BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

October 11, 2002

VIA HAND DELIVERY

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket No. 98-00123*
Docket No. 00-00544

Dear Chairman Kyle:

Enclosed please find the original and fourteen copies of BellSouth Telecommunications, Inc.'s Comments in Support of Joint Motion of United Telephone-Southeast, Inc. and Sprint Communications Company, L.P. to Suspend. Copies of the enclosed have been provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH/jej

Enclosure

466066

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket No. 98-00123*

Docket No. 00-00544

COMMENTS OF BELLSOUTH TELECOMMUNICATIONS, INC. IN SUPPORT OF JOINT MOTION OF UNITED TELEPHONE-SOUTHEAST, INC. AND SPRINT COMMUNICATIONS COMPANY, L.P. TO SUSPEND

BellSouth Telecommunications, Inc. ("BellSouth") submits these Comments in support of the Joint Motion to Suspend filed by United Telephone-Southeast, Inc. ("United") and Sprint Communications Company, L.P. ("Sprint") on May 29, 2002 (the "Joint Motion"). BellSouth agrees that the Tennessee Regulatory Authority (the "TRA" or "Authority") should suspend its First Interim Order and its Order on Petition for Stay and Request for Reconsideration and Clarification.

On May 9, 2000, the TRA opened a generic docket for the purpose of establishing Unbundled Network Element ("UNE") prices per the FCC Line Sharing Order and Line Splitting Order and permanent prices for riser cable and Unbundled Network Terminating Wire per the TRA's Order in Docket No. 98-00123. The Docket was entitled *In Re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123*, Docket No. 00-00544.

The TRA entered a First Initial Order on April 3, 2002 and an Erratum on June 27, 2002, which, among other minor issues, changed the name of the First Initial

Order to First Interim Order. After motions for reconsideration were filed by United and BellSouth, the TRA deliberated on May 21, 2002, and entered an Order on Petition for Stay and Request for Reconsideration and Clarification on June 27, 2002 (collectively "the Prior Orders").

BellSouth has recently filed appeals from these orders.[1] Without repeating all of the grounds for appeal, BellSouth respectfully submits that the Authority's Prior Orders are fundamentally flawed as a matter of law. As Sprint and United point out in the Joint Motion, the FCC has authorized state commissions to establish unbundling and access obligations only where the state complies with the necessary and impair analysis required by Section 251(d)(2) of the 1996 Act.[2] None of the Prior Orders, however, even purport to apply the necessary and impair analysis required by law.

For example, in ordering BellSouth and Sprint to provide and install dual purpose line cards for next generation digital loop carrier ("NGDLC"), the TRA cited generally to 47 U.S.C. § 251(c) of the 1996 Act. No mention was made of the actual section of the 1996 Act that specifically authorizes the FCC to designate what network elements shall be subject to unbundling and access requirements. That section allows for further unbundling of the local telephone company's network but only after

---

1 The appeal was filed in United States District Court, Middle District of Tennessee, Nashville Division on August 26, 2002. *See* Docket No. 3-02-0830. A protective appeal was also filed in the Court of Appeals for the Middle Section of Tennessee on the same date. *See* Docket No. M2002-02054-COA-R12-CN. If the Authority grants the joint motion, BellSouth will file motions requesting that those Courts hold the appeals in abeyance in order to allow time for the Authority to consider these matters without expending time and resources defending the appeals in the meantime.

considering, "at a minimum, whether - (A) access to such network elements as are proprietary in nature is *necessary; and* (B) the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it now seeks to offer." 47 U.S.C. § 251(d)(2) (emphasis added). As a consequence of this failure to even consider this pertinent section of the 1996 Act, by requiring BellSouth to provide dual purpose line cards for NGDLC, the Authority has effectively determined that BellSouth must unbundle parts of its packet switching network without performing the analysis required by the federal Act. The TRA should suspend its Order until, at a minimum, it employs the appropriate impairment test.

