX codes.

In addition, BellSouth's new policy violates its obligation to provide interconnection on a nondiscriminatory basis. As the Commission explained in the *Local Competition Order*, "incumbent LECs may not discriminate against parties based upon the identity of the carrier[.]"⁹ Under the new policy, however, BellSouth is doing just that: It is willing to provide interconnection to NXX codes held by other ILECs that serve areas outside BellSouth territory, but will not provide the same interconnection to Triton and other non-ILEC carriers that also serve those areas. Given that Triton does not seek that BellSouth activate NXX codes for areas where Triton is not authorized to provide service, there simply is no basis for any such discrimination.

⁸ In some cases, the BellSouth policy could force other carriers to establish direct interconnection with dozens of other carriers, greatly increasing the cost of interconnection without any countervailing benefit.

⁹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15612 (1996).

All of the Commission's prior determinations specifically apply to CMRS providers. The Commission's rules establish that ILECs are required to provide interconnection for all intraMTA traffic exchanged with CMRS providers. 47 C.F.R. § 51.701(b)(2) (defining intraMTA traffic as local traffic for interconnection purposes as between local exchange carriers and CMRS providers). Indeed, the applicability of these rules to CMRS providers has been upheld by the courts as well.¹⁰ Consequently, any policy that prohibits routing of intraMTA traffic over direct interconnection facilities is in violation of Section 251(c)(2) and the Commission's implementing rules.

In its January 30 memorandum, BellSouth defends its new policy by claiming that routing calls to NXXs with rating points outside BellSouth territory could cause BellSouth and the interconnecting carriers "to violate state commission regulations under which they operate."¹¹ This claim is incorrect. First, BellSouth points to no specific state regulation and, to Triton's knowledge, there is no ruling by any state regulator in BellSouth's territory to that effect. Such a ruling would be nonsensical, because no ILEC has an exclusive right to serve a franchise area.¹² Consequently, there is no basis for insisting that interconnection between BellSouth and any carrier occur through the facilities of other ILECs.

Even if such state regulations existed, however, the Communications Act and the Commission's rules would supersede them. As described above, the interconnection requirements of Section 251(c)(2) and the Commission's rules implementing those requirements forbid BellSouth's new policy, and those requirements override any contrary state law or policy.¹³ Second, the Commission specifically has been given the authority to govern all interconnection between ILECs and CMRS providers, to the exclusion of

¹⁰ See *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997) (affirming FCC rules governing CMRS interconnection); see generally *Qwest Corporation v. FCC*, 232 F.3d 462 (D.C. Cir. 2001).

¹¹ See Exhibit 2 at 1.

¹² The Communications Act specifically forbids states from barring entry into local telecommunications markets. 47 U.S.C. 253(a) (preempting entry barriers). Even rural ILECs that do not face competition from CLECs do not have exclusivity, as there generally are two or more wireless providers serving nearly every part of the country.

¹³ See *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 378-79 (1999) (FCC rules implementing 1996 Act preempt state authority). Even if, arguably, Section 251 and the Commission's rules did not preempt state authority, BellSouth's failure to meet the requirements of those provisions would prevent it from obtaining interLATA authority under Section 271. The competitive checklist contains no provision excusing BOC compliance if there is a conflict between federal and state law. 47 U.S.C. § 271(c)(2)(B).

state laws and policies.¹⁴ Thus, BellSouth cannot depend on unarticulated state requirements to excuse its failure to meet its checklist obligations and thus, BellSouth does not meet checklist item one.

III. CHECKLIST ITEM 9: BELLSOUTH'S NEW INTERCONNECTION POLICY VIOLATES THE COMMISSION'S RULES GOVERNING NUMBERING ADMINISTRATION.

Under the ninth item of the competitive checklist, a BOC must comply with the applicable “telecommunications numbering administration guidelines, plan or rules.”¹⁵ As the Commission has explained, a BOC must “demonstrate[] that it adheres to industry numbering assignment guidelines and Commission rules[.]”¹⁶ BellSouth’s new interconnection policy violates the Commission’s numbering administration rules and, therefore, BellSouth cannot meet this item of the checklist if it intends to maintain its newly announced policy.

BellSouth’s January 30 memorandum indicates that “[r]eview of the guidelines provided by NeuStar, which manages the national code administration system function, shows that applications of rating and routing centers must meet all regulatory requirements.”¹⁷ Relying on this very general statement of principle, BellSouth concludes that it will not activate NXX codes with rating points outside the BellSouth franchise area. In other words, BellSouth is interpreting NeuStar’s general statement as specific permission for BellSouth to determine which codes it will activate and which ones it will not.

