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July 26, 2001

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

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:

Enclosed are the original and thirteen copies of BellSouth's Reply to AT&T's Motion to Dismiss BellSouth's Proposed Section 271 Schedule and the Response of XO Tennessee and Time Warner Telecom to AT&T's Motion to Dismiss. Copies of the enclosed are being provided to counsel of record.

~~Very~~ truly yours,

Guy M. Hicks

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Enclosure

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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

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO AT&T'S MOTION TO DISMISS BELLSOUTH'S PROPOSED SECTION 271 SCHEDULE AND THE RESPONSE OF XO TENNESSEE AND TIME WARNER TELECOM TO AT&T'S MOTION TO DISMISS

BellSouth Telecommunications Inc. ("BellSouth") hereby files its Reply to AT&T's Comments and Motion to Dismiss BellSouth's Proposed Section 271 Schedule and the Response of XO Tennessee ("XO") and Time Warner Telecom ("Time Warner") to AT&T's Motion to Dismiss (collectively, the "Motions"). AT&T, XO and Time Warner argue that the TRA should delay the benefits of interLATA competition to Tennessee consumers until the TRA's proceedings in the Performance Measures docket[1] and Third Party Operations Support Systems ("OSS") docket[2] have been completed, by "dismissing"[3] BellSouth's proposed Section 271 schedule.

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[1] *Generic Docket on Performance Measurements*, Docket No. 01-00193.

[2] *Docket To Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, Docket No. 01-00362.

[3] It is puzzling why AT&T would seek to "dismiss" BellSouth's comments on the procedural schedule. BellSouth's filing on the procedural schedule was in response to the Hearing Officer's request for such comments. The Hearing Officer has yet to determine the procedural schedule, and thus there currently is nothing to "dismiss."

BellSouth strongly disagrees that the TRA should be so constrained. To the contrary, the time is now for the TRA to act. Delaying this process further will serve no purpose other than to deny Tennessee consumers the benefits already seen by consumers in New York and Texas, where long distance entry has been opened for full competition. Instead, the TRA should promptly address BellSouth's Section 271 compliance through multiple dockets proceeding in parallel—the efficient way to address the complex Section 271 issues that the Authority has already adopted.

I. Competition in Tennessee is Thriving.

The most compelling reason not to delay the Section 271 process is the current status of competition in the local market in Tennessee. BellSouth has irrevocably opened this market to competition, and the vigorous contest for market share in Tennessee is a sufficient basis for the TRA to move forward. BellSouth estimates that as of May, 2001, competitive local exchange carriers ("CLECs") served approximately 343,500 lines in Tennessee, which translates into approximately 11.7% of the local market. These figures are comparable to market share figures in states in which Regional Bell Operating Companies have already gained long distance relief. In Texas, for example, CLECs had captured between 8.4% - 14.0% of the local market when Southwestern Bell Corporation ("SBC") gained approval for entry into the interLATA market, and in Oklahoma, CLECs had a market share of between 5.5% - 9.0%. There is no doubt that local competition is thriving in Tennessee.

The Authority should view the arguments of AT&T and other interexchange carriers with particular skepticism, particularly since they have the most to lose from BellSouth's entry into the long distance market. The lessons of New York and Texas are that the CLECs that claim most vociferously that local markets are not open are the first to compete once the barrier to interLATA entry falls. For example, in New York, AT&T insisted that "[n]o competitor, including AT&T, is yet able to compete for large volumes of orders from either residential or small- to mid-sized business customers."[4] However, just two months later, as Verizon was gaining Section 271 authority, AT&T entered the local market in New York with a flurry, increasing the number of local line customers it served from 97,989 in December 1999 to 750,000 by February 2001.[5]

This same scenario was repeated in Texas. In SBC's Section 271 proceeding at the FCC, AT&T argued that "there is no factual basis on which this Commission could have concluded that competition in Texas will thrive with a level of service outages that the Commission deemed tolerable in New York,"[6] and that "[t]he simple fact is that SWBT does not provide parity access to its OSS now, and

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[4] *Comments of AT&T Corp. in Opposition to Bell Atlantic's Section 271 Application for New York*, CC Docket No. 99-295, 2 (filed Oct. 19, 1999).

[5] *AT&T Offers New Yorkers a New Choice for Local Residential Phone Services,* (Dec. 1, 1999) (News Release), http://www.att.com/press/item/0,1354,2302,00.html; *Local Exchange Companies Ranked by Lines Served,* New York Public Service Commission, as of 12/31/99, http://www.dps.state.ny.us/rankbyal.htm; Yochi J. Dreazen and Deborah Solomon. *AT&T Chief Says Baby Bells May Price Company Out of Local Service Markets*, Wall Street Journal A4 (Feb. 8, 2001).

[6] *Supplemental Reply Comments of AT&T Corp. in Opposition to SBC's Second Section 271 Application for Texas*, CC Docket 00-65, 22 (filed May 19, 2000).

every indication is that the present disparity in treatment faced by CLECs will deepen as volume increases."[7] Despite these alleged problems, AT&T went from 150,000 local customers in Texas in July 2000 to 330,000 local customers by February 2001, just months after AT&T claimed competition was impossible. Competitive lines lost to all CLECs in Texas increased 81% between January 2000 and January 2001.[8] Thus, real-world evidence shows that one of the best ways to increase competition in the local exchange market is to grant BOCs Section 271 authority.

The time is now for the Authority to act and consider BellSouth's evidence. Delaying this process will serve no purpose other than to deny Tennessee consumers the benefits already seen by consumers in New York and Texas.

II. There is No Need for the TRA to Wait For the Completion of the Performance Measures and OSS Docket and the Completion of the Florida OSS Testing.

AT&T, XO and Time Warner argue that a Section 271 submission would be "premature" if it comes prior to completion by the Authority of every outstanding docket with a possible impact on BellSouth's performance in opening the Tennessee market to local competition or prior to completion of third party OSS testing in Florida. This argument ignores several crucial facts.

First, as other states have done, the TRA established a roadmap for evaluation of BellSouth's Section 271 application. The TRA chose to divide the

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[7] *Reply Comments of AT&T Corp. in Opposition to SBC's Second Section 271 Application for Texas*, CC Docket 00-65, 42 (filed February 22, 2000).

issues into separate proceedings, and has been moving forward with these proceeding simultaneously. By utilizing parallel proceedings, the Authority is able to address the complex Section 271 issues more quickly and efficiently. BellSouth recognizes that it must prove its case to the TRA, both on access to OSS and every other checklist item. Interested parties will have a full and fair opportunity to challenge BellSouth's evidence, regardless of the docket where the issue is addressed. AT&T, XO and Time Warner would have the Authority change its approach, delaying the proceeding needlessly. There is no reason, nor have the CLECs presented one, why these dockets cannot proceed in parallel.

Second, the CLECs argue that the TRA must suspend its consideration of BellSouth's 271 application pending completion of the performance measurements docket. This contention is incorrect. There is no doubt that state commissions will have an on-going role to play in resolving factual and legal questions regarding the implementation of the Act. This continued involvement does not, however, translate into a need for the Authority to thwart the goals of the Act, as AT&T, XO and Time Warner suggest, by delaying increased competition in the local and long distance markets pending a decision that need not be made prior to 271 relief. As BellSouth has told the TRA, BellSouth will rely on Tennessee performance data using the regional SQM—developed with CLEC input, and approved by the Georgia Commission. This SQM and accompanying Tennessee-specific data is more than

[8] *SWB Long Distance Accelerates Market Competition*, (Public Affairs Release), http://www.sbc.com/Long_Distance/0,2951,7,00.html (last visited June 22, 2001).

sufficient for the Authority to support BellSouth's Section 271 application at the FCC, until such time as the Authority orders, and BellSouth implements, alternative performance measures. In addition, BellSouth will present a penalty plan to the TRA that it will implement immediately upon exercise of 271 relief in Tennessee. Since BellSouth plans to present its case for Section 271 relief in Tennessee to the FCC based on Tennessee and regional data using the Georgia-approved SQM, it is unnecessary to complete the Performance Measures docket before proceeding with the 271 docket.

Third, the CLECs argue that the TRA must wait for the conclusion of the OSS docket. This argument also is without merit. The FCC has stated explicitly that the most probative evidence that OSS functions are operationally ready is actual commercial usage. Thus, while an independent third party OSS test can play an important role in a 271 assessment, it is not, in the FCC's opinion, the most probative evidence of an RBOC's compliance with checklist item 2. As set forth above, CLECs have approximately 11.7% of local lines in service in Tennessee – this means that CLECs are using BellSouth's systems and processes to place orders. This data alone indicates that BellSouth's OSS are operationally ready to handle local competition. Therefore, the Authority does not necessarily need any third party testing to render an opinion about BellSouth's compliance with the competitive checklist. Such information would only be used in those very limited areas, if any, where there is neither Tennessee commercial usage data or carrier-to-carrier testing. Thus, although the TRA certainly can and should conduct

the OSS and 271 dockets in parallel, there will be substantial evidence of compliance in the 271 docket alone and the TRA should not delay its consideration of that evidence.

Fourth, for purposes of assessing a Section 271 application, the Georgia third party test is complete. Thus, to the extent the TRA believes it needs a third party OSS test, it can rely on the Georgia test. The Georgia test meets all of the important criteria identified by the FCC in its Bell Atlantic Order and is comparable to the tests conducted in New York and Texas. As BellSouth will demonstrate in its filing, BellSouth understands that it bears the burden of proof to demonstrate to the TRA that it is compliant with the Act – BellSouth can meet its burden of proof based on evidence, where necessary, from the Georgia Third Party Test. The TRA should give BellSouth this opportunity as expeditiously as possible.

Fifth, the TRA should reject the parties' position because it is nothing more than an attempt to put the proverbial cart before the horse. AT&T, XO and Time Warner argue, in essence, that the Authority should not conduct a 271 hearing because, in their opinion, BellSouth's evidence about access to OSS will be deficient. In lieu of having a hearing and actually reviewing the evidence, they want the TRA to conclude summarily that BellSouth cannot meet its burden of proof and thus that a hearing is premature. This position is unsustainable. They apparently are concerned that if given the opportunity, BellSouth will meet its burden of proof and will gain entry into the interLATA market. The TRA should move forward as expeditiously as possible.

CONCLUSION

BellSouth is in full compliance with Section 271. Any delay of the review process will impede the development of a fully competitive telecommunications market in Tennessee, which will harm the consumers of this state.

For the foregoing reasons, the TRA should deny AT&T's Motion to Dismiss BellSouth's Proposed Section 271 Schedule as Premature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2001, a copy of the foregoing document was served on the parties of record, via hand delivery, facsimile, overnight or US Mail, addressed as follows:

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