In addition to its failure to even attempt to apply the required "impairment" test, the TRA imposed the requirement to install dual purpose line cards for NGDLC even though the TRA in its Reconsideration Order acknowledged that this technology was not deployed in Tennessee by either United or BellSouth and that such technology is not compatible with the ILECs' systems. The Authority further acknowledged that "CLECs are not harmed, however, at this time because BellSouth has not yet deployed this technology in Tennessee." *See* Reconsideration Order at 7. To the extent that one of the purposes of the TRA's order was to insure that there was "parity" between the CLECs and BellSouth and Sprint, clearly such an effort was misplaced and inappropriate. Such a rationale provides no basis for the TRA's order.

---

2 *See* Section 47 C.F.R. § 51.317.

As a final reason for suspending the TRA's Orders, since the entry of the TRA's Prior Orders, the FCC's line sharing order, the very basis of the TRA's Prior Orders, has been vacated by the United States Court of Appeals for the District of Columbia. That Court expressly vacated the rules of the FCC dealing with the obligation of ILECs to offer line sharing.[3] Since the foundation of the TRA's Orders was based on the rules that have been vacated, serious doubt has been cast on the legal necessity for any ILEC to even offer line sharing, much less comply with other aspects of the Prior Authority Orders emanating from the earlier FCC line sharing order, such as the order to provide and install dual purpose line cards for NGDLC.[4]

As United and Sprint correctly point out in their Joint Motion, the Court of Appeals' decision was a "dramatic intervening event." This event took place after the Authority deliberated on the partial Motions for Reconsideration, and before the Authority entered its written order on June 27, 2002. As stated, the Authority deliberated on May 21, 2002 and the D.C. Court of Appeals issued its Order on May 24, 2002. The TRA, therefore, did not have the Order available to it when deliberating. Suspension of the Authority's Prior Orders would allow the Authority to take the Court's decision, as well as the FCC's response to that decision, into consideration, before making any final decisions on these important matters. At the

---

3 *See United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

4 On September 4, 2002, the D.C. Court of Appeals denied the petition for rehearing filed by WorldCom. The D.C. Court also ordered that the vacatur of the FCC orders be stayed, but only until January 2, 2003. (*See* 2003 U.S. App. LEXIS 18823, copy attached). This means, of course, that the FCC has only until that date to act in response to the Court's Order or the vacatur of the line sharing Order takes effect.

very minimum, the Authority should extend the temporary stay it issued with respect to dual purpose line cards to the other aspects of the Prior Orders, and extend the date of the stay until the Authority has had the opportunity to review the parties' comments and the FCC's response to the Court of Appeals' Order.[5]

A summary of these and additional grounds for BellSouth's appeal is set forth on the attached Complaint and Petition for Review filed in the United States District Court on August 26, 2002.

In conclusion, BellSouth respectfully joins in the Joint Motion and requests that the Authority suspend the Prior Orders and establish a procedural schedule to allow all parties to comment on the effect of the opinion issued by the United States Court of Appeals for the District of Columbia and the anticipated response to that Order by the FCC.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. Douglas Lackey
675 W. Peachtree Street, Suite 4300
Atlanta, Georgia 30375

5 As stated, the Authority stayed its decision on dual purpose line cards for NGDLC, but for six months only. The stay will expire in December, unless the Authority extends it or grants the Joint Motion.

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

Jon E. Hastings, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

James Wright, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church Street, #300
Nashville, TN 37219

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

R. Dale Grimes, Esquire
Bass, Berry & Sims
315 Deaderick Street, #2700
Nashville, TN 37238-3001

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Ave., #1600
P. O. Box 198062
Nashville, TN 39219-8062

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

Joshua M. Bobeck, Esquire
Swidler Berlin, et al.
3000 K St., NW, #300
Washington, DC 20007-5116

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

William H. Weber, Esquire
Covad Communications
1230 Peachtree St., NE, 19th Fl.
Atlanta, GA 30309

FILED
U.S. DISTRICT COURT
AUG 26 2002
BY ____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BELLSOUTH TELECOMMUNICATIONS, INC.,

Plaintiff,

v.

No. 3 02 0830

JUDGE TRAUGER

THE TENNESSEE REGULATORY AUTHORITY, SARA KYLE, Chairman, DEBORAH TAYLOR TATE, Director, PAT MILLER, Director, and RON JONES, Director,

Defendants.