¹⁴ 47 U.S.C. § 332(c)(1)(B) (FCC determines CMRS interconnection requirements); *see also Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21. Triton acknowledges that compliance with Section 332(c) is not a prerequisite for obtaining Section 271 authority. However, it is probative of a BOC’s compliance with its obligations under Section 251(c)(2), especially if the violation leads to discriminatory provision of interconnection, which is prohibited by Section 251(c)(2). Further, a BOC’s willingness to violate its obligations under Section 332 is relevant to the determination of whether grant of Section 271 authority is in the public interest, as it shows the extent to which a BOC is likely to continue to comply with regulatory requirements. *See* 47 U.S.C. § 271(d)(3)(C); *see also* Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, *Memorandum Opinion and Order*, 15 FCC Rcd 3953, 4162 (1999) (“*New York 271 Order*”) (public interest requirement is “an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the Congressional intent that markets be open”).

¹⁵ 47 U.S.C. § 271(c)(2)(B)(ix). This provision requires the BOC to provide “nondiscriminatory access” to numbering resources until a numbering administration regime is in place, and then to comply with the requirements of that regime. *Id.* Because the transition to a neutral administrator has been completed, BellSouth is required to comply with the Commission’s numbering rules and associated policies to meet this requirement.

¹⁶ *New York 271 Order*, 15 FCC Rcd at 4136.

¹⁷ Exhibit 2 at 1.

This behavior is contrary to the Commission's rules governing activation of NXX codes and usurps the Commission's jurisdiction to set telephone numbering policy. BellSouth has no authority at all to determine whether Triton or any other carrier is using NXX codes properly. That authority is vested in the Commission, and through delegation under Section 251(e) of the Act, with NeuStar as numbering administrator and with certain state commissions.¹⁸ The Commission specifically has delegated the power to determine whether to assign NXX codes to NeuStar, and has removed all NXX code administration functions from BellSouth and other ILECs.¹⁹

Under the rules, once NeuStar has determined that an NXX code can be assigned to Triton consistent with the CO Code Guidelines and the Commission's number assignment rules, BellSouth is not empowered to decide that the code assignment, Triton's proposed routing or Triton's proposed rating point is improper. Indeed, if BellSouth believes that Triton or any other carrier is using numbering resources improperly, its remedies lie with NeuStar or with the Commission. Self-help, such as BellSouth's new interconnection policy, is not an option.²⁰

Further, BellSouth is incorrect when it asserts that Triton cannot adopt rating points outside BellSouth's franchise area. The only service area requirement for assignment of an NXX code in the Commission's rules is that "[t]he applicant is authorized to provide service in the area for which the numbering resources are being requested[.]"²¹ Plainly, Triton would not be requesting NXX codes that are not coincident with its service area. Similarly, the CO Code Assignment Guidelines require an applicant for an initial code in an area to demonstrate only "authorization and preparation to provide

¹⁸ 47 U.S.C. § 251(e) (FCC has plenary authority over numbering and may delegate authority to a numbering administrator and to state regulators as it determines to be appropriate).

¹⁹ 47 C.F.R. § 52.15 (delegating central office code administration to numbering administrator).

²⁰ In fact, concerns about arbitrary decisions by ILECs acting as state numbering administrators were an important factor in the Commission's initial request to the telecommunications industry to adopt guidelines for NXX code assignments in the mid-1990s, even before the 1996 Act was enacted. BellSouth's new policy, if permitted to remain in place, would allow ILECs to resume their previous status as gatekeepers in determining whether competing carriers would be allowed to obtain and implement NXX code assignments.

²¹ 47 C.F.R. § 52.15(g)(2) (i).

service” before receiving a code.²² The CO Code Guidelines also specifically recognize that the rating and routing points for an NXX code may differ.²³

The criteria in the Commission’s rules and in the Guidelines have been set in accordance with Section 251(e) and are the only ones that can be applied by any carrier. To the extent that BellSouth applies any additional requirements of its own to activation of NXX codes, it is usurping the authority of the Commission and NeuStar under Section 251(e) and the Commission’s rules. The new BellSouth interconnection policy, by insisting that activation of NXX codes in BellSouth’s switches depends on the locations of the rating points for those codes, rather than on whether NeuStar has assigned the codes, is simply beyond its authority. Consequently, the new policy violates the requirement that BellSouth comply with all numbering rules and guidelines, and BellSouth cannot satisfy checklist item nine with its new policy in place.

²² CO Code Guidelines, § 4.1.

²³ *Id.*, § 4.1, n. 14 (“Multiple NXX codes, each associated with a different rate center, may be assigned to the same switching entity/POF”). As described in Exhibit 1, Triton routinely implements NXX codes with differing rating and routing points and never has had an NXX code application denied for this reason. Exhibit 1 at 1-2.

IV. CONCLUSION.

For all these reasons, Triton PCS License Company, LLC, respectfully requests that the Commission deny BellSouth's Joint Application for authorization to provide in-region, interLATA service in the States of Georgia and Louisiana until such time as BellSouth rescinds its new interconnection policy.

