

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

May 15, 2001

IN RE:	)	
DOCKET TO ESTABLISH GENERIC	)	
PERFORMANCE MEASUREMENTS,	)	DOCKET NO.
BENCHMARKS AND ENFORCEMENT	)	01-00193
MECHANISMS FOR BELL SOUTH	)	
TELECOMMUNICATIONS, INC.	)	
IN RE:	)	
DOCKET TO DETERMINE THE	)	
COMPLIANCE OF BELL SOUTH	)	DOCKET NO.
TELECOMMUNICATIONS, INC.'S	)	01-00362
OPERATIONS SUPPORT SYSTEMS WITH	)	
STATE AND FEDERAL REGULATIONS	)	
IN RE:	)	
AT&T COMMUNICATIONS OF THE	)	
SOUTH CENTRAL STATES, INC.	)	DOCKET NO.
PETITION FOR THE ESTABLISHMENT	)	99-00347
OF AN INDEPENDENT THIRD PARTY	)	
TESTING PROGRAM OF BELL SOUTH	)	
TELECOMMUNICATIONS, INC.	)	
OPERATIONAL SUPPORT SYSTEMS	)	
IN RE:	)	
BELL SOUTH TELECOMMUNICATIONS,	)	
INC.'S PETITION TO CONVENE GENERIC	)	DOCKET NO.
DOCKET AND TO RESOLVE PENDING	)	00-00392
ARBITRATION ISSUES	)	

**ORDER CONSOLIDATING DOCKET NOS. 99-00347 AND 00-00392
INTO DOCKET NO. 01-00193 AND OPENING DOCKET NO. 01-00362**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on February 21, 2001, on its own motion. This Order, which reflects the findings of the Authority at the February 21, 2001 Conference shall be incorporated into the Final Order as if fully rewritten therein.

Background

Section 251(c)(3) of the Telecommunications Act of 1996 specifically requires Incumbent Local Exchange Companies (ILECs) such as BellSouth to “provide, to any requesting telecommunications carrier . . . 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 . . .”¹ Operational Support Systems (“OSS”) are a network element within the meaning of §251(c)(3).² According to the Federal Communications Commission (“FCC”):

[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers. Thorough understanding of OSS involves a number of complex and technical matters. Nondiscriminatory access to the OSS functions, however, rests on a fairly straightforward concept: efficient and effective communication between the retail service provider (*i.e.*, the new competitor) and the wholesale provider (*i.e.*, the incumbent carrier). By “efficient and effective communication,” we mean that the competing carrier must be able to access the customer data necessary to sign up customers, place an order for services or facilities with the incumbent, track the progress of that order to completion, receive relevant billing information from the incumbent, and obtain prompt repair and maintenance for the elements and services it obtains from the incumbent.³

The FCC has consistently found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.⁴ The FCC has stated that “access to OSS functions falls squarely within an incumbent LEC’s duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and

¹ 47 U.S.C. § 251(c)(3).

² See *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56; 13 FCC Rcd. 12,817 (released April 17, 1998) (Notice of Proposed Rulemaking), ¶9.

³ *Id.* (citations omitted).

⁴ See, e.g., *In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, FCC 99-404, CC Docket No. 99-295, 15 FCC Rcd 3953 (December 22, 1999) (Memorandum Opinion and Order), ¶ 83 (hereinafter *Bell Atlantic New York Order*); *In the Matter of Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, FCC 97-418, 13 FCC Rcd. 539 (December 24, 1997) (Memorandum Opinion and Order), ¶ 15 (hereinafter *South Carolina Order*).

reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.”⁵ According to the FCC, without nondiscriminatory access to the functions performed by the incumbent’s OSS, new entrants cannot formulate and place orders for network elements or resale services, install service to their customers, maintain and repair network facilities, or bill customers, leaving competing carriers “‘severely disadvantaged, if not precluded altogether, from fairly competing’ in the local exchange market.”⁶

Tennessee law also mandates nondiscriminatory access to OSS functions. Tenn. Code Ann. § 65-4-124(a) requires that all telecommunications service providers shall “provide non-discriminatory interconnection to their public networks under reasonable terms and conditions” This requirement reflects Tennessee’s broad policy permitting competition in all telecommunications markets.⁷

The Procedural History of Docket No. 99-00347

The purpose of Docket No. 99-00347 is to assure nondiscriminatory access to BellSouth’s OSS. This docket commenced after AT&T Communications of the South Central States, Inc. (“AT&T”) filed on May 12, 1999 a *Petition for the Establishment of an Independent Third Party Testing Program of BellSouth’s Operational Support Systems*. The Petition sought such testing to establish standards for measuring BellSouth’s compliance with 47 U.S.C. § 251(c)(3).