COMPLAINT AND PETITION FOR REVIEW

BellSouth Telecommunications, Inc. ("BellSouth"), for its Complaint and Petition for Review, states as follows:

PARTIES, JURISDICTION AND VENUE

1. This civil action arises under the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act"), a law of the United States.

2. Plaintiff BellSouth is a corporation organized under the laws of the state of Georgia with its principal place of business located in Atlanta, Georgia. BellSouth provides local exchange, exchange access, and other telecommunications services in the State of Tennessee. BellSouth is an Incumbent Local Exchange Carrier ("ILEC") under the 1996 Act, 47 U.S.C. § 251(h)(1).

3. Defendant Tennessee Regulatory Authority ("TRA") is an agency of the State of

Tennessee and is authorized to regulate intrastate telecommunications services offered by public utilities in the State of Tennessee. The TRA is a "State Commission" under the 1996 Act, 47 U.S.C. §153(41).

4. Defendant Sara Kyle is Chairman of the TRA. Chairman Kyle is sued in her official capacity for declaratory and injunctive relief only.

5. Defendant Deborah Taylor Tate is a Director of the TRA. Defendant Tate is sued in her official capacity for declaratory and injunctive relief only.

6. Defendant Pat Miller is a Director of the TRA. Defendant Miller is sued in his official capacity for declaratory and injunctive relief only.

7. Defendant Ron Jones is a Director of the TRA. Defendant Jones is sued in his official capacity for declaratory and injunctive relief only.

8. This Court has jurisdiction over the subject matter of this action pursuant to 47 U.S.C. §252(e)(6) and 28 U.S.C. § 1331.

9. Venue in the Middle District of Tennessee is proper under 28 U.S.C. § 1391(b)(1) because the all defendants reside in this district pursuant to 28 U.S.C. § 1391(c). Alternatively, venue is proper under 28 U.S.C. § 1391(b)(2) because the substantial part of the events giving rise to the claims in this action occurred in this district.

SUMMARY OF ACTION

10. Before passage of the 1996 Act, local telephone companies such as Bellsouth provided, pursuant to regulated monopolies, local telephone service to business and residential customers within their designated service areas.

11. The 1996 Act generally ended these monopolies and, subject to certain exceptions, introduced competition into the local telephone market. The 1996 Act requires that ILECs such as Bellsouth provide to Competitive Local Exchange Carriers ("CLECs")

"nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance" with the rest of the Act. 47 U.S.C. § 251(c)(3).

12. Claiming to interpret and promote the stated goal of the 1996 Act, the Federal Communications Commission ("FCC") issued a Line Sharing Order requiring ILECs to provide unbundled access to the high frequency portion of their telephone line to CLECs. *See* In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20912, FCC 99-355, released Dec. 9, 1999 (hereafter "Line Sharing Order"). The FCC reconsidered and clarified the Line Sharing Order in a subsequent Line Splitting Order. *See* In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Provisions of the Telecommunications Act of 1996, Third Report and Order on Reconsideration in CC Docket No. 98-147; Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, FCC 01-26 released on Jan. 19, 2001 (hereafter "Line Splitting Order).

13. Line sharing is a method that allows one telecommunications provider to use the high frequency portion of a telephone line while another telecommunications provider uses the low frequency part of the line for a traditional voice call. In other words, line sharing permits the provisioning of two types of telephone service over the same line, that is, high speed or digital ("DSL") service is provided by a CLEC and voice service is provided by an ILEC on the same telephone line ("loop").

14. As distinguished from line sharing, line splitting occurs when neither the DSL service nor the voice service is provided by an ILEC. Rather, both services are provided by a CLEC over the ILEC-owned loop.

15. On May 9, 2000, the TRA opened a generic docket for the purpose of establishing Unbundled Network Element ("UNE") prices per the FCC Line Sharing Order and Line Splitting Order and permanent prices for riser cable and Unbundled Network Terminating Wire per the TRA's Order in Docket No. 98-00123. The Docket was entitled In Re: Generic Docket to Establish UNE Prices for Line Sharing Per FCC 99-355, and Riser Cable and Terminating Wire as Ordered in TRA Docket 98-00123, Docket No. 00-00544.

