

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

In the Matter of

Review of the Section 251 Unbundling Obligations
of Incumbent Local Exchange Carriers

CC Docket No. 01- 338

Implementation of the Local Competition Provisions
in the Telecommunications Act of 1996

CC Docket No. 96-98

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

CC Docket No. 98-147

**JOINT OPPOSITION TO THE PUBLIC UTILITY COMMISSION OF OREGON'S
REQUEST FOR AN EXTENSION OF TIME**

BellSouth Corporation, SBC Communications Inc., and the Verizon telephone companies (collectively, "ILECs") hereby file this joint opposition to the request of the Public Utility Commission of Oregon ("Oregon Commission") to extend by 60 days the December 31 deadline for seeking a waiver of this Commission's new rules governing enterprise switching.

The request should be denied for three reasons. *First*, the Oregon Commission waited until the day before the deadline to file its motion for an extension of time to file its waiver petition, notwithstanding this Commission's clear admonition that such motions should be filed at least seven days before the filing date. *See* 47 C.F.R. § 1.46(b). Indeed, according to its own motion (at 3-4), the Oregon Commission had decided to seek an extension of time more than one month ago, yet it inexplicably chose to wait to file any such request until the eve of the deadline. This failure to comply with the Commission's procedural rules is reason enough to deny the requested extension of time.

Second, the Oregon Commission has failed to provide a sufficient justification for additional time. Of course, many state commissions have had no difficulty concluding the process within the allotted time period.¹ The basis for the Oregon Commission’s request for an extension is to allow its staff sufficient time to gather and analyze market-survey data from non-party CLECs – data that “ha[ve] not been forthcoming with either the speed or completeness that had been requested.” Motion at 3 (citation omitted). But this Commission has already found that “there are few barriers to deploying competitive switches to serve customers in the enterprise market at the DS1 capacity and above, and thus no operational or economic impairment on a national basis.” *Triennial Review Order* ¶ 451.² The only issues for the Oregon Commission to decide are whether there are unique operational barriers to entry in Oregon or whether, taking into account all sources of potential revenue, entry into the market in Oregon would somehow be uneconomic in the absence of unbundled local circuit switching. *See id.* ¶¶ 456-457. The market-survey data it seeks from the CLECs are irrelevant to the question whether there is operational or economic impairment.

In any case, the summary data that the Oregon Commission has already made available prove conclusively that CLECs are not impaired in serving enterprise customers without access to the incumbents’ switches. Specifically, there are at least 28 non-incumbent switches in

¹ The following states have completed their review under 47 C.F.R. § 51.319(d)(3)(i): Kentucky, Maine, Massachusetts, New Hampshire, and North Dakota. A number of other state commissions have decided (for different reasons) not to undertake any proceeding at all: Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

² Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”), *petitions for review pending, United States Telecom Ass’n v. FCC*, Nos. 00-1012 *et al.* (D.C. Cir.).

Oregon serving thousands of enterprise customers throughout the state.³ This evidence is consistent with the FCC's nationwide conclusion that there is no impairment with respect to serving enterprise customers over high-capacity loops in Oregon. The results of the summary survey belie any notion that impairment exists in the market for enterprise switching in Oregon, and there is nothing that additional data from a few, uncooperative CLECs would do to undermine this overall conclusion.⁴ Indeed, one would expect that, if they were truly impaired without access to enterprise switching from the incumbents, these CLECs would have an interest in providing data to support such a claim.

Finally, granting the Oregon Commission's request would effectively extend for two additional months the incumbents' obligation to provide unbundled access to network elements for which this Commission has already found no impairment under 47 U.S.C. § 251(d)(2). In response to the D.C. Circuit's decision to vacate the last set of rules that were premised almost exclusively on the principle that "more unbundling is better," *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 425 (D.C. Cir. 2002) ("*USTA*"), *cert denied*, 123 S. Ct. 1571 (2003),⁵ the Commission has responded by concluding that, on a national basis, CLECs are not impaired in their ability to compete without unbundled access to incumbent switches serving enterprise customers over high-capacity loops.

³ See Ruling, *Oregon Telecom, Inc., and United Communications, Inc., dba UNICOM, Petition Regarding Access to Unbundled Local Switching to Serve Enterprise Market Customers*, UM 1110, App. A (Or. P.U.C. Dec. 9, 2003) ("Ruling").

⁴ See Ruling at 1 ("[r]esponses from virtually all of the CLECs have now been received" and, "[o]ver the course of the past few weeks, members of the Commission staff (Staff) have organized and formatted the information into summary form").

⁵ The *USTA* court also recognized that "[e]ach unbundling of an element imposes costs of its own, spreading the disincentive to invest in innovation and creating complex issues of managing shared facilities. . . . [The FCC's prior order] reflects little Commission effort to pin 'impairment' to cost differentials based on characteristics that would make genuinely competitive provision of an element's function wasteful." 290 F.3d at 427.

Nowhere in its request does the Oregon Commission even acknowledge the harm to the ILECs in extending this deadline. This Commission has correctly determined that requiring incumbents to subsidize their competitors in the enterprise market distorts competition and squelches innovation without any corresponding benefit to consumers. Perpetuating such arrangements thus harms the public interest in a direct and significant way.

CONCLUSION

For the foregoing reasons, the Commission should deny the Oregon Commission's request for an extension of the 90-day deadline to seek a waiver of the non-impairment finding with respect to local circuit switching used to serve enterprise customers.

Respectfully submitted,

JAMES D. ELLIS
PAUL K. MANCINI
JOSEPH E. COSGROVE, JR.
SBC COMMUNICATIONS INC.
175 East Houston
San Antonio, Texas 78205
(210) 351-3500

GARY L. PHILLIPS
CHRISTOPHER HEIMANN
JAMES P. LAMOUREUX
SBC COMMUNICATIONS INC.
1401 I Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-8910
Counsel for SBC Communications Inc.

CHARLES R. MORGAN
JAMES G. HARRALSON
JONATHAN B. BANKS
THEODORE R. KINGSLEY
LISA S. FOSHEE
BELLSOUTH CORPORATION
1155 Peachtree Street, N.E., Suite 1800
Atlanta, Georgia 30309
(404) 249-2641
Counsel for BellSouth Corporation

January 8, 2004


MICHAEL K. KELLOGG

MARK L. EVANS
GEOFFREY M. KLINEBERG
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
*Counsel for BellSouth Corporation,
SBC Communications Inc., and the Verizon
telephone companies*

MICHAEL E. GLOVER
EDWARD SHAKIN
VERIZON
1515 North Courthouse Road, Suite 500
Arlington, Virginia 22201
(703) 351-3099
Counsel for the Verizon telephone companies