

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

In the Matter of

Petition of BellSouth For
Forbearance Under 47 U.S.C. Section 160(c)
From Application of the Separate Subsidiary
Requirements of Section 272 of the
Communications Act of 1934, as Amended,
To Provide International Directory
Assistance Service

CC Docket No. 97-172

REPLY OF BELLSOUTH CORPORATION

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. (collectively “BellSouth”), hereby submits this reply to AT&T Corp.’s (“AT&T”) letter¹ regarding BellSouth’s revised petition for forbearance submitted on November 25, 2003. In its Petition, BellSouth asked the Commission to forbear from applying the separate affiliate requirements of Section 272² of the Act, so as to allow BellSouth to provide international directory assistance (“IDA”) service on an integrated basis together with its local and nonlocal directory assistance (“DA”) services.³ Given that no one, including AT&T, opposes BellSouth’s petition, the

¹ Letter from Aryeh S. Friedman, Senior Attorney, AT&T Corp., to Ms. Marlene H. Dortch, Secretary, FCC, Re: BellSouth Telecommunications, Inc., SBC Communications, Inc., and Verizon’s Petitions for Forbearance, CC Docket No. 97-172 (filed Dec. 16, 2003) (“AT&T Letter”).

² 47 U.S.C. § 272.

³ Petition of BellSouth For Forbearance Under 47 U.S.C. Section 160(c) From Application of the Separate Subsidiary Requirements of Section 272 of the Communications Act of 1934, as Amended, To Provide International Directory Assistance Service, CC Docket No. 97-172 (filed

Commission should grant BellSouth's request. BellSouth has demonstrated that the Section 10 criteria have been met and that forbearance is warranted.

I. AT&T DOES NOT OPPOSE BELLSOUTH'S REQUEST FOR FORBEARANCE.

AT&T – the only party to submit comments on BellSouth's petition – does not oppose BellSouth's request for forbearance to provide IDA services on an integrated basis.⁴ AT&T's sole objection to BellSouth's petition is buried in a footnote. In footnote 2, AT&T states that the Commission could deny BellSouth's request because of the absence of cost data to substantiate BellSouth's statement that imposing the separate affiliate requirements would necessitate the duplication of systems, equipment and personnel functions thereby leading to increased operating costs.⁵

As an initial matter, there is no requirement in Section 10 that an entity requesting forbearance relief provide detailed cost data. It is interesting to note that in a separate proceeding in which BellSouth (and the other Bell Operating Companies ("BOCs")) asked the Commission to forbear from applying the operation, installation, and maintenance prohibition to BOCs, AT&T argued that cost savings are not relevant to the Commission's forbearance decisions.⁶ Notwithstanding its previous position minimizing the importance of costs, AT&T

Nov. 25, 2003). The FCC sought comment on BellSouth's Petition in a *Public Notice*. See *Pleading Cycle Established for Comments on Revised Petition of BellSouth For Forbearance Under Section 10 of the Communications Act, As Amended, From Section 272 Requirements for International Directory Assistance Services and Request for Comparably Efficient Interconnection Waiver*, CC Docket No. 97-172, *Public Notice*, DA 03-3823 (rel. Dec. 1, 2003).

⁴ AT&T Letter at 2 ("AT&T does not oppose those petitions . . .").

⁵ *Id.* n.2.

⁶ Comments of AT&T Corp. in Opposition to BellSouth's Petition for Forbearance, CC Docket No. 96-149, at 1 (filed Aug. 6, 2003) ("And even if such costs were relevant . . .").

now asserts that costs are not only relevant to a forbearance analysis, but also can be the sole determinant as to whether forbearance is warranted. AT&T's waffling on this issue is further proof that its arguments are without merit.

Moreover, it is obvious that requiring redundant facilities and resources results in increased costs. The Commission itself has acknowledged that "structural separation imposes direct costs on the BOCs from duplication of facilities and personnel, the limitations on joint marketing, and the inability to take advantage of scope economies," with the end result being that "the BOCs are unable to organize their operations in the manner best suited to the markets and customers they serve."⁷ A detailed cost study is not necessary to demonstrate this fact.

Given that AT&T does not oppose BellSouth's petition and has failed to rebut BellSouth's demonstration that the Section 10 forbearance test has been satisfied, the Commission should allow BellSouth to provide IDA on an integrated basis as requested in its petition.

II. AT&T'S PROPOSAL IS OVERBROAD AND MAY CONFLICT WITH INTERNATIONAL LAWS AND REGULATIONS.

AT&T requests that the Commission condition forbearance relief upon the requirement that BOCs provide nondiscriminatory access to IDA listings "for wireline services between the United States and foreign countries where they are treated as dominant carriers because of their overseas affiliate."⁸ The Commission should reject this request as overly broad. Although AT&T's proposal may seem appealing and easy to implement in theory, in reality, there are a

⁷ *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), et al.*, CC Docket No. 85-229, *Report and Order*, 104 FCC 2d 958, 1008, ¶ 91 (1986).

⁸ AT&T Letter at 2.

number of factors that could affect a BOC's ability to satisfy such a condition – factors that AT&T apparently has overlooked.⁹

Even though BellSouth is not considered dominant on any international routes at this time, it is unable to consent to AT&T's proposed condition.¹⁰ Imposing a requirement on BOCs to provide nondiscriminatory access to IDA information for those countries in which they are treated as dominant on particular routes because of overseas affiliates is overbroad and rests on a number of assumptions that may not be true.

First, AT&T assumes that simply because a BOC is considered dominant on a particular international route, it automatically has access to the listings of subscribers in that particular country. This assumption is not reasonable because it ignores the realities of the marketplace. The existence of an affiliate relationship with a foreign wireline carrier does not give a BOC the automatic right to control or access subscriber listings in a particular foreign country.

