

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Joint Application by BellSouth Corporation,)
BellSouth Telecommunications Inc., and)
BellSouth Long Distance, Inc. for Provision)
of In-Region InterLATA Services in)
Georgia and Louisiana)
)

CC Docket No. 02-35 /

**OPPOSITION OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits this opposition to the Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. to provide in-region interLATA services in Georgia and Louisiana, pursuant to section 271 of the Communications Act of 1934, as amended (the "Act").¹

CompTel is the premier industry association representing competitive telecommunications providers and their suppliers in the United States. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel's fundamental policy mandate to see that competitive opportunity is maximized for *all* of its members, both today and in the future.

¹ 47 U.S.C. § 271. See Comments Requested on the Joint Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to ProvideContinued

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CompTel members have encountered repeated significant problems while conducting business with BellSouth. CompTel detailed the experiences of several member companies -- including ITC^DeltaCom, e.spire Communications, Inc., Z-Tel Communications, Inc., KMC Telecom, and Birch Telecom, Inc. -- in its opposition to BellSouth's prior application for authority to provide in-region interLATA services in Georgia and Louisiana. CompTel has attached its previous opposition to this filing, and incorporates it by reference into this proceeding.² This opposition supplements the previous filing -- and contains a new affidavit -- by confirming that BellSouth still does not satisfy the competitive checklist set forth in section 271 of the Act and that it would not be in the public interest to grant BellSouth's application. Even though CompTel does not discuss each argument raised in its previous opposition to BellSouth's earlier section 271 application, all arguments and problems cited therein remain valid grounds for the Commission to deny the instant 271 application.³

I. BELLSOUTH'S POOR OSS PERFORMANCE PRECLUDES A FINDING BY THE COMMISSION THAT BELLSOUTH HAS SATISFIED CHECKLIST ITEM II.

In the three months since BellSouth withdrew and refiled its application for section 271 authority to provide in-region interLATA services in Georgia and Louisiana, carriers have not experienced any sustained or notable improvement in BellSouth's performance such

In-Region, InterLATA Services in the States of Georgia and Louisiana, Public Notice, CC Docket No. 02-35, DA 02-377 (Feb. 14, 2002).

² CompTel Comments, CC Docket No. 01-277 (filed Oct. 22, 2001) (attached hereto as Exhibit C); *see Comments Requested on the Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the States of Georgia and Louisiana, Public Notice, CC Docket No. 01-277, DA 01-2286 (Oct. 2, 2001)*. Since CompTel incorporates by reference its comments filed in CC Docket No. 01-277, it will not reiterate the arguments raised therein at length.

³ For example, in these comments, CompTel will not address winback or pricing issues, both of which remain grounds for denying BellSouth's current application.

that the Commission now can find that BellSouth has satisfied section 271's competitive checklist. Section 271(c)(2)(B)(ii) ("checklist item ii") requires BellSouth to provide "non-discriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."⁴ The Commission has determined that "access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable."⁵ In its comments opposing BellSouth's prior 271 application, CompTel documented that BellSouth violated checklist item ii, *inter alia*, by preventing competitive entry through its inadequate and discriminatory OSS practices.⁶ Specifically, CompTel showed that BellSouth has failed to provide OSS to competing carriers in a nondiscriminatory manner, to create reliable OSS databases, or to develop an adequate change management control system.

A. BellSouth Does Not Provide Nondiscriminatory Access to Ordering Functions.

BellSouth still refuses to provide nondiscriminatory access to OSS. As one example, BellSouth does not provide competing carriers with access to ordering functions in the same time and manner as its own retail operations. In its previous comments, CompTel stated that BellSouth's retail representatives had tools available to them that BellSouth denied to

⁴ 47 U.S.C. § 271(c)(2)(B)(ii).

⁵ *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 3952, 3990, ¶ 84 (1999).

⁶ See CompTel Comments, CC Docket No. 01-277, at 4-9. CompTel also demonstrated that BellSouth violated checklist item ii, because BellSouth's rates for several UNEs and for DUFs did not satisfy the Commission's TELRIC test. See CompTel Comments at 10-17.

competing carriers, such as pending order activity information.⁷ To date, competing carriers still are unable to view the same pending order activity as BellSouth retail personnel, regardless of the OSS interface accessed by the competing carrier. BellSouth makes several OSS interfaces available to competing carriers, including Local Exchange Navigation System (“LENS”), Telecommunications Access Gateway (“TAG”), and Electronic Data Interchange (“EDI”). Currently, the only pending order information available to competing carriers – though any of the OSS interfaces – is a “PSO” flag via LENS. This “PSO” flag, which solely indicates that there is a pending order, is not equivalent to the pending information available to BellSouth retail: BellSouth retail representatives can view detailed information about pending orders on a customer’s account.⁸

Further, competing carriers have been unsuccessful in their attempts to obtain pending order information via the TAG interface. In August 2000, more than eighteen months ago, CompTel member ITC^DeltaCom Communications, Inc. (“ITC^DeltaCom”) and the competing carrier community submitted a change request to BellSouth asking that the pending service indicator be added to TAG pre-order information. To date, ITC^DeltaCom’s change request still awaits release assignment.⁹ As a result, competing carriers do not have access to

⁷ See CompTel Comments, CC Docket No. 01-277, at 4-5.

