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January 16, 1998

David Waddell
Executive Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

In Re: *BellSouth Telecommunications,Inc.'s Entry into Long Distance (interLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No: 97-00309

Dear Mr. Waddell:

Please find enclosed the original and thirteen copies of AT&T's Motion to Dismiss BellSouth's Statement of Generally Available Terms and Conditions and Determine that BellSouth has not yet met the Act's Fourteen Point Competitive Checklist and Dismiss this Proceeding.

Sincerely,

Jim Lamoureux

cc: Parties of record

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: BellSouth Telecommunications, Inc.'s Entry into Long Distance (interLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996	))))	Docket No. 97-00309

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.'S MOTION TO DISMISS BELLSOUTH'S STATEMENT OF GENERALY AVAILABLE TERMS AND CONDITIONS, DETERMINE THAT BELLSOUTH HAS NOT MET THE ACT'S FOURTEEN POINT COMPETITIVE CHECKLIST AND DISMISS THIS PROCEEDING

AT&T Communications of the South Central States, Inc. ("AT&T") hereby submits this Motion To Dismiss BellSouth's Statement of Generally Available Terms and Conditions ("SGAT"), determine that BellSouth has not met the Act's fourteen point competitive checklist, and dismiss this proceeding. AT&T's motion is based on: (1) the current lack of permanent cost-based rates in Tennessee, (2) the unavailability of Track B to BellSouth in Tennessee, and (3) the recent decision of the Federal Communications Commission ("FCC") denying the application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. ("BellSouth") to provide in-region, interLATA service in South Carolina. The FCC Order denying BellSouth's application for South Carolina was issued on December 24, 1997, and provides guidance to inform the TRA's deliberations in this proceeding.

First, the FCC's order confirms that BellSouth is precluded from filing for interLATA relief under Track B in Tennessee at this time. Moreover, under the standards articulated in the FCC's South Carolina decision, BellSouth has received a request from at least one qualifying Track A provider in Tennessee—AT&T. In short, Track B is closed to BellSouth in Tennessee.

In addition to the determination that neither Track was available to BellSouth, the FCC also evaluated BellSouth's compliance with the fourteen point checklist. The FCC found that BellSouth failed to demonstrate that it: (1) offers nondiscriminatory access to its operations support systems ("OSS"); and (2) offers nondiscriminatory access to unbundled network elements ("UNEs") in a manner that permits competing carriers to combine them as required by the Telecommunications Act of 1996 ("the Act"). Memorandum Opinion and Order, CC Docket No. 97-208 ¶ 14 (December 24, 1997) ("FCC SC Order").

These determinations of the FCC should guide the TRA in this proceeding. The SGAT filed by BellSouth in South Carolina is virtually identical to the SGAT filed in this proceeding in Tennessee. Moreover, BellSouth stated unequivocally in its application to the FCC that the systems and processes it uses to provide interconnection, access to UNEs and services for resale are the same region-wide. Thus, the conditions which compelled the FCC to conclude that BellSouth has not met the Act's fourteen point checklist apply on a region-wide basis. The conclusions reached by the FCC as to BellSouth's South Carolina application are of equal force in Tennessee. BellSouth has not identified any updates, revisions, or modifications to either its Tennessee SGAT or its Tennessee application which would compel the TRA to reach a different conclusion than the FCC reached on BellSouth's South Carolina SGAT and application.

Finally, the TRA should, consistent with the Staff Report issued earlier in this proceeding, and with the arguments raised in AT&T's pre-hearing brief filed on April 25, 1997, dismiss this proceeding because permanent cost-based rates for interconnection and unbundled network elements have not yet been established in Tennessee. While there is an ongoing proceeding to establish such rates, that proceeding will not conclude until well after the statutory deadline for the TRA to render a decision on BellSouth's SGAT. Therefore, as a matter of fact and law, the TRA will not be able to determine, by the date it must reach a decision in this proceeding, that there are permanent cost-based rates in Tennessee.

Because BellSouth is foreclosed from pursuing Track B, it cannot apply for authority to offer in-region, interLATA service in Tennessee until the TRA finds that a facilities-based

provider is providing service to both residential and business customers predominantly over its own facilities pursuant to an interconnection agreement with BellSouth for access and interconnection. See 47 U.S.C.A. § 271(c)(1)(A). However, the lack of permanent, cost-based rates for unbundled elements and interconnection, as required under the Act, precludes the TRA from endorsing any such BellSouth application. In addition, because the evidence provided in this record is the same as the evidence which the FCC already has deemed inadequate to satisfy the fourteen point checklist, BellSouth cannot rely on the SGAT filed in Tennessee for § 271 relief. For all of these reasons, AT&T respectfully requests that the TRA reject BellSouth's SGAT and dismiss this proceeding.

