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August 5, 2002

VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Re: In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., Pursuant to Section 271 of the Communications Act to Provide In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina, WC Docket No. 02-150
Ex Parte

Dear Ms. Dortch:

On August 2, 2002 Jake Jennings of NewSouth Communications, Corp. (NewSouth) and the undersigned counsel met with Greg Cooke, Aaron Goldberger, Bill Kehoe and Gina Spade of the Wireline Competition Bureau and Steve Rangel of the Wireless Bureau to discuss BellSouth's Section 271 applications for Alabama, Kentucky, Mississippi, North Carolina and South Carolina in WC Docket No. 02-150. Because NewSouth was attempting to resolve the issues set forth at the meeting with BellSouth through negotiations, NewSouth did not file initial comments in the above referenced proceeding. Although NewSouth remains open to negotiating resolutions of its disputes with BellSouth, NewSouth scheduled an *ex parte* meeting and is filing this *ex parte* notification letter because BellSouth remains unwilling to address the root causes of the disputes raised by NewSouth. In the absence of progress, NewSouth believes that evidence of its disputes with BellSouth must form part of the record upon which the Commission conducts its Section 271 review.

Accordingly, NewSouth identified three areas of dispute in which BellSouth's performance fails to comply with items (i), (ii), (iv) and (v) of the 14 point checklist outlined in Section 271: interconnection performance and pricing, special access-to-EEL conversion timeliness and audit requests, and billing accuracy/dispute resolution and deposit requests.

I. Interconnection

A. Network Outages

Over the last ten (10) months,[1] NewSouth has experienced seven (7) significant interconnection outages with BellSouth. In each instance, NewSouth customers were unable to either receive or complete local and/or long distance calls. These outages reflect, and are a direct result of, BellSouth's recurring failure to properly perform network maintenance and translations tasks that impact all interconnecting carriers and their customers. Specifically, each outage was due to improperly performed translation changes or upgrades performed by BellSouth without adequate notice of the specific date upon which they were scheduled to occur. In the aggregate, these outages lasted more than 63 hours and resulted in more than 150,000 blocked calls. The four most recent outages took down service to 898 customers in Charlotte, NC, 372 customers in Mobile, AL, and 15 customers in Spartanburg, NC. To date, BellSouth has provided a scant $30,000 in credits, although NewSouth's damages resulting from these outages are already much higher (and they continue to grow).

The seven outages referenced above had almost universal impact on NewSouth's customer base in Charlotte, NC, Mobile, AL and Spartanburg, SC. Following is a brief description of the circumstances surrounding these outages. These descriptions represent what NewSouth currently knows about these outages through trouble shooting and trouble ticket resolution. BellSouth has not yet fully responded to NewSouth's request for information and analysis of the outages (however, in some instances, BellSouth has admitted that the outages were its fault).

<u>September 19, 2001– Mobile (Blockage and Incorrect Digit Transmission)</u>

On September 19, 2001 at 2:45 PM, NewSouth began to receive complaints from customers in our Mobile market about blocked incoming calls. This outage lasted for several days as NewSouth and BellSouth attempted to work on finding a root cause. At various points over the course of 8 days, calls were intermittently failing due to incorrect digits being sent to NewSouth's central office. Some BellSouth offices were sending 7 digits and others were sending 13. After correcting this issue, traffic issues emerged which were masked by

[1] During the meeting, NewSouth mistakenly had indicated that all of these outages had occurred during the past eight (8) months.

BellSouth's incorrect translations. The outage was resolved on September 26, 2001 at 1:40 PM. This outage affected NewSouth's entire Mobile customer base of roughly 350 customers.

October 19, 2001– Louisville (Incorrect Translations Documentation)

NewSouth began receiving complaints from Louisville customers at about 10:00 AM on October 19, 2001. Through troubleshooting this ticket, BellSouth discovered documentation errors in its translations paperwork. During routine maintenance, inaccurate translations were loaded back into the Louisville tandem resulting in a complete inbound call outage in that market. This outage lasted approximately 5 hours. The entire Louisville customer base of around 150 customers was affected by this outage.

January 7, 2002 – Mobile (LSMS Download Failure)

On January 7, 2002 NewSouth's Mobile Customers were again hit with a translations outage. BellSouth's download of the LSMS from NPAC had failed. BellSouth did not notify its customers that this problem was occurring. The LSMS is the database that guides calls to ported numbers. Since most of NewSouth's customer base has ported numbers, this outage was almost universal in scope. This outage lasted approximately 36 hours and affected nearly 300 of NewSouth's customers in Mobile.

May 21, 2002 – Charlotte (Incorrect Digits)

The Charlotte, NC market experienced outage from approximately 9:50 AM to 11:20 AM on May 21, 2002. This outage impacted all local inbound calls to NewSouth's customers in the Charlotte market. Some long distance calls bound for Charlotte customers within the NewSouth network were blocked as well.