16. The TRA directed the ILECs, including BellSouth and United Telephone Southeast, Inc. ("United"), to file cost studies regarding these services.

17. The TRA conducted evidentiary hearings in this matter from November 27-30, 2000.

18. At these hearings, BellSouth placed into evidence its cost studies and other supporting data regarding the rates, terms, and conditions of its line sharing. BellSouth's pre-filed testimony and exhibits, together with its testimony at the hearing, provided substantial and material evidence of the reasonableness of BellSouth's rates, terms, and conditions of offering line sharing.

19. The TRA entered a First Initial Order on April 3, 2002 and an Erratum on June 27, 2002, which, among other minor issues, changed the name of the First Initial Order to First Interim Order (hereafter "Interim Order"). A true and correct copy of the Interim Order is attached as Exhibit 1 and a true and correct copy of the Erratum is attached as Exhibit 2.

20. After motions for reconsideration were filed by United and BellSouth, the TRA, on June 27, 2002, entered an Order on Petition for Stay and Request for Reconsideration and

Clarification ("Reconsideration Order"). A true and correct copy of the Reconsideration Order is attached as Exhibit 3.

21. Notwithstanding the evidence presented by BellSouth, the TRA Interim Order and Reconsideration Order require BellSouth to take actions expressly contrary to the evidence presented by BellSouth and contrary to existing law. Specifically, the TRA Orders require BellSouth (1) to install and provide dual-purpose line cards for the CLECs' use; (2) to offer ILEC-owned splitters to CLECs one port at a time; and (3) to install and implement line sharing within unreasonable time limits.

ISSUES FOR REVIEW

A. DUAL-PURPOSE LINE CARDS (TRA ISSUE NO. 20).

22. The TRA directed BellSouth and United to install for the CLECs' use dual purpose line cards in their NGDLC (next generation digital loop carrier) systems, to prepare a cost study related to the installation of those NGDLC dual purpose line cards, and to provide such installation to the CLEC's on a non-discriminatory basis at a fair and reasonable price.

23. Although not clear from the TRA Orders, it appears dual-purpose line cards are to be purchased and installed for the purpose of providing line sharing to the CLEC, and are to be placed where the line splitter and digital subscriber line access modem functions are incorporated into a single line card in a remote terminal or digital loop carrier ("DLC") system.

24. Bellsouth filed with the TRA a Petition for Reconsideration and a Petition for Stay of Issue 20 of the TRA's Initial Order on April 10, 2002.

25. The TRA in its Reconsideration Order granted in part BellSouth's stay request with respect to Issue 20 and extended the stay of Issue 20 to apply to United as well. However, the grant of the stay was only for a period of six months from the date of the Reconsideration Order, that is until December 26, 2002, at which time BellSouth and United must comply with

the TRA's Initial Order in full. *See* Reconsideration Order at 7, 28. The TRA did not address the merits of BellSouth's and United's request for reconsideration on this issue, finding instead that the partial grant of the stay rendered the issue moot.

26. The TRA imposed the requirement to install dual-purpose line cards even though the TRA in its Reconsideration Order acknowledged that this technology was not deployed in Tennessee by either United or BellSouth and that such technology is not compatible with the ILECs' systems. *See* Reconsideration Order at 7.

27. In ordering ILECs to provide and install dual-purpose line cards, the TRA cites generally to 47 U.S.C. § 251(c) of the 1996 Act. Subsection (c)(3) thereof requires ILECs to provide non-discriminatory access to unbundled network elements ("UNEs").

28. A subsequent provision within the 1996 Act allows the FCC the to designate what network elements shall be subject to unbundling and access requirements, but only after considering, "at a minimum, whether – (A) access to such network elements as are proprietary in nature is *necessary*; *and* (B) the failure to provide access to such network elements would *impair* the ability of the telecommunications carrier seeking access to provide the services that it now seeks to offer." 47 U.S.C. § 251(d)(2) (emphasis added).

29. The FCC has never concluded that dual-purpose line cards must be installed and provided by ILECs so as to offer access to the CLECs. Requiring the provisioning of dual-purpose line cards amounts to requiring that the ILECs unbundle their packet switching networks. Such action is not mandated by the FCC, except under the limited circumstances of the packet switching rule contained in 47 C.F.R. § 51.319(c)(5)(b)(i)-(iv), which circumstances are not applicable to this appeal.