ARGUMENT

I. THE TRA SHOULD REJECT BELLSOUTH'S SGAT AND DISMISS THIS PROCEEDING BECAUSE PERMANENT COST-BASED RATES HAVE NOT YET BEEN APPROVED BY THE TRA

The Act requires the establishment of permanent cost-based rates before BellSouth may provide interLATA services in Tennessee. 47 U.S.C. §§ 271(c)(2)(B)(i) and (ii). The Act also requires the establishment of permanent cost-based rates before the TRA may approve a BellSouth Statement of Generally Available Terms and Conditions. 47 U.S.C. §§ 252(f) and 272(c)(2)(B). Sections 252(f) (governing Statements of Generally Available Terms and Conditions) and 272(c)(2)(B) (governing authority to provide interLATA services) provide that BellSouth's SGAT must comply with §252(d)(1) of the Act, which mandates permanent cost-based and nondiscriminatory rates for all unbundled network elements. BellSouth can not meet this requirement in Tennessee.

While the TRA has approved interim rates for interconnection in conjunction with the AT&T and MCI arbitrations, the TRA has not yet established permanent cost-based rates under

the Act. As permitted under the Act and the FCC Order implementing the Act, the Arbitrators thus adopted "proxy" prices, "until such time as the Authority sets permanent rates." Second and Final Order of Arbitration Awards, Docket Nos. 96-01152, 96-01271 (January 23, 1997) at 52. At no time during the AT&T/MCI arbitrations did the TRA determine that the proxy prices contained in the Second and Final Order of Arbitration Awards are cost-based prices as required under Section 271. Indeed, the Arbitrators based the proxy prices largely on existing BellSouth tariffs. The TRA has never made a finding that any rates for interconnection and unbundled elements are cost-based under the Act.

The lack of cost-based rates will compel rejection of any Statement of Generally Available Terms and Conditions filed by BellSouth as well as any Track A filing which relies upon interim rates in an interconnection agreement. Without such cost-based rates, BellSouth can not comply with the Act's Competitive Checklist. This was the conclusion reached by the Staff Report: "While the proxy rates may be helpful in executing early interconnection activity, the staff believes that the law is quite clear in its intent to have the rates for these 4 checklist items (i.e., 1,2,3, and 13) based on cost. For this reason the staff believes that BellSouth should not be certified as in compliance with these items until new cost studies are complete, and permanent rates set." Staff Report at 4. AT&T's position on this issue was set forth in its April 25, 1997 pre-hearing brief in this proceeding.

AT&T agrees with the TRA staff that BellSouth cannot meet the Competitive Checklist until the TRA completes its unbundled element cost proceedings, and permanent cost based rates are established in Tennessee. Under the current schedule for the unbundled element cost proceeding, cost-based rates will not be established until sometime in June 1998. Under the schedule in this proceeding, BellSouth will file its "final" SGAT on January 16, 1998. The Act

requires that the TRA render a decision on BellSouth's SGAT no later than 60 days after that, on March 17, 1998. There will be no decision in the unbundled elements cost docket by March 17, 1998. Therefore, the TRA, as a matter of fact, will not be able to conclude by the deadline established in the Act for accepting or rejecting BellSouth's SGAT that BellSouth has met the requirements of the Act—either for Track A or Track B. For this reason, the TRA should reject BellSouth's SGAT and dismiss this proceeding, pending the completion of the unbundled elements cost proceeding.

II. BELLSOUTH CANNOT PROCEED UNDER TRACK A OR TRACK B AT THIS TIME

The FCC determined that BellSouth could not proceed under either Track A or Track B at this time in South Carolina. Track A, providing access and interconnection pursuant to an agreement with a facilities-based provider, is not available to BellSouth unless there is a provider offering service to both residential and business customers predominantly over its own facilities within the state. See 47 U.S.C.A. § 271(c)(1)(A). Track B, generally offering access and interconnection pursuant to an SGAT, is unavailable where BellSouth has received a qualifying request from a carrier under Track A. See 47 U.S.C.A. § 271(c)(1)(B).