⁸ See Exhibit A: Affidavit of Mary Conquest, ITC^DeltaCom Communications, Inc., ¶ 2. Citations to the Conquest affidavit refer to the new affidavit attached hereto as Exhibit A. As of February 2, 2002, competing carriers are able to view a pending service order flag through LENS, one of the OSS interfaces that BellSouth has made available to competing carriers. Competing carriers do not have access to pending order information through other OSS interfaces, such as TAG. The flag through LENS only signals competing carriers that there is some type of pending order on the account, but does not provide any information associated with that order (*e.g.*, whether the order is for an add, disconnect, or other). In contrast, BellSouth’s retail personnel are able to view the details of the pending order. BellSouth’s personnel thus are able to take the actions necessary to serve their customers in light of the pending orders.

⁹ *Id.* BellSouth has not assigned a due date to this change request.

pending order information through TAG, and do not have any indication that BellSouth will implement this particular change request. In sum, because BellSouth has unlawfully refused to provide CLECs with the same pending order information as BellSouth's own retail operations, the Commission must find that BellSouth fails checklist item ii.

B. BellSouth's Change Management Control Process is Inadequate.

BellSouth also has not implemented an adequate change management control process, and, therefore, BellSouth is not providing competing carriers with nondiscriminatory access to OSS.¹⁰ As CompTel explained in its previous comments, competing carriers are not given the chance to influence third-party testing of the BellSouth change control process, and further, have never been provided with sufficient information to understand the change management control process itself. To date, BellSouth still refuses to disclose how a release is packaged.¹¹

Competing carriers have been substantially impaired by BellSouth's process for prioritizing change requests ("CRs"). Competing carriers use the CR process to request modifications of the OSS interfaces. Implementation of CRs is critical to a carrier's ability to have meaningful access to, and use of, the OSS interfaces to compete effectively against BellSouth. Under BellSouth's change management process, BellSouth has the sole discretion to determine which CRs it will implement each month. Florida Observation 86 discloses that BellSouth applies only forty percent (40%) of the capacity to CLEC issues: twenty percent

¹⁰ See CompTel Comments at 5-8 (discussing BellSouth's flawed change management control process and stating that the Commission repeatedly has stated that to provide nondiscriminatory access to OSS, a BOC must first "demonstrate that it has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.") (citations omitted).

¹¹ Conquest Affidavit ¶ 6.

(20%) to CLEC changes, and twenty percent (20%) to “CLEC regulatory mandates.” Correcting BellSouth’s defects in the OSS interfaces, however, requires more capacity than the forty percent (40%) allotted to CLEC issues, such that many necessary CLEC changes are grossly delayed or never implemented.¹² Because BellSouth has unlawfully refused to provide CLECs with the same pending order information as BellSouth’s own retail operations, and has failed to implement an adequate change control process, the Commission must find that BellSouth fails checklist item ii.

II. BELLSOUTH IS NOT PROVIDING ACCESS TO LOOPS IN ACCORDANCE WITH CHECKLIST ITEM II AND IS ENGAGING IN ANTICOMPETITIVE BEHAVIOR.

Since filing its previous comments in this proceeding, BellSouth increasingly has denied competing carriers, such as CompTel members, access to loops and has engaged in anticompetitive tying practices, therefore denying competing carriers a meaningful opportunity to compete in violation of checklist item ii.¹³ It is BellSouth’s undisputed corporate practice to condition the terms and availability of its DSL services on the concurrent purchase of BellSouth local exchange voice services. Thus, although it is technically feasible to provision separate DSL and local voice products, BellSouth refuses to provide DSL service on UNE loops, including the UNE Platform. BellSouth only provides DSL service to the customer if that customer also subscribes to BellSouth’s local voice service on the same loop.¹⁴ As a result of BellSouth’s practices, competing voice carriers lose significant numbers of current and future customers.

¹² *Id.*

¹³ *See, e.g.*, North Carolina Utility Commission Transcript, Vol. 10, at 391-92 (Withers) and 397-98 (Swain).

¹⁴ *See, e.g.*, BellSouth FastAccess Service Plan.