NewSouth opened a trouble ticket with BellSouth's LISC immediately. The trouble ticket ID was IL-014276. Through troubleshooting this problem, NewSouth learned that BellSouth had replaced translations in the Charlotte Caldwell tandem as part of an ongoing clean up project underway throughout the BellSouth nine state region. BellSouth began sending 7 digits to NewSouth's Lucent 5ESS switch in Charlotte. NewSouth's switch must receive 10 digits in order to be able to route calls. This is due in part to the fact that CLEC switches tend to serve larger geographical areas than ILEC switches and often route calls to several NPAs in their service footprint.

July 1, 2002 – Charlotte (NewSouth NPA/NXX Deleted)

NewSouth's Charlotte, NC market experienced another outage on July 1, 2002. All inbound calls to NewSouth's customers with ported numbers were blocked at the Charlotte

Caldwell tandem. The vast majority of NewSouth's customers have ported numbers so the impact of this outage on the Charlotte market was almost universal. This outage began at approximately 2:30 PM and lasted until 6:00 PM.

After internal analysis, NewSouth opened a trouble ticket with BellSouth's LISC at 3:30 PM. The trouble ticket ID was IL-015769. In troubleshooting this outage, NewSouth learned that BellSouth had left NewSouth's NPA/NXX for the Charlotte rate center out of the translations at the Charlotte Caldwell tandem while executing routine maintenance. Unfortunately, the NPA/NXX that was left out of the tandem was NewSouth's LRN for the Charlotte LATA. The LRN guides inbound calls to ported numbers to the appropriate switch; therefore, all inbound calling to NewSouth's customers with ported numbers was disrupted.

July 8, 2002 – Spartanburg (Incorrect Digits/ICO Translations)

NewSouth's customers in Spartanburg, SC experienced an outage on July 8, 2002 from around 12:00 PM to 4:20 PM. As was the case in Charlotte, BellSouth began sending 7 digits to NewSouth's Lucent 5ESS in Greenville, SC. This outage involved one trunk group and affected all calling from Greenville to Spartanburg. BellSouth's analysis also showed that independent telephone company translations in the Greenville-Spartanburg area were impacted by this incident. The BellSouth trouble ticket ID was IL-015819. Again, maintenance was performed with no coordination between BellSouth and NewSouth.

July 16, 2002 – Mobile (Incorrect Digits)

After several outages suffered by NewSouth's customer base in Mobile, AL at the end of 2001 and early in 2002, once again BellSouth disrupted NewSouth service in that market. On July 16, 2002 from 9:40 AM to 12:40 PM customers in the Mobile market were unable to receive incoming calls. Again, the issue was 7 digits being sent to NewSouth's switch in New Orleans. The BellSouth trouble ticket IDs were NL-010889 and NL-010891.

In order to prevent future outages, NewSouth has proposed the following action items to BellSouth:

1) exchange of Network Interconnection Service Center (NISC) /Local Interconnection Service Center (LISC) Method of Procedure documents relating to translations changes and notification of all ongoing and planned projects which might impact NewSouth,

2) distribution of a schedule of translations and switch upgrade projects and identification of contacts responsible for each,

3) contractual commitment from BellSouth that NewSouth's Network Operations Center will be contacted every time translations are modified on NewSouth's trunk groups,

4) an action plan that details the specific steps BellSouth is implementing in the LISC/NISC to assure that these errors are not repeated,

5) written responses describing the circumstances surrounding the aforementioned outages

6) a single point of contact to work with NewSouth on resolving this issue and who will be responsible for communicating to NewSouth all actions, plans and documentation related to the resolution of this issue.

NewSouth has not received a commitment from BellSouth on any of these proposals. Thus, NewSouth has no reasonable assurance that BellSouth's routine switch maintenance and updates will not continue to result in network and customer service outages. BellSouth's poor performance and seeming unwillingness to devote the resources necessary to improve that performance do not warrant a passing grade for checklist item (i).[2]

B. Cost-Based Interconnection

BellSouth also fails to satisfy checklist item (i) because it fails to provide cost-based access to interconnection. Indeed, contrary to the requirements of Sections 251(c)(2) and (d)(1), BellSouth charges tariffed access charges (federal and state) for all or portions of interconnection trunks that NewSouth orders from BellSouth. Notably, as part of a broader settlement of issues, NewSouth had agreed in its interconnection agreement with BellSouth to accept language requiring ratcheted interconnection trunk billing (with a percentage of the billing at tariffed rates) based on jurisdictional reporting factors, including a "percent local facility" ("PLF"). However, BellSouth defaulted to billing fully at access rates which is not authorized by the party's agreement, the Act, or the Commission's rules. To date, BellSouth's unlawful practice of charging tariffed access rates for interconnection trunks and facilities has cost NewSouth more than $4.5 million. Before the Commission can find BellSouth in compliance with item (i) of the competitive checklist, it must put an end to BellSouth's practice of unlawfully imposing tariffed access charges for interconnection.