In analyzing BellSouth's South Carolina 271 application, the FCC first looked at whether BellSouth had received any qualifying requests under Track A. The FCC stated it would attach particular weight to a negotiated or arbitrated agreement between BellSouth and requesting carriers. FCC SC Order ¶ 60. The FCC specifically rejected BellSouth's argument that a request should not be deemed a "qualifying" request unless the carrier takes "reasonable steps" toward implementing the request. Id. ¶ 62. Applying these standards to the facts in South Carolina, the FCC found that BellSouth had received a number of qualifying requests for access to BellSouth's network, including a request from AT&T. FCC SC Order ¶ 65. Because none of the qualifying

requesters were offering service pursuant to the requirements of Track A, the FCC concluded that BellSouth could not proceed under Track A.

The FCC then determined that because there were qualifying requests for access and interconnection in South Carolina, Track B also was foreclosed to BellSouth. FCC SC Order ¶ 67. Again, the FCC rejected BellSouth's argument that qualifying requests must be accompanied by reasonable steps in order to preclude eligibility under Track B. Id. As AT&T argued in its April 25, 1997 pre-hearing brief in this proceeding, this is also the case in Tennessee.

AT&T negotiated its Interconnection Agreements with BellSouth on a region-wide basis. AT&T and BellSouth went to arbitration to resolve disputes over certain issues, resulting in signed Interconnection Agreements with BellSouth for each state in its nine state region. The AT&T/BellSouth Interconnection Agreements for each of the nine states are virtually identical absent a few minor differences in the Agreements for each state due to the results of arbitration. In short, AT&T has requested the same access to BellSouth's network in each state. Therefore, the basis for the FCC's finding that AT&T has made a qualifying request in South Carolina is applicable to Tennessee as well. Accordingly, based on the FCC's definition of a qualifying request, BellSouth has received a qualifying request for access and interconnection, at the very least, from AT&T in Tennessee. Thus, BellSouth is foreclosed from pursing Track B in Tennessee.[1]

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1 The TRA has the authority under the Act to make such a determination. The Act sets forth a division of responsibility between the FCC and state commissions. State commissions, however, have an additional role to play in the Section 271 process. Section 271(d)(2)(B) provides:

> Before making any determination under this subsection, the Commission shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of subsection (c).

(Footnote continued on next page)

Further, the TRA should reject BellSouth's SGAT because BellSouth is foreclosed from pursuing Track B in Tennessee. This is the approach adopted by both the Michigan and Kentucky Public Service Commissions. See Order of the Michigan Public Service Commission, June 5, 1997 (Case No. U-11104); Order of the Kentucky Public Service Commission, August 21, 1997 (Case No. 96-608).[2] As the Michigan Public Service Commission concluded, approval of BellSouth's SGAT "would have a negative effect on ongoing and future negotiations with competitive local exchange providers, and thus, would hinder the development of competition." Similarly, the Kentucky Public Service Commission concluded that because Track B was unavailable to BellSouth, "its statement should not be considered in this docket." The Kentucky Public Service Commission made it quite clear that it rejected BellSouth's SGAT "on the basis of this Commission's determination as to the appropriate Track." Transcript, August 25, 1997 Hearing, Case No. 96-608 at 39. The TRA should reach a similar conclusion and reject BellSouth's SGAT because Track B is unavailable to BellSouth in Tennessee.

III. BELLSOUTH HAS NOT COMPLIED WITH THE FOURTEEN POINT CHECKLIST

In addition to denying BellSouth's South Carolina application on the grounds that it failed to satisfy the requirements of either Track A or Track B, the FCC also denied the application on the independent ground that BellSouth failed to comply with the requirements of the competitive

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(Footnote continued from previous page)

47 U.S.C. § 271(d)(2)(B)(emphasis added). Thus, while the FCC has responsibility for approving or rejecting BellSouth's application for authority to provide interLATA services in Tennessee, the TRA will be called upon to consult with the FCC as to BellSouth's compliance with Section 271(c). Because Section 271(c) includes subsection 271(c)(1)(B), which sets forth the conditions necessary to seek interLATA authority based upon an approved Statement of Generally Available Terms and Conditions (i.e., Track B), and because the question of "compliance" with subsection 271(c)(1)(B) necessarily includes the question of whether Track B is available to BellSouth, TRA should consider this issue in order to fulfill its consultative role with the FCC.

