

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

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IN RE:

DOCKET TO DETERMINE THE COMPLIANCE
OF BELL SOUTH TELECOMMUNICATIONS,
INC.'S OPERATIONS SUPPORT SYSTEMS
WITH STATE AND FEDERAL REGULATIONS

DOCKET NO.
01-00362

SETTLEMENT AGREEMENT
(PROPOSED)

Background

With the passage of the Telecommunications Act of 1996 (the "Act"), Congress adopted a pro-competitive policy that fundamentally restructured local telephone markets by ending the monopoly of local service held by the incumbent Bell operating companies ("BOCs").¹ The Act allows a BOC to enter the interLATA long distance market in a particular state only after establishing that the BOC has provided CLECs with nondiscriminatory access to local telephone networks.² To that end, before BOCs may enter the interLATA long distance market in a particular state, they must file for approval by the Federal Communications Commission ("FCC"), an application establishing that certain statutory criteria set forth in Section 271 of the Act have been satisfied.³ This criteria includes a fourteen (14) point competitive checklist.⁴ Checklist item (ii) requires proof that the BOC provides "Nondiscriminatory access to network

¹ See 47 U.S.C. § 151 *et seq.*; see also *In the Matter of Bell Atlantic New York for Authorization under Section 271 of the Communications Act*, 220 F.3d 607, 611 (D.C. Cir. 2000).

² See 47 U.S.C. § 271.

³ See 47 U.S.C. § 271. A consent decree arising from a 1982 antitrust suit brought by the Department of Justice permitted incumbents to provide local service in their respective regions, but barred them from providing long distance services. See *SBC Communications, Inc. v. FCC*, 138 F.3d 410, 412 (D.C. Cir. 1998).

⁴ See 47 U.S.C. § 271(c)(2)(B)(i)-(xiv).

elements in accordance with the requirements of 47 U.S.C. §§ 251(c)(3) and 252(d)(1).”⁵ In effect, checklist item (ii) requires BOCs to provide nondiscriminatory access to their Operations Support Systems (“OSS”) to CLECS.⁶

The docket at issue in this appeal, Docket No. 01-00362, *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations*, arose in the context of Tennessee’s Section 271 proceedings and the obligations of the Tennessee Regulatory Authority (“Authority” or “TRA”) under state law to promote competition and prevent preferences. Docket No. 01-00362 was convened on February 21, 2001 in anticipation of BellSouth Telecommunications, Inc. (“BellSouth”) filing its Section 271 application with the TRA. BellSouth did in fact file its Section 271 Application with the TRA on July 30, 2001, in Docket No. 97-00309. The purpose of Docket No. 01-00362 was to determine whether existing data or test results derived from OSS testing in other states was reliable and applicable to Tennessee and, in those instances where reliance on such testing was inappropriate, to conduct necessary testing.

During the course of discovery, in preparation for a Hearing, a discovery dispute arose between the parties. In an attempt to resolve the discovery dispute, the Pre-Hearing Officer appointed to this docket entered a series of orders directing BellSouth to provide specific information in advance of the Hearing. The information was not produced before the Hearing and so, during the Hearing, the Authority heard evidence from BellSouth as to why the imposed deadlines for producing the information were infeasible. BellSouth was directed to produce the

⁵ 47 U.S.C. § 271 (c)(2)(B)(ii).

⁶ “[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.” *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; *Notice of Proposed Rulemaking*, 13 FCC Rcd. 12,817 (April 17, 1998) ¶9.

information within forty-five days. BellSouth stated at the Hearing that it could not meet that deadline and eventually produced the information after the imposed deadline expired.

Thereafter, the Authority held a hearing to determine whether BellSouth should be sanctioned. A majority of the Directors voted to impose a sanction of \$1,054 against BellSouth for failing to generate and produce certain reports within the time period specified in the Authority order compelling discovery. BellSouth has filed an appeal from a 2-to-1 decision of the Tennessee Regulatory Authority (the "Authority") memorialized in an Order dated June 28, 2002.⁷ The appeal of the Authority's order is now pending in the Tennessee Court of Appeals for the Middle Section (*See* Appeal No. M2002-02069-COA-R12-CV) (the "Appeal"). All Briefs have been filed by the parties. Oral argument has been scheduled by the Court for May 7, 2003.

Terms and Conditions of Settlement Agreement

In recognition of certain risks and expenses that are attendant with this appeal and in order to avoid those risks and expenses, BellSouth and the Authority have reached the following agreement:

1. BellSouth agrees to withdraw its Appeal filed in the Court of Appeals in Appeal No. M2002-02069-COA-R12-CV and agrees to pay all costs of the Appeal assessed by the Court in exchange for the Authority vacating its "Order Imposing Sanctions on BellSouth Telecommunications, Inc. Pursuant to Tenn. Code Ann. §65-4-120."

2. The Authority agrees to vacate its "Order Imposing Sanctions on BellSouth Telecommunications, Inc. Pursuant to Tenn. Code Ann. §65-4-120" issued on June 28, 2002, in

⁷ Chairman Kyle did not vote with the majority. The terms of the former Directors of the Authority expired on June 30, 2002. Chairman Kyle was re-appointed and commenced a new term as a Director of the Authority on July 1, 2002. Deborah Taylor Tate, Pat Miller, and Ron Jones began terms as Directors on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Tate and Jones was randomly selected and assigned to Docket No. 01-00362.

Docket No. 01-00362 imposing sanctions against BellSouth, in exchange for BellSouth withdrawing its Appeal.

3. BellSouth and the Authority will jointly ask the Court of Appeals for permission to return jurisdiction in this docket to the Authority to enable it to issue an order vacating its "Order Imposing Sanctions on BellSouth Telecommunications, Inc. Pursuant to Tenn. Code Ann. §65-4-120" issued on June 28, 2002. Thereafter, BellSouth will withdraw its Appeal in this docket with the permission of the Court of Appeals.

4. If, for any reason, the Authority does not vacate its Order of June 28, 2002, BellSouth shall have no obligation to withdraw its Appeal or assume responsibility for the costs of the Appeal. If, for any reason, BellSouth fails to withdraw its Appeal, the Authority will act to reinstate its Order.

5. BellSouth agrees that it will not seek reimbursement of the \$1,054 previously paid to the Authority as a result of the June 28, 2002 Order and states that it has no objection to the Authority retaining the \$1,054 and using those monies for consumer education or any other lawful purpose.

6. This agreement is solely for the purpose of settling this matter and does not constitute an admission or concession of any legal position or argument made by either BellSouth or the Authority.

**On behalf of
BELLSOUTH
TELECOMMUNICATIONS, INC.**

**On behalf of the
TENNESSEE REGULATORY
AUTHORITY**

Its: _____

Its: _____