

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

In the Matter of)	
)	
Joint Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc. and)	WC Docket No. 02-150
BellSouth Long Distance, Inc. for)	
Provision of In-Region, InterLATA Services in)	
The States of Alabama, Kentucky, Mississippi,)	
North Carolina and South Carolina)	

REPLY COMMENTS OF US LEC CORP.

US LEC Corp. (“US LEC”) submits these reply comments concerning the Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance (“BellSouth”) for Provision of In-Region, InterLATA Services in the States of Alabama, Kentucky, Mississippi, North Carolina and South Carolina (“Application”).¹ One thing is clear from reading the initial comments filed in this proceeding: BellSouth has been working much harder at generating support from the public than they have at actually fixing the numerous problems in their provisioning of service to CLECs. To read the comments of politicians, labor groups, business associations, and others, one would conclude that long-distance service—not local service—is in the hands of monopolists, and only BellSouth can bring competition to the (presumably) non-competitive long-distance market. Meanwhile, ILECs are seriously impairing CLECs’ ability to compete. Accordingly, the Commission should deny BellSouth’s application.

¹ *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 Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, Public Notice, WC Docket No. 02-150, DA 02-1453, released June 20, 2002.

I. PARTICIPANTS IN BELLSOUTH’S LETTER WRITING CAMPAIGN MISS A CRUCIAL POINT—NONE OF THEM SEEM TO BE ABLE TO ORDER LOCAL SERVICE FROM ANYONE OTHER THAN BELLSOUTH

If otherwise unimpressive, BellSouth’s application does reflect a successful effort to obtain letters in support of its application from local officials, groups, and individuals. They all echo the same refrain—BellSouth should be granted long-distance authority because more competition is needed in the long-distance market. Few seem to recognize that BellSouth must open its markets to competitors before BellSouth may be allowed to provide in-region long distance service. Not one of them claims to be receiving local exchange service from a CLEC. Instead, the dominant theme is that consumers have been impaired in their ability to choose long-distance providers solely because BellSouth has been prohibited from providing in-region long distance service. More specifically, they describe the benefits of “one-stop shopping” from BellSouth, but not from competitive providers. However, these commenters seem to misunderstand that BellSouth entry to the long-distance market was intended to occur only after consumers had a choice of local service providers. The fact that these customers apparently lack the ability to choose a local service provider other than BellSouth speaks volumes about the state of local competition throughout the BellSouth territory.

In spite of BellSouth’s successful letter writing campaign, the Commission has a statutory obligation to confirm that BellSouth has complied with the requirements to open local markets to competition so that new market entrants have a level playing field for providing service to end users. BellSouth has not done so, and its application must be denied.

II. BELLSOUTH’S INCOMPETENCE IS FULLY DISPLAYED

When the Commission approved BellSouth’s application for Section 271 authority for Georgia and Louisiana, the Commission moved a long way from the standards it set in the early

days of implementation of the Telecom Act. The Commission should return to a standard that requires BellSouth to provide all new market entrants with a viable opportunity to compete.

The record is filled with examples of BellSouth's inability to provide service to CLECs in a non-discriminatory manner, or in a manner that provides them with a viable opportunity to compete. The Commission could start and end with the string of e-mails from Ernest Communications, Inc. to BellSouth regarding the ridiculously simple request that BellSouth change the designation of Ernest's payphone lines from "business" to "coin." From the first email in February 2002, in which Ernest simply attaches a list of telephone numbers it needs fixed (Exh. 1) that took BellSouth a month and a half to correct (Exh. 6), to exasperation over BellSouth's continued incompetence ("Also, all of our current new line orders are still being processed incorrectly. What is being done to correct the errors in the system? Please respond quickly as this is really starting to damage our reputation.") (Exh. 6), to a confession of the real-world consequences of BellSouth's incompetence (the numbers "need to be corrected immediately. . . [the customer] is losing thousands in dial around revenue right now") (Exh. 12), to the verge of failure due to BellSouth incompetence ("I have not had any response from Trent from my email a week ago, and this customer has just informed me that [they] are switching their lines to another CLEC over the loss of revenue at this location. These lines have absolutely got to be corrected today. No Exceptions.") (Exh. 13), it is clear that BellSouth just does not care. When a CLEC loses its customers through no fault of its own, it is too late to seek relief from the state commission. The only way to convince BellSouth and other BOCs to take their Telecom Act obligations seriously is to deny them 271 authority until carriers like Ernest are able to provide service to any customer they want to serve, without the inevitable catastrophes.