30. The FCC has authorized state commissions to establish unbundling and access obligations where it complies with the necessary and impair analysis required by § 251(d)(2) of

the 1996 Act. *See* § 47 C.F.R. § 51.317 and In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, released Nov. 5, 1999 (hereafter "UNE Remand Order") at ¶ 153-161.

31. None of the TRA Orders, however, even purport to apply the necessary and impair analysis nor the analysis necessary to unbundle packet switching. By requiring BellSouth to provide dual-purpose line cards under the 1996 Act, the TRA has effectively determined that such an offering is a UNE without performing the analysis required by the Act.

32. Besides the fact that the TRA did not comply with the mandatory procedures of the 1996 Act, technical issues relating to the dual-purpose line cards present substantial obstacles to BellSouth's ability to comply with the TRA's First Initial Order.

33. BellSouth has not deployed dual-purpose line cards in its NGDLC systems anywhere in Tennessee or elsewhere in BellSouth's nine-state network.

34. BellSouth has only performed technological evaluations of the dual line cards at BellSouth's technology laboratory in Atlanta. During these evaluations, BellSouth has determined that there are numerous technical, logistical and operational issues with all solutions available to date.

35. The FCC recognized the difficulties the CLECs face with line sharing and line splitting when fiber has been deployed in the loop. The FCC has specifically mentioned the dual-purpose line card solution in a notice of proposed rulemaking addressing the general issue. Of particular concern to the FCC, however, is whether the dual-purpose line card solution requires modification of its current packet switching unbundling rule. *See* Line Splitting Order at ¶¶ 55-64.

36. These issues were addressed minimally or not at all during the evidentiary phase of the proceeding before the TRA. This is evidenced by the TRA Orders containing only selective quotes from the FCC's Line Sharing Order as the basis for its decision.

37. In addition, since the entry of the TRA Orders, the FCC's Line Sharing Order (the very basis of the TRA Orders) has been addressed by Federal Courts. On May 24, 2002, the United States Court of Appeals for the District of Columbia expressly vacated the rules of the FCC dealing with the obligations of ILECs to offer line sharing. *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

38. Since the foundation of the TRA's decision in this case was based on the now vacated FCC rules, the *United States Telecom Association* opinion, by vacating the FCC's rules regarding line sharing, has cast into extreme doubt the legal necessity for any ILEC to even offer line sharing.

39. If no stay of the *United States Telecom Association* opinion is issued by a federal court, then the high frequency portion of the loop will be removed from the national list of UNEs when the D.C. Circuit Court's mandate becomes effective. The obligation of an ILEC to offer line sharing and line splitting will then be eliminated on a national basis.

40. For all the above reasons, the TRA's Initial Order and Reconsideration Order with regard to Issue 20 should be vacated.

B. THE NUMBER OF SPLITTERS (TRA ISSUE 11)

41. As discussed above, line sharing refers to the situation where an ILEC such as BellSouth provides an end user with voice service, while a data CLEC provides the end user with data service. Since the end user sends all of his or her calls, whether voice or data, over a single loop, it is necessary to separate the voice stream from the data stream in order to route the two different types of traffic to the appropriate place.

42. A splitter is a tangible piece of equipment that is used to break this single combined voice and data stream into two separate voice and data streams. The combined stream comes in to the splitter from the direction of the end user's premises. The voice stream is then redirected to Bellsouth's central office switch, and the data stream is redirected to the data CLEC's collocation arrangement.

43. The issue addressed by the TRA involves the quantity of "splitters" that a CLEC must purchase at a time. BellSouth offered to provide splitters in groups of 24, which would provide the CLEC with capacity to serve up to 24 DSL customers. The CLECs, however, wanted to purchase the splitters one at a time.

44. The TRA ordered ILECS such as BellSouth and United to provide splitters to CLECs "one port at a time."

45. In response to motions for reconsideration filed by BellSouth and United on this issue, the TRA affirmed its Order by merely stating, without further explanation, that the "evidentiary record supports the Authority's decision on the issue and that modification of the decision is unwarranted."