2 Copies of the Kentucky and Michigan Orders, as well as relevant pages of Volume I of the Kentucky 271 hearing, are attached hereto as Exhibit A.

checklist in § 271(c)(2)(B). Because BellSouth's offerings in Tennessee are virtually identical to the offerings rejected by the FCC, and BellSouth has not identified a single instance in which it has changed its SGAT or other condition from South Carolina to Tennessee, the TRA likewise should find that BellSouth has not complied with the fourteen point checklist and should reject the SGAT and this proceeding on that basis.

BellSouth has admitted that all of the items it offers in its SGAT are the same on a region-wide basis. Indeed, BellSouth argued before the FCC in support of its South Carolina application that evidence of actual commercial usage and testing in other states should serve as evidence that it can furnish the same checklist items in another state. See FCC SC Order ¶ 79. The FCC agreed, stating:

> Where the BOC uses identical processes and systems for ordering and for furnishing items in a multistate region, evidence that a BOC actually is *or is not* capable of furnishing the item in another state would be probative of that BOC's ability to make the checklist item available as both a legal and practical manner in the state that is the subject of the application.

Id. ¶ 81 (emphasis added). Thus, a finding by the FCC that BellSouth has failed to satisfy the requirements of § 271 with respect to certain checklist items is essentially a finding that BellSouth is not able to provide those items in any state in its nine state region, including Tennessee.

A. BellSouth's Operations Support Systems Are Inadequate

In its South Carolina decision, the FCC determined that BellSouth had not demonstrated that it provides access to certain OSS functions to competing carriers for pre-ordering, ordering and provisioning of resale services and pre-ordering of unbundled network elements equivalent to the access it provides to itself. FCC SC Order ¶ 88. Specifically, the FCC determined that given the deficiencies in the access to its OSS BellSouth provides for new entrants, interactions between new entrants and their customers will take longer and be more prone to error than those between BellSouth and its end user customers. Id. ¶ 89.

The FCC consistently has held that OSS performance is critical to a determination of whether a BOC is providing all of the items on the competitive checklist and that access to OSS falls within the definition of a network element. FCC SC Order ¶¶ 84-85. The FCC found that BellSouth's proposed access to its OSS has numerous deficiencies. With respect to ordering and provisioning of resale services, the FCC found: (1) BellSouth failed to explain the high number of order rejections (Id. ¶¶ 104-114); (2) BellSouth does not provide notices of order error and rejection, firm order confirmation, and order jeopardies to competing carriers in the same time and manner as it provides them to itself (Id. ¶¶ 115-131); and (3) BellSouth failed to provide actual installation intervals (Id. ¶¶ 132-140). The FCC also expressed concern about OSS functions for ordering and provisioning of unbundled network elements. Id. ¶¶ 141-146. In regard to pre-ordering, the FCC found that these interfaces were discriminatory because BellSouth prevented competing carriers from connecting LENS electronically to their OSS and to the EDI ordering interface (Id. ¶¶ 152-166.), and BellSouth does not provide equivalent access to due dates for service installation (Id. ¶¶ 167-173). The FCC expressed additional concerns about the parity of particular functions (Id. ¶¶ 174-176), access to telephone numbers (Id. ¶¶ 177-179), and the operational readiness of BellSouth's OSS functions for pre-ordering (Id. ¶¶ 180-181).

As the FCC noted, BellSouth's OSS interfaces are the same region-wide. FCC SC Order ¶ 100. Indeed, BellSouth submitted region-wide data regarding OSS access in support of its South Carolina 271 application. Id. ¶¶ 97, 100. Therefore, all of the deficiencies in BellSouth's OSS interfaces noted by the FCC are present in the OSS interfaces offered in Tennessee. Because BellSouth relies on exactly the same OSS interfaces in this proceeding that were found to be discriminatory by the FCC, and BellSouth has not identified any revisions, modifications or changes to its OSS interfaces which would cure the deficiencies identified by the FCC, the TRA should reject BellSouth's SGAT and dismiss this proceeding.

