

facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.²³⁷ In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.²³⁸

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.²³⁹ The Commission’s findings regarding section 272 compliance constitute independent grounds for denying an application.²⁴⁰ Past and present behavior of the BOC applicant provides “the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272.”²⁴¹

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity?²⁴² Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission’s many years of experience with the consumer benefits that flow from competition in telecommunications markets.

71. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent

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11 18 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff’d sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

²³⁷ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

²³⁸ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

²³⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

²⁴⁰ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

²⁴¹ *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

²⁴² 47 U.S.C. § 271(d)(3)(C).

determination.²⁴³ Thus, the Commission views the public interest requirement as 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, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.

Among other things, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.²⁴⁴ Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission's analysis of checklist compliance, that markets are open to competition.

²⁴³ In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June 8, 1995).

²⁴⁴ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee

Today's unanimous decision granting BellSouth authority to provide long distance service in Florida and Tennessee represents a significant milestone. BellSouth is the first Bell Operating Company to obtain long distance authority throughout its region. I want to applaud the hard work of the Florida Public Service Commission, the Tennessee Regulatory Authority and BellSouth for bringing such a strong application to this Commission. Our decision today represents a balanced result: BellSouth has gained permission to provide in-region long distance service and new entrants can be assured that BellSouth has taken the statutorily-required steps to open their local markets to competition.

Of course, this action does not mean that our evaluation of these markets is complete. The Commission has a responsibility not only to ensure that BellSouth is in compliance with section 271 today but also that it remains in compliance in the future. This Commission will work closely with each of the state commissions to ensure that BellSouth does not cease to meet any of the conditions required for long distance entry.

Statement of
Commissioner Michael J. Copps

Re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Florida and Tennessee

With today's grant of its application to provide long-distance services in Florida and Tennessee, BellSouth becomes the first Regional Bell Operating Company to obtain long-distance authorization for all of its States. I commend BellSouth for this achievement and the State Commissions in that region for their significant efforts to promote competition.

Now the real challenge in this region begins. The Commission looks closely at a Bell company's performance to ensure compliance with the statute at the time we consider a Section 271 application. We do not, however, always accord the same vigilance towards ensuring continued compliance. We must institute better follow-up on what happens in a state following a successful application. Our data on whether competition is taking hold is sketchy and non-integrated. We must do better.

In this effort, we must work closely with the State Commissions. Our expectation is that BellSouth's performance will continue to improve and that it will work cooperatively with other carriers to resolve any issues that develop. To the extent that BellSouth does not adequately address problems that occur, the Commission and the State Commissions have a shared obligation to enforce the market-opening obligations of the Act. Now that we will no longer examine BellSouth's performance **as part** of a Section 271 application, we must be especially proactive and vigilant as we monitor and enforce all facets of section 271 compliance. By taking this responsibility seriously, we can ensure that consumers continue to reap the benefits of enduring competition **as** envisioned by Congress in the 1996 Act -- greater choice, lower prices, and better services.