In fact, BellSouth has taken affirmative steps to terminate DSL service to competing carriers' customers. As one example, BellSouth notified ITC^DeltaCom that it planned to terminate ADSL service to subscribers of ITC^DeltaCom's UNE-Platform voice service. Those customers were using the ADSL service to obtain Internet access services from third-party ISPs.¹⁵ BellSouth's tying practice effectively prevents customers from obtaining the voice carrier of their own choosing. Moreover, because BellSouth has not implemented the Commission's *Line Splitting Order*, it is impossible for competing voice providers to replicate BellSouth's offer – even if competitive DSL providers were available.

As another example, BellSouth follows the business practice of installing DSL service on the primary or billing telephone line of a multi-line customer's account. As a practical matter, this practice bars competing carriers from continuing to serve *their* multi-line customers once BellSouth installs the DSL service. Multi-line customers frequently subscribe to a feature referred to as "hunting," which permits calls to roll to a spare line if the primary line is busy. Assigning DSL to the primary line requires CLECs to ask customers to request a "line station transfer" to move DSL service from the billing telephone number to a "bill on" number. Further, BellSouth makes it difficult to implement this solution by insisting that line station transfer requests be made expressly by the end-user subscriber, not by the competitive carrier serving that customer. The result is that BellSouth's practice interferes with the ability of a competitive carrier to provide service to its customers, and in many cases, causes loss of service, customer confusion, needless delays, and service disruptions.

¹⁵ Conquest Affidavit ¶ 7; see Exhibit B: Letter to Tom Mullins, ITC^DeltaCom from Gregory R. Follensbee, BellSouth (June 25, 2001).

It should be emphasized that a competitive carrier often is unaware that BellSouth is providing DSL service on a customer's primary line. The result is that if a competitive carrier begins providing local voice services over that line pursuant to a customer's request, the cut-over process can result in the DSL service being terminated by BellSouth. Unfortunately, customers often incorrectly blame the competitive carrier, rather than BellSouth, for the loss of its DSL service in this situation. This is yet another example of how BellSouth's practice of tying DSL and local voice services harms local competition and deprives competing carriers of their right to obtain UNEs from BellSouth at reasonable and non-discriminatory terms.¹⁶

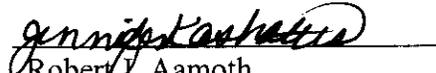
¹⁶ CompTel supports the comments of KMC Telecom, which further discuss this situation. *See* KMC Telecom Comments at 12-15.

III. CONCLUSION

In the three months since BellSouth withdrew and then refiled its application for section 271 authority to provide in-region interLATA services in Georgia and Louisiana, BellSouth has not remedied the deficiencies in its prior application such that the Commission should grant BellSouth's current application. As demonstrated above, BellSouth still does not satisfy checklist item ii, and continues to engage in anti-competitive behavior, such that granting BellSouth's current application would not be in the public interest. For the foregoing reasons, BellSouth's application should be denied.

Respectfully submitted,

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March 4, 2002

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

In the Matter of)
)
Application of BellSouth Corporation)
To Provide In-Region, InterLATA) Docket No. 02-35
Long Distance Services Under Section)
271 of the Telecommunications Act of 1996)

AFFIDAVIT OF MARY CONQUEST
ON BEHALF OF ITC^DELTACOM COMMUNICATIONS, INC.
D/B/A ITC^DELTACOM

I, Mary Conquest, being of lawful age and duly sworn upon my oath, depose and state:

INTRODUCTION

My name is Mary Conquest. I am employed by ITC^DeltaCom Communications, Inc., ("ITC^DeltaCom"), and my business address is 600 Boulevard South, Huntsville, Alabama 35802. I am the same Mary Conquest who provided an affidavit in support of the comments of the Competitive Telecommunications Association ("CompTel") filed in opposition to BellSouth's previous application for 271 authority in Georgia and Louisiana (CC Docket No. 01-277).

SUMMARY

I am updating my previous affidavit on the following issues:

- Integration

- Data Accuracy
- Change Control Process
- BellSouth's Corporate Policy on ADSL

I. INTEGRATION

1. We have not tested BellSouth's parsed CSR that was released January 5, 2002. BellSouth documented twenty-five (25) defects in its code; however, some of these defects have been resolved.
2. In my previous affidavit I stated that BellSouth did not provide nondiscriminatory access to OSS functions. I highlighted the fact that BellSouth retail personnel, but not CLECs, had the capability to check the status of pending service orders. To date, ITC^DeltaCom still cannot check the status of pending service orders. BellSouth retail personnel, on the other hand, do have access to OSS systems which indicate pending activity against an account and are able to review the actions needed to serve their customers. The indicator "PSO" pending service order is used to advise activity is scheduled to occur. ITC^DeltaCom filed with the BellSouth Change Control group a request (CR 0127) on August 4, 2000, requesting the "PSO" flag to be added to the TAG pre-order information. Prior to Bell's implementation of ENCORE Release 9.4 on July 28, 2001, LENS was able to present this flag. The LENS defect was scheduled to have the functionality returned on January 5, 2002, in Release 10.3; it was not deployed until Release 10.3.1 on February 2, 2002. *(LENS only allows competing carriers to see that there is a pending order, but not any of the information associated with that order.)* ITC^DeltaCom's request to have this information added to TAG, which is prioritized,

however, still awaits release assignment. The inability to know orders that are pending against the account costs the CLEC time in clarification, error resolution and customer dissatisfaction.

II. DATA ACCURACY

3. As I stated previously to this Commission, ITC^DeltaCom requested to view BellSouth's retail analog data to ascertain the level of accuracy of BellSouth's reporting. I had discovered that some of our data did not appear in the raw data files.

4. Our review of BellSouth's retail analog data is in progress. Although we have some questions regarding the validity of BellSouth's reporting, we will have more conclusive information prior to Reply Comments.

III. THE CHANGE CONTROL PROCESS IS FLAWED

5. Previously, I filed an affidavit with this Commission regarding BellSouth's process for prioritizing Change Requests (CR's) and the slotting of CR's for a Release Package as lacking control and definition. Since the last time I filed this Affidavit on this issue there has been no change.

6. BellSouth refuses to disclose how a release is packaged. BellSouth still refuses to disclose the release capacity to allow prioritization of work. Florida Observation 86 discloses that BellSouth will apply 20% of the capacity to CLEC changes and another 20% to "CLEC regulatory mandates." Currently, defect correction exceeds the 40% referenced above. In other words, approximately half of BellSouth's efforts are spent

correcting defects. In conclusion, the net effect is that necessary CLEC changes are grossly delayed or never implemented.

IV. BellSouth's Corporate Policy on ADSL

7. BellSouth refuses to allow consumers with ADSL to be served by a CLEC via UNE-P. While technically feasible, BellSouth states that as a matter of policy, it refuses to share the line with a UNE-P provider. Attached to my affidavit is a letter labeled Exhibit One from BellSouth to ITC^DeltaCom wherein Bellsouth states that it will cut off ADSL service to subscribers of ITC^DeltaCom's UNE-P voice service. The only solution proposed by BellSouth was to convert those customers back to resale. This situation evolved through no fault of ITC^DeltaCom.

8. ITC^DeltaCom does not provide ADSL service; therefore, the net effect of BellSouth's policy is to tie its voice service to the provision of ADSL service.

CONCLUSION

I strongly recommend on behalf of ITC^DeltaCom, that BellSouth be required to provide access to pending orders, not just the "PSO" flag; that BellSouth be required to provide access to BellSouth's retail analog metrics such that CLECs can verify the accuracy of Bellsouth's reporting; that BellSouth be required to implement CLECs' Change Requests within 90 days unless extenuating circumstances exist; and that Bellsouth be required to allow the consumer who is served via UNE-P service to purchase ADSL from whatever provider they choose.

I declare under the penalty of perjury that the facts stated herein are true and correct, to the best of my knowledge, information and belief.

Mary Conquest

Mary Conquest
IT Development

SWORN TO and subscribed
before me this 4th day
of March, 2002.

Paul S. Edwards
Notary Public

My Commission Expires: 2-15-04



June 25, 2001

Tom Mullins
DeltaCom Inc.,
700 Blvd South, Suite 101, Huntsville, AL, 35802

RE: BellSouth Tariffed Digital Subscriber Line ("DSL") Service on Unbundled Network Element - Platform ("UNE-P") Loops

Dear Tom,

BellSouth has recently discovered that, as a result of a recent failure of a systems edit, BellSouth is currently providing its tariffed Asymmetrical Digital Subscriber Line ("ADSL") service to certain Internet Service Provider ("ISP") customers on one or more UNE-P loops purchased by your company. (A list of the affected telephone numbers is attached hereto.)

Since your company owns all features and functionalities of unbundled loops purchased from BellSouth, BellSouth does not have access to the high frequency spectrum on those loops for purposes of providing tariffed ADSL to its ISP customers. BellSouth thus intends to notify the affected ISPs, within twenty (20) days of the date of this letter, that it will be discontinuing tariffed DSL service on the affected lines. (The affected ISPs include BellSouth® Internet Services.)

To the extent your company desires to have ISPs continue to provide tariffed DSL on the affected lines, those lines could be converted to resold lines. On a resold line, BellSouth would continue to have access to the high frequency spectrum, as your company is only purchasing the low frequency spectrum in a resold situation. Unless we hear to the contrary within twenty (20) days of the date of this letter, the DSL will be disconnected.

Very truly yours,



Gregory R. Follensbee

Attachment