46. It appears that the TRA's decision was based on a misunderstanding of the current situation regarding the existence of splitters in BellSouth's network.

47. At page 25 of its Interim Order, the TRA states: "Given that ILECs own splitters for their data affiliates to use in providing xDSL services, ILECs should offer CLECs ILEC-owned and maintained splitter options for xDSL services pursuant to Tenn. Code Ann. § 65-4-124(a)." This conclusion is factually incorrect and is not supported by the record.

48. BellSouth does not use splitters in its network for itself or for any data affiliate. When BellSouth provides both voice and data service to a customer, BellSouth does not use a splitter such as that contemplated here.

49. BellSouth separates the voice stream from the data stream in its DSLAM (a piece of equipment that performs a number of functions, including the splitting of the signal), which BellSouth locates either in its own central office, or in the remote terminal serving the end user.

50. BellSouth, pursuant to FCC order, is not required to "unbundle" its DSLAM, absent specific circumstances not relevant in this proceeding. *See* UNE Remand Order ¶¶ 300-313.

51. CLECs are free to locate their own DSLAMs in the CLEC's collocation arrangement in the central office, or in the remote terminal, as the CLEC deems appropriate.

52. If the CLEC chooses to collocate its own DSLAM, a splitter is required because the end user's signal must be split in order to route the voice portion and the data portion of the end user's service to two different service providers.

53. Therefore, splitters are not used in BellSouth's network and are necessitated solely because of the CLECs' needs.

54. BellSouth purchases splitters, which it does not use for its own services and has to obtain solely for the benefit of CLECs, in units that provide capacity to split either 96 or 144 loops.

55. Although splitters are an expensive piece of equipment, as is reflected in the record in this proceeding, in an effort to accommodate the interests of the CLECs, BellSouth offered to sell splitters to the CLECs in increments of 24.

56. This means that if a CLEC wanted to obtain splitters in a central office, BellSouth would have to purchase a piece of equipment that provides the capacity to split a minimum of 96 lines. BellSouth would only charge the CLEC for 24 splitters, or one fourth of the capacity of the equipment that BellSouth was required to purchase in order to serve that CLEC. That is, the CLEC would pay for 24 splitters, and BellSouth would have to absorb the cost of the remaining

72 splitters until another CLEC came along and wanted to purchase all or part of the remaining splitters in that piece of equipment.

57. The TRA's Order, however, goes well beyond that, requiring BellSouth to assume risks related to cost recovery that are simply inappropriate. The TRA has ordered that CLECs be allowed to purchase these splitters one at a time.

58. This means that if a CLEC orders a splitter, and if no splitters are currently found in the relevant BellSouth central office, BellSouth has to purchase and install a shelf of at least 96 splitters to provide that one splitter to the CLEC.

59. The natural corollary is that BellSouth, which does not use splitters in its network, has to carry the cost of the other 95 splitters until another CLEC comes along and orders a second splitter. If that never happens, BellSouth will never recover the cost of the unused splitters that it was required to purchase in order to be able to provide to the CLEC a single splitter, since in the absence of more demand, the rate that the CLEC pays for the one splitter will not cover the cost of the shelf.

60. The TRA's ruling on this issue is clear error because BellSouth is entitled to recover its costs of providing service to the CLECs, irrespective of which costing theory one advocates or adopts. However, there is not a shred of evidence in the record that supports a finding that BellSouth would have a reasonable opportunity to recover the costs of the splitters it would be required to purchase to provide a CLEC with a single splitter.

61. For the above reasons, the TRA's decision with regard to Issue 11 should be vacated.

C. TIME INTERVALS FOR PROVISIONING LINE SHARING (TRA ISSUE 15)

62. In its Interim Order, the TRA ordered certain time intervals for ILECs to provide line sharing to CLECs according to the number of loops ordered and whether the loops needed

conditioning. Specifically, with respect to CLEC orders for 6-14 lines at the same end-user address, the TRA ordered the provisioning and installation of the high frequency portion of the loop, where conditioning is necessary, within 10 business days from the receipt of a CLEC's local service request, or LSR.