⁵ *Bell Atlantic New York Order*, ¶ 84.

⁶ *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Co. and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in Texas*, CC Docket No. 00-65; FCC No. 00238, 15 FCC Rcd 18,354 (June 30, 2000) (Memorandum Opinion and Order) ¶ 92; *see BellSouth South Carolina Order*, ¶ 82.

⁷ *See* Tenn. Code Ann. § 65-4-123.

On May 19, 1999, the Authority issued a Notice inviting interested parties to file comments on AT&T's Petition by May 26, 1999.⁸ Intermedia Communications, Inc. ("Intermedia"), Southeastern Competitive Carriers Association ("SECCA"), Sprint Communications Company, Inc. ("Sprint"), The Competitive Telecommunications Association ("CTA"), MCI Telecommunications, Inc. d/b/a MCI WorldCom ("MCI"), and NextLink, Tennessee, Inc ("NextLink") filed Petitions for Leave to Intervene. Intermedia, the Consumer Advocate Division of the Office of the Attorney General and Reporter, Sprint, and SECCA filed comments. MCI filed a letter adopting the comments of SECCA.

On May 26, 1999, BellSouth responded to AT&T's Petition, asserting that the Authority should monitor the third-party testing program ordered by the Georgia Public Service Commission rather than initiate an additional, duplicative testing program in Tennessee. BellSouth asserted that the results of third party testing in Georgia should be equally relevant to the Authority's evaluation of BellSouth's OSS in Tennessee.

During a regularly scheduled Authority Conference on October 26, 1999, the Authority heard comments and responses from representatives of AT&T, BellSouth and the SECCA regarding efforts to conduct third party testing of BellSouth's OSS in Georgia and Florida. After receiving assurances from BellSouth's counsel that BellSouth would continue to provide the TRA with the same information provided to Georgia and Florida, the Authority held in abeyance the issue of whether to grant AT&T's Petition. However, the Authority suggested that interested parties comment on Tennessee specific OSS testing issues.

To assist in gathering information regarding OSS operations in Tennessee and those utilized in other states in BellSouth's regions, the Authority issued a Data Request on April 24,

⁸ On May 26, 1999, the Authority issued a letter allowing additional time in which to file comments.

2000 requesting all parties to identify and explain all areas where the interfaces, systems, and processes utilized by BellSouth in Tennessee differ from those utilized in other states. The Data Request also sought identification of the impact, if any, of the Tennessee specific differences on the applicability of third party testing of BellSouth's OSS in other states to conditions in this State. BellSouth, responded by denying the existence of any Tennessee specific differences, asserting that the OSS pre-ordering functions, interfaces, systems and processes used in Tennessee are the same as those used throughout BellSouth's region. AT&T argued that some form of OSS testing is necessary to assure that BellSouth provides nondiscriminatory access to its OSS in Tennessee. Comments from the CLECs generally supported AT&T's position.

The Procedural History of Docket No. 00-00392

On May 17, 2000, BellSouth filed a *Petition to Convene Generic Docket and to Resolve Pending Arbitration Issues*. The Petition requested that the Authority convene a generic docket to address performance measurements and enforcement mechanisms. BellSouth argued that these issues, which had been raised in several other dockets, should be resolved in a single proceeding rather than in separate dockets. Specifically, BellSouth asserted that at least four CLECs had requested that the Authority arbitrate issues concerning performance measurements and enforcement mechanisms and each request sought different performance measurements and enforcement mechanisms. BellSouth proposed that the Authority resolve in this generic docket all issues relating to performance measurements and enforcement mechanisms raised in those arbitrations.⁹ On June 8, 2000 Time Warner Telecom of the MidSouth, L.P. filed a Petition for

⁹ These included issues raised in Docket No. 99-00948 (*In Re: Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(B) of the Telecommunications Act of 1996*), Docket No. 00-00079 (*In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. §252*), and Docket No. 00-00309 (*In Re Petition of MCImetro Access Services, LLC and Brooks Fiber Communications of Tennessee, Inc. For Arbitration Under the Telecommunications Act of 1996*).

Leave to Intervene in Docket No. 00-00392.