B. BellSouth Has Failed To Demonstrate That It Can Provide Nondiscriminatory Access To Unbundled Network Elements

The FCC also found that BellSouth failed to demonstrate that it can make UNEs available in a manner that allows competing carriers to combine them. FCC SC Order ¶ 182. In its South Carolina application, as in this proceeding, BellSouth stated that the primary means for providing access to UNEs was through collocation. Id. The FCC determined that BellSouth had not demonstrated that it can provide access to UNEs through collocation or any other means.

Section 271(c)(2)(B)(ii) of the Act requires that BellSouth provide nondiscriminatory access to UNEs in accordance with §§ 251(c)(3) and 252(d)(1). Section 251 (c)(3) requires that BellSouth provide such elements in a manner that permits requesting carriers to combine them to create a telecommunications service. In its South Carolina decision, the FCC first looked at the SGAT's provisions regarding the provision of combinations of UNEs. It concluded that the SGAT lacked "crucial details such as which elements will be separated and which will be provided in combination , and how and at what cost." FCC SC Order ¶ 197. Without this detail, there is no basis for determining whether the proposed offering is nondiscriminatory. Id.

BellSouth identified only one method of providing access to UNEs so that new entrants can combine them-- collocation.[3] Therefore, the FCC next examined the SGAT provisions regarding collocation and determined that they also gave insufficient detail. Specifically, the FCC expressed concern regarding the lack of a committed interval for providing collocation space and a lack of data reflecting actual intervals. Id. ¶¶ 202-03. Further, the FCC deemed BellSouth's SGAT deficient because its collocation rates do not include any rates for the space

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3 Offering access to UNEs solely through the means of collocation does not satisfy the requirements of the Act. The United States Court of Appeals for the Eight Circuit found that a new entrant is not required to own or control any portion of a telecommunications network in order to acquire access to UNEs. Iowa Utilities Board v. FCC, 120 F.3d at 815 (8th Cir. 1997). The FCC did not address this question in its South Carolina Order, as it concluded that even if offering access solely through collocation were permissible, BellSouth had not demonstrated that it could provide such access. See FCC SC Order ¶ 199.

preparation fee. Most significantly, the FCC noted that BellSouth has not demonstrated that it has provided collocation space anywhere in its region for the purpose of allowing a new entrant to combine UNEs. Id. ¶ 205. The FCC also noted that BellSouth has not provided any details on how it would provide virtual collocation to permit access to UNEs. Id. ¶¶ 207-08.

The deficiencies identified in BellSouth's South Carolina SGAT also exist in the SGAT it filed in Tennessee. In fact, the language is virtually identical. BellSouth fails to state how it will provide access to combinations of UNEs. The SGAT promises to provide collocation, but does not specify the methods and procedures that will ensure the nondiscriminatory provision of collocation. More fundamentally, the SGAT contains no description of the manner in which BellSouth will make UNEs available in order to allow competing carriers to combine them.

BellSouth still has not demonstrated that it can provide collocation on a just, reasonable and nondiscriminatory basis. Further, as this is the only method it proposes for combining UNEs, BellSouth has failed to demonstrate that it can provide access to UNEs so that they can be combined by a new entrant to create a telecommunications service. BellSouth has not identified any manner in which the situation in Tennessee is any different from the situation in South Carolina. Therefore, for the same reasons the FCC found BellSouth's South Carolina SGAT deficient, the TRA should reject BellSouth's SGAT, and dismiss this proceeding, because BellSouth has not demonstrated that it can provide access to UNEs in accordance with the Act.

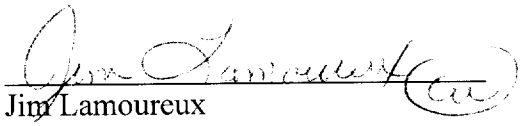
CONCLUSION

The FCC rejected BellSouth's application to provide in-region, interLATA service in South Carolina on several grounds. Each of those grounds is applicable to the issues before this Commission in this proceeding. First, BellSouth currently is not eligible to proceed under Track A in Tennessee at this time. In addition, BellSouth's OSS interfaces are deficient, and BellSouth has failed to demonstrate that it can provide access to UNEs in a manner that permits new entrants to combine them. Moreover, permanent cost-based rates for interconnection and unbundled network elements have not yet been established in Tennessee. For all of these

reasons, the TRA should reject BellSouth's SGAT, find that BellSouth has not complied with the fourteen point checklist, and dismiss this proceeding.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.



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Attorney for AT&T Communications
of the South Central States, Inc.

Dated: January 16, 1998

Attachment A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to consider AMERITECH MICHIGAN's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996.	)))Case No. U-11104))

At the June 5, 1997 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

ORDER

On September 30, 1997, Ameritech Michigan filed an application seeking Commission approval of its propsed statement of generally available terms and conditions for interconnection pursuant to Section 252(f) of the federal Telecommunications Act of 1996 (federal Act), 47 USC 252(f), and the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.

By October 21, 1996, responses to Ameritech Michigan's filing were filed by the Telecommunications Resellers Association, the Michigan Cable Telecommunications Association, the Commission Staff (Staff), AT&T Communications of Michigan (AT&T), Competitive Telecommunications Corporation, MCI Telecommunications Corporation (MCI), and Sprint Communications Company, L.P. Those responses included a joint motion for summary disposition. By October 30, 1996, Ameritech Michigan filed replies to the responses.

By letter dated November 19, 1996, Ameritech Michigan agreed that the proposed statement would not go into effect pending a Commission order to be issued by April 1, 1997.

By letter dated March 24, 1997, Ameritech Michigan advised the Commission that it would amend its application within 30 days and requested that the Commission not take action with regard to its original statement. Ameritech Michigan also acknowledged that the Commission would have 60 days after submission of the amended petition to take action.

On April 10, 1997, Ameritech Michigan filed its amended application. Ameritech Michigan states that the period for Commission review is thus extended until June 10, 1997, pursuant to Section 252(f)(3) of the federal Act. 47 USC 252(f)(3).

On April 30, 1997, the Commission received responses to the amended application by AT&T and MCI. MCI renewed the previously filed motion for summary disposition. On May 22, 1997, the Staff filed a response to Ameritech Michigan's amended application, recommending that the Commission reject the request for approval.

After considering the arguements raised by the parties, the provisions in the federal Act that are related to statements of generally available terms and conditions for interconnection, and the public interest, the Commission concludes that Ameritech Michigan's application should be denied.

Section 271(c) provides in relevant part:

> (1) AGREEMENT OR STATEMENT. -- A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorizer is sought.
>
> > (A) PRESENCE OF A FACILITIES-BASED COMPETITOR. -- A Bell operating company meets the requirements of this subparagraph if it has entered into one or more binding agreements that have been approved under section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service . . ..
> >
> > (B) FAILURE TO REQUEST ACCESS. --- A Bell operating company meets the requirements of this subparagraph if, after 10 months after the date of enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application under subsection (d)(1), and a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect by the State commission under section 252(f).
> > 47 USC 271(c).

In the Commission's view, this section of the federal Act provides two alternative methods for a Bell operating company to demonstrate compliance with the first statutory requirement for providing certain interLATA services. First, it may demonstrate that it has entered into approved, binding agreements for interconnection. Second, if no competitive provider has requested access and interconnection to provide local exchange service within the statutory time period, the company may seek Commission approval of a statement of generally available terms and conditions for interconnection pursuant to Section 252(f). The Commission

concludes that if competitive providers have requested interconnection with the Bell operating company in a timely manner, the second option is not available.

The Commission notes that Ameritech Michigan has received many requests for interconnection and has engaged in negotiations and arbitration proceedings concerning interconnection agreements. Several cases have been processed through arbitration proceedings before the Commission. The Commission has approved interconnection agreements, both negotiated and arbitrated, between Ameritech Michigan and several licensed based local exchange providers. Ameritech Michigan has therefore begun to comply under subparagraph (A) and does not qualify for the provisions of subparagraph (B). Moreover, the Commission finds that approval of Ameritech Michigan's proposed statement would have a negative effect on ongoing and future negotiations with competitive local exchange providers, and thus, would hinder the development of competition. Therefore, the Commission finds that, consonant with the public interest and applicable law, the application should be denied.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 USC 151 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The application for approval of generally available terms and conditions for interconnection filed by Ameritech Michigan should be denied.

THEREFORE, IT IS ORDERED that the application filed by Ameritech Michigan for approval of its proposed generally available terms and conditions for interconnection is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ John C. Shea
Commissioner, concurring in a separate opinion.

/s/ David A. Svanda
Commissioner

By its action of June 5, 1997.

/s/ Dorothy Wideman
Its Executive Secretary

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner, concurring in a separate opinion.

Commissioner

By its action of June 5, 1997.

Its Executive Secretary

In the matter, on the Commission's own motion,	)
to consider AMERITECH MICHIGAN's compliance	)
with the competitive checklist in Section 271 of	)Case No. U-11104
the Telecommunications Act of 1996.	)
	)

Attachment A

Suggested Minute:

"Adopt and issue order dated June 5, 1997 denying the application filed by Ameritech Michigan for approval of its proposed generally available terms and conditions for interconnection, as set forth in the order."

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to consider AMERITECH MICHIGAN's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996.	) Case No. U-11104

CONCURRING OPINION OF COMMISSIONER JOHN C. SHEA
(Submitted on June 5, 1997 concerning order issued on same date)

I concur in the result set forth in the order, but not for the reasons stated therein. The terms and conditions for interconnection to Ameritech Michigan should be governed by the provisions of the Michigan Telecommunications Act, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., and not the Federal Telecommunications Act, 47 USC 151 et seq.

MICHIGAN PUBLIC SERVICE COMMISSION

Commissioner

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ATTACHMENT A

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETY OF PROVISION OF INTERLATA SERVICES BY BELLSOUTH TELECOMMUNICATIONS, INC. PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	) CASE NO. 96-608

ORDER

On August 8, 1997, MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc. (collectively "MCI"), filed a motion to dismiss this case ("MCI Motion") claiming that the order of the Federal Communications Commission ("FCC") in Application by SBC Communications, Inc., Pursuant to §271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma (CC Docket No. 97-121, June 26, 1997) ("SBC Order") resolves all issues relating to the application of BellSouth Telecommunications, Inc. ("BellSouth") to provide interLATA services in Kentucky. MCI argues that the SBC Order clarifies that BellSouth's application is governed by §271 (c)(1)(a) ("Track A") rather than §271 (c)(1)(B) ("Track B") and concludes that, since BellSouth itself has admitted there are no qualifying competitors providing residential and business service in Kentucky, any Track A application must fail.

MCI correctly points out that the Commission, in its Order dated December 20, 1996, determined that Track A is appropriate for BellSouth in Kentucky because qualifying competitors have requested interconnection. See 47 U.S.C. §271. Track B enables a Bell Operating Company to present a Statement of Generally Available Terms

("Statement") rather than one or more interconnection agreements to demonstrate that it has legally opened its local market to competition. Track B does not require the presence of a facilities-based competitor, for the obvious reason that Track B was created to ensure that Bell operating companies were not prevented from entering the interLATA market simply because no such competitor had requested interconnection.

BellSouth, in its response to MCI's motion, filed August 15, 1997 ("BellSouth Response"), asserts that "[t]he choice of Tracks is up to the Bell Company."[1] The Commission does not agree. The statute itself, as well as the SBC Order, makes it abundantly clear that a request for interconnection forecloses Track B if the requestor is facilities-based and requests access and interconnection to provide local exchange service to business and residential customers as described in §271(c)(1)(A).[2] The Commission earlier ruled that BellSouth's Statement would be considered in this proceeding only because it is not entirely clear that a "facilities-based" carrier has requested interconnection. In its Order dated April 16, 1997, the Commission explained that it was not clear whether, for purposes of §271, a carrier is considered "facilities-based" only if it is constructing its own facilities as opposed to purchasing unbundled elements from the incumbent local carrier. Because the Commission's role under §271 is to advise the FCC, the Commission did not wish to foreclose consideration of the Statement in the absence of a clear statement from the FCC that a carrier is "facilities-based" if it provides service pursuant to unbundled elements. MCI in its motion does not

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1 BellSouth Response at 6.

2 SBC Order at Para. 54.

address this issue. However, the FCC has done so in Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan (CC Docket No. 97-137, August 19, 1997). At Paragraphs 86-103, pursuant to a lengthy legal analysis with which this Commission concurs, the FCC confirmed that unbundled elements purchased from an incumbent carrier are the purchaser's own facilities for purposes of §271. Accordingly, the Commission finds that Track B is closed to BellSouth in Kentucky and that its Statement should not be considered in this docket.

However, Track A remains open. BellSouth currently has entered into numerous negotiated agreements that have been approved by this Commission, as well as binding arbitrated agreements with MCI and AT&T. Accordingly, this proceeding should focus on whether the terms of those agreements satisfy the checklist, and whether BellSouth is making all items on the competitive checklist found at §271(c)(2)(B) available as a practical matter, at parity and without discrimination.