It is clear that carriers have been repeatedly impaired by BellSouth's incompetence. CLECs lack the resources to battle with BellSouth in these regulatory proceedings and struggle to provide local service hobbled by BellSouth's antipathy to new market entrants. Comments of Birch Telecom of the South at 3-4. More than one CLEC has cited the "phantom DSL USOCs" that are subtle yet simple ways for BellSouth to prevent competitors from ever providing local service on par with BellSouth. Birch Comments at 4-13; Comments of KMC Telecom III LLC and Nuvox, Inc. at 17-21. Further, BellSouth's placing "pending service orders" for DSL on a customer's main telephone number or line of a hunt group is another impediment that goes largely undetected in the performance metrics that have formed the sum and substance of the Commission's review of BOC compliance with the competitive checklist. Birch Comments at 13-20.

The difficulties cited by SouthEast Telephone also demonstrate that BellSouth engages in a deliberate strategy to grind down its potential competitors in any way imaginable. SouthEast Telephone is one of very few CLECs that have attempted to provide service to rural markets in BellSouth territory. BellSouth would never conceive of providing affordable service to high-cost rural areas without universal service support, yet that is exactly what BellSouth appears to require of SouthEast Telephone. SouthEast Telephone Comments at 2. SouthEast Telephone also routinely encounters the delays and doubletalk associated with BellSouth's provisioning of wholesale services experienced by other CLECs, even though SouthEast Telephone appears to provide service in markets in which few, if any, other CLECs operate. BellSouth's incompetence is systematic.

This systematic failure by BellSouth to provide wholesale services to the CLECs discussed above is consistent with US LEC's experience with BellSouth's provisioning of

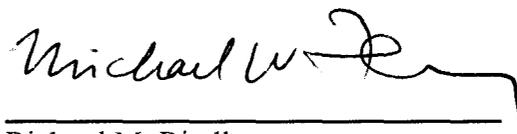
special access circuits. US LEC Initial Comments at 16-18. BellSouth's performance with respect to services provided to US LEC are deplorable, yet BellSouth's repeated failures are not reflected in the performance metrics considered by the state commissions. As long as special access services are excluded from regulatory oversight, BellSouth will continue to have and to exploit its ability to impair the services provided by US LEC. Id. at 8-13.

The Commission must also understand that for CLECs to expend extremely limited resources just getting BellSouth to cooperate, and then expending resources to come to this Commission to express grievances in this proceeding, evidences a fundamental breakdown in the way the Telecom Act was supposed to operate. If the grievances were more random or isolated, one could conclude they were unavoidable by-products of requiring a competitor to obtain essential facilities and inputs from a monopoly provider. The grievances are neither random nor isolated. They demonstrate BellSouth's attitude of institutional incompetence, minimal compliance, maximum obstruction, and an unchallenged belief that such performance will be sufficient to earn in-region long-distance authority from the Commission. If the Commission truly wants CLECs to have a level playing field in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, it must deny BellSouth's application until such time that CLECs do not have to endure BellSouth's practices that undermine their provision of competitive services.

III. CONCLUSION

For the foregoing reasons, and for the reasons stated in US LEC's initial comments, US LEC Corp. urges the Commission to deny BellSouth's Application for Provision of In-Region InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina.

Respectfully submitted,



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