The February 21, 2001 Authority Conference

During the regularly scheduled Authority Conference held on February 21, 2001, the Authority addressed the issues raised in Docket No. 99-00347 and Docket No. 00-00392, outlining a strategy to assure nondiscriminatory access to BellSouth's OSS and resolve pending performance measurement issues raised in several dockets. The Authority determined that the establishment of a single set of performance measurements applicable to all interconnection agreements is desirable. The Authority found that standard measurements, which could possibly be based to some degree on measurements from other states, would ensure consistency in the performance measurements applicable to all CLECS. The Authority also found that the adoption of an ongoing performance measurement program with built-in enforcement mechanisms would provide the Authority with a tool to assure that BellSouth was offering nondiscriminatory access to its network in a competitively neutral manner. Recognizing the value of establishing standard performance measurements and enforcement procedures in a single proceeding, the Directors voted unanimously to consolidate Docket No. 99-00347 with Docket No. 00-00392.

During the February 21, 2001 Authority Conference, the Directors further determined that the necessity for third party testing hinged on the applicability of testing previously undertaken by Georgia and Florida as well as BellSouth's ability to demonstrate its compliance with the performance measurements through Service Quality Measurements ("SMQs"). While acknowledging the accuracy of BellSouth's assertion that some of its systems are not Tennessee specific, the Authority cautioned that this fact does not necessarily mean that BellSouth's systems are completely regional. As an example, the Authority referred to OSS testing in Georgia and Florida which may not test the work groups and systems in Tennessee because the Birmingham Local Carrier Service Center ("LCSC") provides service to Tennessee while the

Atlanta LCSC provides service to both Georgia and Florida. The Authority also observed that BellSouth has Tennessee specific local work groups preparing collocation spaces for CLECs in Tennessee. The Authority will order Tennessee specific testing in those situations in which BellSouth cannot demonstrate compliance through its SQMs or reliance on the Georgia and Florida testing cannot indicate Tennessee performance.

The Authority enumerated several steps necessary to ensure BellSouth's compliance with the performance measurements and unanimously decided to implement these steps in two separate dockets. Specifically, the Authority determined that the first docket shall consist of the consolidated dockets of No. 99-00347 and No. 00-00392 and shall use as a starting point the measurements, performance benchmarks and enforcement mechanisms determined during the arbitration in Docket No. 99-0430 (*In Re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*).¹⁰ Proceedings will be held in the newly consolidated docket (No. 01-00193) to determine any necessary changes to the base measurements and benchmarks.

A second docket (No. 01-00362) will be established to: (1) engage an independent third party to advise the Authority of the areas of OSS testing in which reliance on existing data or the test results from other states is not possible; and (2) engage an independent third party to conduct any required testing.

At the February 21, 2001 Authority Conference, the Directors voted unanimously to appoint Director H. Lynn Greer, Jr. to act as Pre-Hearing Officer in these matters to prepare both dockets for a hearing.

¹⁰ For a further explanation of the exact performance measurements, benchmarks and enforcement mechanisms adopted in Docket No. 99-00430, see *Interim Order of Arbitration Award*, filed August 11, 2000; *Final Order of Arbitration*, filed February 23, 2001, and the Arbitrator's deliberations at the Arbitration Meeting of May 1, 2001.

IT IS THEREFORE ORDERED THAT:

1. Docket No. 99-00347 (*Third Party Testing Of BellSouth's Operational Support Systems*) is consolidated with Docket No. 00-00392 (*BellSouth Telecommunications, Inc.'s Petition To Convene Generic Docket And To Resolve Pending Arbitration Issues*). A new docket, No. 01-00193 (*Docket To Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*), continuing those consolidated actions, shall be opened for the purpose of establishing generic performance measurements, benchmarks and enforcement mechanisms for BellSouth Telecommunications, Inc.;

2. A single set of standard performance measurements and benchmarks shall be established in Docket No. 01-00193 with those established in Docket No. 99-00430 (*In Re Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*) being used as the starting point in said determination;

3. A second docket, No. 01-00362, shall be convened to determine the areas of OSS testing in which reliance on existing data or the test results from other states is not possible and to conduct any required testing;

4. The Authority shall retain an independent third party to analyze the existing data and test results from other states and to determine whether the data demonstrates compliance with the standard performance measurements and whether the test results are applicable to Tennessee. If the data is insufficient to establish compliance, the data does not show compliance, or the process involves a function that cannot be measured using testing from other states, an independent third party shall be engaged to conduct any required testing;

5. Director H. Lynn Greer, Jr. is appointed Hearing Officer to prepare both dockets for a hearing;

6. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary