

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth
Telecommunications, Inc.'s entry into
interLATA services pursuant to Section
271 of the Federal Telecommunications
Act of 1996.

Docket No. 960786-TL

Filed: July 20, 2001

REBUTTAL TESTIMONY AND EXHIBIT OF JOHN FURY

ON BEHALF OF NEWSOUTH COMMUNICATIONS CORP.

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1 **Q. Please state your name and business and address.**

2 A. My name is John Fury. My business address is 2 North Main Street, Greenville,
3 South Carolina 29601.

4 **Q. By whom are you employed and in what capacity?**

5 A. I am employed by NewSouth Communications Corp., as Carrier Relations Manager.

6 **Q. What are your responsibilities as Carrier Relations Manger?**

7 A. I am responsible for overseeing NewSouth's business relationships with other
8 telecommunications carriers, particularly those incumbent local exchange companies
9 with whom we interconnect to provide services.

10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to rebut the direct testimony of W. Keith Milner and
12 Cynthia Cox as it relates to BellSouth's assertion that it has complied with Item No.
13 1 of the Competitive Checklist.

14 **Q. Briefly describe your educational background and telecommunications
15 experience.**

16 A. I graduated from Louisiana State University in 1991, with a Bachelor of Science
17 degree in political science and I have been employed in the telecommunications
18 industry since graduation. I have been employed in various capacities for Worldcom,
19 Brooks Fiber, Broadwing and U.S. One. Since April 1998, I have been employed by
20 NewSouth Communications of Greenville, South Carolina.

21 **Q. Please describe the position you have held in the telecommunications industry
22 in the last 10 years.**

1 A. I have worked in network audit, planning and provisioning, capacity management,
2 traffic management, outside plant design and engineering as well as network design.
3 More specifically, since April 1998, I have worked for NewSouth in network
4 planning and capacity planning and since January of 2001 I have held my current
5 position as Carrier Relations Manager.

6 **Q. Describe NewSouth Communications Corp.**

7 A. NewSouth is a facilities-based local competitive broadband provider, providing
8 various telecommunications services throughout the BellSouth region of the
9 United States. NewSouth primarily services medium to large size business
10 customers by purchasing unbundled loops, combinations of unbundled loops and
11 unbundled dedicated transport ("enhanced extended links" or "EELs") which are
12 connected to NewSouth's voice and data switches. For these customers,
13 NewSouth also purchases number portability and interconnection services from
14 BellSouth. NewSouth has installed over 100,000 lines in the BellSouth region
15 using a combination of BellSouth's unbundled network elements ("UNEs") and
16 NewSouth's own voice and data switches. For these customers, it is critical that
17 NewSouth receive access to unbundled loops, local number portability, and
18 interconnection, including collocation, in a timely and nondiscriminatory manner.

19 NewSouth uses the UNE Platform to offer service to very small business
20 customers where BellSouth will not provide unbundled switching for service to
21 customers with more than 3 lines, and to business customers of all sizes in various
22 markets.

1 **Q. What has been NewSouth’s general experience in dealing with BellSouth?**

2 A. NewSouth has experienced a broad range of issues in its dealings with BellSouth,
3 only a few of the most severe of which are discussed here. As a new entrant,
4 NewSouth is dependent upon BellSouth for timely, accurate and reliable ordering
5 systems and provisioning, cooperative management of the facilities that interconnect
6 the parties’ networks, and cost-based pricing for services and facilities obtained from
7 BellSouth. NewSouth has experienced failings in all of these areas, however, that
8 impede its ability to meaningfully compete with BellSouth.

9 **Q. If NewSouth has experienced numerous problems with BellSouth, why has it not**
10 **filed a complaint with this Commission?**

11 A. As a small company with limited resources in a climate where ALECs are
12 experiencing great difficulty in obtaining additional capital, NewSouth has been, and
13 continues to be, sensitive to its expenditures. NewSouth has used its limited
14 resources to establish its presence as a competing carrier in the BellSouth region and
15 serve its customers. By necessity, it has tried to work through its various problems
16 with BellSouth, taking the incumbent carrier at its word, for example, when it
17 indicated that it would resolve various interconnection and provisioning problems
18 experienced by NewSouth.

19 Due to a combination of its limited resources and its attempts to work through
20 issues with BellSouth, NewSouth has not heretofore filed a complaint addressing the
21 problems it has experienced with BellSouth or filed briefs in any dockets touching
22 upon issues faced by NewSouth. In the face of BellSouth’s application to provide in-

1 region, interLATA service, however, NewSouth has determined that it must voice its
2 concerns about BellSouth's persistent failure, in connection with certain issues, to
3 abide by applicable law.