Respectfully submitted,

TRITON PCS LICENSE COMPANY, L.L.C.

/s/ Laura H. Phillips

Laura H. Phillips

J.G. Harrington

Its Attorneys

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March 4, 2002

Exhibit 1

Declaration of Donna Bryant

DECLARATION OF DONNA BRYANT

1. My name is Donna Bryant. I am Director, Network Design and Interconnect of Triton PCS License Company, LLC (“Triton”). I am making this declaration in connection with Triton’s comments in opposition to the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, “BellSouth”) for authority to provide in-region interLATA service in the states of Georgia and Louisiana.

2. In my role as Director, Network Design and Interconnect, I am familiar with the status of Triton’s interconnection arrangements with BellSouth. I also am responsible for Triton’s compliance with numbering resource requirements. The statements in this declaration are based on my personal knowledge.

3. I have reviewed the document attached to Triton’s comments as Exhibit 2. It is a true and correct copy of the memorandum sent to Triton by BellSouth on January 30, 2002.

4. Following receipt of the January 30 memorandum, I and others acting under my direction sought additional guidance from BellSouth concerning the new policy articulated in the memorandum and its effect on Triton. In particular, Triton sought to determine if it was BellSouth’s intent to preclude direct interconnection with Triton for the purpose of routing calls to NXX codes with locations outside BellSouth’s franchise areas. Triton was informed that this was the case. Further, BellSouth informed Triton that this policy would apply both to newly-activated NXX codes and to any existing NXX code once BellSouth determined that the code had a rating point outside BellSouth’s franchise area.

5. Like many other wireless providers, Triton has a longstanding practice of separating the rating and routing points of many of its NXX codes. This practice reflects the large geographic areas covered by the switches used by wireless carriers. This practice also reflects the differences in network architecture between wireless providers and incumbent local exchange carriers, which usually have at least one switch in each local calling area.

6. Consistent with the Central Office Code Assignment Guidelines adopted by the Industry Numbering Committee, Triton applies for NXX codes only in areas where it is authorized to serve and actually provides service or intends to provide service following assignment of a code. Triton's rating points for its operational NXX codes all are contained within its actual service area. Triton never has been denied an NXX code by NeuStar based on the rating point specified in the NXX code application.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2002.

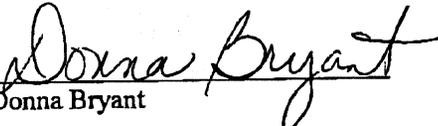

Donna Bryant

Exhibit 2

BellSouth January 30 Memorandum

BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91082844**

Date: January 30, 2002

To: All Telecommunications Carriers Operating In BellSouth Telecommunications Inc.
Service Areas

Subject: All Telecommunications Carriers - Activation of NPA/NXX Codes with Rate Centers
in Non-BellSouth Service Areas

Increasingly, telecommunications carriers are requesting activation of NPA/NXX arrangements whereby routing of traffic is established within BellSouth service areas and rating of such traffic is established with a third-party telecommunications carrier's rate center service area. The third-party rate centers are for service areas outside of BellSouth's franchised service area in which BellSouth is licensed to provide service.

Routing of traffic to/from these NPA/NXXs, with a third-party rate center, is such that calls from/to the Public Switched Telephone Network (PSTN) should route to/from the third-party rate center network upon which the call is rated. Issues arise when the following occur:

- Routing of traffic to these NPA/NXXs, with a third-party rate center, is such that calls from the Public Switched Telephone Network (PSTN) never route to the third-party rate center network upon which the call is rated.
- Calls originating from these NPA/NXXs route over the BellSouth network for termination rather than routing over the third-party telecommunications carrier network, as they should.

Further, by this arrangement establishing a rate center in the third-party's service area and a routing center in BellSouth, normal local and toll options, associated with landline end-user calls, will be rated in a manner inconsistent with the routing of the call. This arrangement places BellSouth and the third-party telecommunications carrier in the position of having to rate calls, based on tariffs for the third party, as though the calls have actually originated from or terminated to the third-party telecommunications carrier, which is contrary to current regulations.

BellSouth does not agree with establishment of this arrangement, as to do so causes BellSouth and/or the third-party telecommunications carrier to violate state commission regulations under which they operate. Review of the guidelines provided by NeuStar, which manages the national code administration system function, shows that applications of rating and routing centers must meet all regulatory requirements.

BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth. This position is applied uniformly across all telecommunications carrier markets.

Please contact your BellSouth account team representative with any questions.

Sincerely,

ORIGINAL SIGNED BY JIM BRINKLEY

Jim Brinkley – Senior Director
BellSouth Interconnection Services

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 4th day of March, 2002, copies of the foregoing “**COMMENTS IN OPPOSITION OF TRITON PCS LICENSE COMPANY, L.L.C.**” were served via first-class mail, postage prepaid, on the following:

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