Relationships with foreign affiliates will vary – some may involve direct control; others may

⁹ It is clear that AT&T has not conducted a detailed analysis of the feasibility of its proposal. This idea – contained in a 3-page letter – apparently is a new one only recently developed. AT&T did not ask the Commission to impose such a requirement when given the opportunity to comment on similar petitions filed by SBC and Verizon in March and July 2003, respectively. *See Pleading Cycle Established for Comments on Petition of Verizon for Forbearance Under Section 10 of the Communications Act, as Amended, from Section 272 Requirements for International Directory Assistance Services and Request for Comparably Efficient Interconnection Waiver*, CC Docket No. 97-172, *Public Notice*, 18 FCC Rcd 15386 (2003); *Pleading Cycle Established for Comments on Petition of SBC for Forbearance from Application of the Separate Subsidiary Requirements of Section 272*, CC Docket No. 97-172, *Public Notice*, 18 FCC Rcd 6421 (2003). In fact, AT&T did not submit any comments in either of those proceedings.

¹⁰ *See International Bureau Policy Division Grants BellSouth International Section 214 Authority For Florida And Tennessee*, File No. ITC-214-20021009-00500, *Public Notice*, 17 FCC Rcd 25419 (2002); *International Bureau's Policy Division Grants BSLD International Section 214 Authority for Georgia and Louisiana*, File No. ITC-214-20020219-0005, *Public Notice*, 17 FCC Rcd 8823 (2002); *International Bureau Policy Division Grants BellSouth International Section 214 Authority for Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, File No. ITC-214-20020628-00328, *Public Notice*, 17 FCC Rcd 17428 (2002).

involve indirect control; some may consist of majority ownership; others may involve minority ownership. There are too many variations in the relationships with foreign affiliates to adopt a requirement that assumes easy and automatic access to the DA listings of a foreign affiliate.

In addition, there are international regulatory obstacles that may preclude a BOC from providing the type of access sought by AT&T. As BellSouth has explained on previous occasions, the DA system outside the U.S. is fragmented, with each country defining its own laws and regulations regarding access to DA services and data.¹¹ In addition, many foreign countries have strict privacy laws that preclude foreign carriers from selling or providing DA listings to other carriers. Thus, foreign laws and regulations may not allow the BOCs (or their foreign affiliates) to offer the type of access to IDA information sought by AT&T.

If granted the forbearance relief requested, BellSouth plans to load onto its storage facilities those international listings it is able to acquire from third parties. As explained above and in prior Commission filings, international regulatory barriers will likely limit the international listings BellSouth is able to acquire.¹² Since BellSouth will have to obtain international listings from third parties in a manner similar to that used today to obtain DA listings outside of its region, it should not be under any obligation to provide nondiscriminatory access to those listings. Such a finding would be consistent with the Commission's prior rulings.

¹¹ See Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Ms. Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172, at 7-8 (filed Aug. 24, 2001) and Attachment (International Directory Assistance Database Issues – Study Prepared by The Kelsey Group for BellSouth Operator Services (August 2001)).

¹² See, e.g., BellSouth Petition for Forbearance, CC Docket No. 97-172, at n.18 (filed Nov. 25, 2003); Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Ms. Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172 (filed Oct. 5, 2001); Letter from Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Ms. Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172, at 7-8 (filed Sept. 6, 2001); Letter from

In the various orders authorizing BOC provision of nonlocal DA on an integrated basis, the Commission declined to require BOCs to provide other carriers with nondiscriminatory access to DA listings outside of their respective regions. The Commission reasoned that BOCs did not exercise monopoly power over the components used to provide telephone numbers of customers outside their regions.¹³ Likewise, with respect to international listings, it is inaccurate to assume that the existence of a foreign affiliate gives a BOC control over or access to the DA listings of subscribers in a foreign country.

III. CONCLUSION

BellSouth urges the Commission to grant BellSouth's request to forbear from applying the separate affiliate requirements of Section 272 to enable BellSouth to provide IDA services on an integrated basis pursuant to Section 271(g)(4). BellSouth has demonstrated that the Section 10 forbearance criteria are satisfied and that forbearance is warranted.

In addition, the Commission should not impose AT&T's proposal to require BOCs to provide nondiscriminatory access to IDA information for those countries in which the BOC is

Mary L. Henze, BellSouth, Executive Director, Federal Regulatory Affairs, to Ms. Magalie Roman Salas, Secretary, FCC, CC Docket No. 97-172, at 7-8 (filed Aug. 24, 2001).

¹³ *Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, et al.*, CC Docket Nos. 97-172 and 92-105, *Memorandum Opinion and Order*, 14 FCC Rcd 16252, 16271, ¶ 33 (1999) (“*U S WEST Forbearance Order*”). *Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, CC Docket No. 97-172, *Memorandum Opinion and Order*, 14 FCC Rcd 21484, 21491, ¶ 14 (1999) (“*Bell Atlantic Forbearance Order*”); *See, e.g., BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service; Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services; Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, CC Docket No. 97-172, *Memorandum Opinion and Order*, 15 FCC Rcd 6053, 6060, ¶ 14 (2000) (“*BellSouth Forbearance Order*”).

considered dominant due to the existence of a foreign affiliate. AT&T's proposal not only is overbroad but also rests on faulty assumptions that ignore the differences among affiliate relationships as well as the differences between the DA market in foreign countries and the United States.

Respectfully submitted,

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December 23, 2003

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of December 2003 served the following parties to this action with a copy of the foregoing **REPLY OF BELLSOUTH CORPORATION** by electronic filing, electronic mail, or U. S. Mail, addressed to the parties on the attached service list.

/s/ Rudine J. Davis

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