As a final matter, MCI points out that BellSouth itself has stated that there are currently no Track A providers in Kentucky and that such a provider must be present for a Track A application to succeed.[3] However, the quoted statement of BellSouth was made many months ago. Since then, MCI itself has entered into a binding agreement with BellSouth that may be found to satisfy Track A. It is true that MCI has not begun to serve customers pursuant to its agreement with BellSouth. However, the agreement through which it may do so is in place. The incentive provided by §271 and discussed

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[3] MCI Motion at 2.

in the SBC Order, at Paragraph 57, has been serving its purpose: BellSouth appears to have moved expeditiously to satisfy the interconnection requests of potential competitors, including MCI. Moreover, BellSouth claims to provide each item of the competitive checklist to competitors. MCI says itself that the interconnection agreements with BellSouth, when fully implemented, will result in "the type of business and residential services satisfying Track A."[4]

In contrast, the FCC rejected SBC Communications' ("SBC") Oklahoma application because the company could not show that Brooks Fiber, a competitor relied upon exclusively by SBC for purposes of satisfying Track A,[5] was a provider of both residential and business service. Brooks Fiber, after all, stated it would not accept requests for residential services in Oklahoma,[6] and the record showed that Brooks Fiber was providing residential services without charge to only a few employees for testing purposes. It remains to be seen which competing carriers' business activities will be relevant to BellSouth's application to the FCC.

The FCC has stated there must be an actual commercial alternative to the Bell operating company in order for a Track A application to succeed.[7] Whether such an alternative exists in BellSouth's market is a matter to be determined -- particularly since events are moving so rapidly that, even if such an alternative does not exist as of the

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4 MCI Motion at 11-12.

5 SBC Order at Para. 6.

6 SBC Order at Para. 9, 20.

7 SBC Order at Para. 14.

date of this Order, it might very well exist by the time BellSouth files its application with the FCC. AT&T and MCI appear to be reasonable commercial alternatives to BellSouth which will serve both residential and business customers and, given that they have entered into binding agreements with BellSouth, it is to be expected that they will actually be competing in BellSouth's market in short order. Thus, the Commission cannot definitively state at this time that the hearing should be canceled.

This Commission has previously stated that it will not truncate this proceeding absent firm legal standards applied to irrefutable facts demonstrating that such truncation is appropriate and will not simply prevent this Commission from compiling as complete a record as possible to advise the FCC in making its decision.

For the foregoing reasons, IT IS HEREBY ORDERED that MCI's motion to dismiss this proceeding is denied.

Done at Frankfort, Kentucky, this 21st day of August, 1997.

By the Commission

ATTEST:

Executive Director

ATTACHMENT A

BEFORE THE
COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

INVESTIGATION CONCERNING THE
PROPRIETY OF PROVISION OF
INTERLATA SERVICES BY BELLSOUTH
TELECOMMUNICATIONS, INC., PURSUANT
TO THE TELECOMMUNICATIONS ACT OF
1996

CASE NO. 96-608

TRANSCRIPT OF EVIDENCE
V O L U M E I

DATE OF HEARING: August 25, 1997

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summaries are included in the testimony, and the Commission doesn't feel that it needs to have the summaries. As to some of the matters before us - I hope I'm going to get them all - the arguments before us as to the SGAT and the request to clarify the brief statement that I read this morning, I will attempt to clarify for the parties what I said in my response this morning to the motion. We are rejecting the SGAT on the basis of this Commission's determination as to the appropriate Track. I thought that that was clear when I read that this morning. We are not rejecting the SGAT on the basis of its merits or completeness, because we don't consider the merits. Therefore the SGAT will not go into effect as a generic tariff. However, BellSouth may certainly offer the terms of the SGAT to any carrier without this Commission's prior approval. On the motion to adjourn and reconvene at BellSouth's offices, the Commission believes that the proposed OSS demonstration will be helpful to it in its assessment of the sufficiency of BellSouth systems. It also believes that the rights of all parties are preserved and that the proposed demonstration will take place on the record as part of this hearing. Accordingly, the motion is granted, and I would like to ask that, if there's conversation going on in the back-

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CERTIFICATE OF SERVICE

I, James P. Lamoureux, hereby certify that on this 16th day of January, 1998, a true and correct copy of the foregoing has been delivered via U. S. Mail, postage prepaid to the following counsel of record:

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