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2 NewSouth has a meeting with BellSouth scheduled for Wednesday, August 7, 2002, to discuss these issues.

II. ACCESS TO LOOP/TRANSPORT UNE COMBINATIONS (EELs)

A. Timeliness/Cost of Delay

NewSouth has experienced considerable delays in having loop/transport combinations (EELs) converted from special access to unbundled network elements. On average, it takes BellSouth more than 60 days to convert a special access circuit to an EEL. This problem is compounded by the fact that BellSouth refuses to designate a reasonable period after which circuits automatically would be billed at UNE rates (or to which a true-up would apply retroactively). NewSouth submits that seven (7) days is a reasonable period of time for completing conversions and that all conversion dates should have a "bill effective date" seven (7) days after submission to BellSouth. Yet, BellSouth refuses to commit to any conversion intervals or to adopt a bill effective date upon which UNE billing automatically becomes effective. The result is delays that unjustly enrich BellSouth and cost NewSouth and its customers dearly. Indeed, these delays have cost NewSouth millions of dollars (if all NewSouth's conversions were completed in 30 days – a timeframe way beyond that which NewSouth believes is reasonable – NewSouth would have saved more than $1 dollars). Unless BellSouth is made to address this problem by adopting reasonable provisioning intervals for EEL conversions or a seven (7) day bill effective date, it is difficult to conceive how the Commission could find BellSouth in compliance with its obligation to provide reasonable and nondiscriminatory access to UNEs.

B. Noncompliant Audit Requests

BellSouth's satisfaction of checklist item (ii) also is marred by its failure to comply with the Commission's *Supplemental Order Clarification* limits on its ability to audit EEL conversions. As NewSouth and several other CLECs have demonstrated in various filings in support of NuVox's Petition for Declaratory Rulings related to ILEC audits of CLECs' compliance with the local use restrictions on circuits converted from special access to EELs adopted in the *Supplemental Order* and *Supplemental Order Clarification* in CC Docket No. 96-98, BellSouth insists on harassing NewSouth and other competitors with audit requests that do not comply with the limitations on such audits established in those orders. Until BellSouth relents from its insistence on having an ILEC consulting group conduct random audits (three months after it made its audit request, BellSouth still has not identified a reasonable concern regarding NewSouth's compliance with the use restrictions established by the Commission), it cannot be determined that it is providing access to UNEs in conformance with its checklist obligation.

III. BILLING AND DEPOSITS

Over the past two years, NewSouth has disputed a total of $8.2 million of charges imposed by BellSouth for various services, including interconnection, unbundled network elements, and special access services. Of the $8.2 million disputed, $5 million worth of disputes have been resolved, with over sixty six percent being resolved in NewSouth's favor. Another $3 million in disputes remains outstanding. BellSouth's chronic inability to bill correctly raises two issues that prevent BellSouth from demonstrating compliance with checklist item (ii) (UNE/OSS) and the public interest standard. The first issue is resource costs. NewSouth has had to devote four full time employees to auditing BellSouth's bills for inaccuracies. In addition, NewSouth has had to develop and implement an automated auditing program in order to expedite the audit process so that NewSouth is able to pay undisputed amounts within 30 days. So chronic are BellSouth's billing problems that NewSouth has been forced to outsource its disputes with an outside consulting firm. This consulting firm receives payment based on a percentage of amounts successfully disputed. These payments would never have had to be made, but for BellSouth inability to bill correctly.

The second issue is that BellSouth's chronic inability to bill accurately compounds significantly a major area of dispute between BellSouth and its competitors – deposits. Not only is the volume of disputes between NewSouth and BellSouth high, the problem is compounded by BellSouth's unwillingness to devote adequate resources to and develop sufficient procedures for getting the disputes resolved. Disputes typically languish for months and while they are pending BellSouth does not appear to remove disputed amounts from amounts it considers to be past due. BellSouth's failure to do this skews and distorts BellSouth's records of NewSouth's payments (making its seem as though NewSouth takes much longer to pay than it actually does) and NewSouth's monthly billings and outstanding balance (inflating both figures). Thus, BellSouth compounds the problems created by its refusal to dedicate the resources necessary to bill CLECs properly and resolve disputes expeditiously with requests for CLEC deposits. In NewSouth's experience, BellSouth's deposit requests are unjustified and amount to little more than an attempt by BellSouth to drain its competitors of working capital.

Without substantial reforms in the way in which BellSouth bills its competitors, the Commission should not find that BellSouth has opened its markets to competition fully and as required by the Act.

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If you have any questions regarding this submission, please do not hesitate to contact me at (202) 955-9888.

Respectfully submitted,

John J. Heitmann/EWE

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