63. Both United and Bellsouth sought reconsideration of this part of the Interim Order.

64. United argued that this rule granted the CLECs preferential treatment compared with United's retail customers, and that the TRA should pursue parity in wholesale and retail provisioning.

65. Bellsouth argued that the TRA had no factual basis for this Order because the information BellSouth provided in response to the data request and relied upon by the TRA in its finding only related to loops that did not require conditioning.

66. The TRA reconsidered this issue, but only changed its order so as to provide a 10 day time interval for 1-10 lines, rather than 6-14 lines.

67. Regardless of the change in the number of lines to which the 10 day time limit is applicable, the time interval mandated by the TRA still has no factual basis and does not render parity between an ILEC's wholesale and retail customers.

68. The TRA's Ruling with regard to Issue 15, as modified by the Reconsideration Order, should be vacated.

CLAIMS FOR RELIEF

69. BellSouth realleges and incorporates by reference Paragraphs 1 through 68 of this Complaint as if fully set forth herein.

70. The TRA's rulings requiring the installation of dual-purpose line cards, the provision of ILEC-owned splitters one port at a time, and the completion of line sharing

provisioning within unreasonable time limits are inconsistent with the 1996 Act and implementing FCC determinations. The TRA's rulings on these issues are also arbitrary and capricious and result from a failure to engage in reasoned decision making.

PRAYER FOR RELIEF

WHEREFORE, BellSouth respectfully requests that this Court enter an Order:

1. Declaring that the TRA's rulings requiring the installation of dual-purpose line cards (Issue 20), the provision of ILEC-owned splitters one port at a time (Issue 11), and the completion of line sharing provisioning within unreasonable time limits (Issue 15) violate federal law and are, therefore, void;

2. Declaring that the TRA's rulings requiring the installation of dual-purpose line cards (Issue 20), the provision of ILEC-owned splitters one port at a time (Issue 11), and the completion of line sharing provisioning within unreasonable time limits (Issue 15) are arbitrary and capricious and result from a failure to engage in reasoned decision making;

3. Enjoining the Defendants and all parties acting in concert with them, from seeking to enforce the TRA's rulings requiring the installation of dual-purpose line cards (Issue 20), the provision of ILEC-owned splitters one port at a time (Issue 11), and the completion of line sharing provisioning within unreasonable time limits (Issue 15); and

4. Granting BellSouth such further relief as the Court may deem just and equitable.

DATED Aug 26, 2002

Respectfully submitted,

R. Dale Grimes

R. Dale Grimes (#6223)
Andrea Taylor McKellar (#19618)
BASS, BERRY & SIMS PLC
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238
(615) 742-6200

Guy M. Hicks (#0232)
BellSouth Telecommunications, Inc.
333 Commerce Street, #2101
Nashville, Tennessee 37201-3300

Attorneys for Plaintiff BellSouth Telecommunications, Inc.

United States Telecom Association, Petitioner v. Federal Communications Commission and United States of America, Respondents; Bell Atlantic Telephone Companies, et al., Intervenors

No. 00-1012, Consolidated with 01-1075, 01-1102, 01-1103, 00-1015, Consolidated with 00-1025

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

2002 U.S. App. LEXIS 18823

September 4, 2002, Filed

PRIOR HISTORY:
United States Telecom Ass'n v. FCC, 290 F.3d 415, 2002 U.S. App. LEXIS 9834 (D.C. Cir. 2002).

DISPOSITION:
Petition for rehearing denied.

JUDGES:
[*1]

BEFORE: Edwards and Randolph, Circuit Judges, and Williams, Senior Circuit Judge.

OPINION:

ORDER

Upon consideration of intervenor WorldCom, Inc.'s petition for rehearing or, in the alternative, for partial say of the mandate, and the responses thereto, it is

ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the motion for partial stay of the mandate be granted. The vacatur of the Commission's orders is hereby stayed until January 2, 2003. See In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Notice of Proposed Rulemaking, 16 F.C.C.R. 22781, 22818 at P 81 (2001)* (FCC is currently reviewing rules for triennial review that is to be completed in 2002).

The Clerk is directed to issue a partial mandate in No. 00-1012, et al. and in No. 00-1015, et al. in the normal course.

Per Curiam