4 **CHECKLIST ITEM 1: DOES BELLSOUTH CURRENTLY PROVIDE**
5 **INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF**
6 **SECTIONS 251(C)(2) AND 252(D)(1) OF THE TELECOMMUNICATIONS ACT OF**
7 **1996, PURSUANT TO SECTION 271(C)(2)(B)(I) AND APPLICABLE RULES**
8 **PROMULGATED BY THE FCC?**

9 **Q. What does this checklist item require?**

10 A. Section 251(c)(2)(A) of the Telecommunications Act of 1996 requires BellSouth "to
11 provide, for the facilities and equipment of any requesting telecommunications
12 carrier, interconnection with [BellSouth's] network . . . for the transmission and
13 routing of telephone exchange service and exchange access." Such interconnection
14 must be "at least equal in quality to that provided by [BellSouth] to itself or to . . .
15 any other party to which [BellSouth] provides interconnect," (47 U.S.C.
16 251(c)(2)(C)), and must be provided "on rates, terms and conditions that are just,
17 reasonable, and non-discriminatory, in accordance with the terms of the
18 [interconnection] agreement and the requirements of [section 251] and section 252."
19 (47 U.S.C. 251(c)(2)(D)). Based upon NewSouth's experience, BellSouth fails to
20 meet this standard.

21 **Q. How has BellSouth failed to comply with this requirement?**

22 A. The interconnection that BellSouth provides to NewSouth is not "equal in quality to

1 that provided by [BellSouth] to itself” because BellSouth does not order and
2 provision interconnection trunks delivering traffic from BellSouth’s network to
3 NewSouth’s network in a timely fashion in response to NewSouth’s forecasts of
4 need. In other words, BellSouth must show that “it is offering *interconnect and*
5 *access to network elements on a nondiscriminatory basis.*” See Memorandum
6 Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc.,*
7 *Southwestern Bell Telephone Company, and Southwestern Bell Communications*
8 *Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In Region,*
9 *InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 (rel. January
10 22, 2001) (hereinafter “SBC Kansas Order”) at ¶ 28 (emphasis added). BellSouth’s
11 failure to provide appropriate trunking has resulted in excessive blockage of calls
12 from BellSouth customers to NewSouth customers and has required NewSouth to
13 delay providing service to new customers so that the volume of calls that they
14 anticipate receiving does not overwhelm the capacity of the interconnection facilities.
15 BellSouth’s conduct in this regard violates standards articulated by the FCC in
16 several of its Section 271 orders.

17 **Q. What factors does the FCC evaluate to determine if these criteria have been**
18 **met?**

19 A. The FCC has analyzed various factors. For example, to show that the “equal in
20 quality” requirement has been fulfilled, the FCC has held that the incumbent carrier
21 must show that its interconnection facilities meet the “same technical criteria and
22 service standards” that are used for “interoffice trunks within the incumbent’s LEC

1 network.” (SBC Texas Order at ¶ 62). The FCC has determined that disparities in
2 trunk group blockage are an indicator of a failure to provide interconnection to
3 competitors which is “equal in quality” because trunk group blockage indicates that
4 end users are experiencing difficulty completing or receiving calls, and it may have
5 a direct impact on the customer’s perception of a competitive LEC’s service quality.
6 *(See generally* Memorandum Opinion and Order, *In the Matter of Application of*
7 *BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long*
8 *Distance, Inc. for Provision of In-Region, InterLAA Services in Louisiana*, CC
9 Docket No. 98-121 (rel. Oct. 13, 1998) (hereinafter “Second BellSouth Louisiana
10 Order”) at ¶¶ 76-77; Memorandum Opinion and Order, *In the Matter of Application*
11 *of Ameritech Michigan Pursuant to Section 271 of the Commissions Act of 1934, as*
12 *amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-
13 137 (rel. Aug. 19, 1997) at ¶¶ 240, 243). The FCC also has determined that the
14 installation time for interconnection services and two-way trunking arrangements
15 (which must be provided upon request) are indicators of whether an incumbent
16 provides interconnection service under terms and conditions that are no less
17 favorable than the terms and conditions “the BOC provides to its own retail
18 operations.” *(See* Memorandum Opinion and Order, *In the Matter of Application by*
19 *Bell Atlantic New York for Authorization Under Section 271 of the Communications*
20 *Act to Provide In-Region, InterLATA Service in the State of New York* CC Docket
21 No. 99-295 (rel. December 22, 1999) (hereinafter “Bell Atlantic New York Order”)
22 at ¶ 65. *See also* SBC Texas Order at ¶ 63). As set forth below, BellSouth has failed

1 to fulfill these various factors.

2 **Q. Please explain the trunking arrangement NewSouth has with BellSouth.**

3 A. NewSouth has an Interconnection Agreement (Agreement) with BellSouth that
4 provides, *inter alia*, for separate one-way trunks for the exchange of local traffic.
5 Under the terms of the Agreement, BellSouth is responsible for ordering and
6 provisioning trunks to deliver the local traffic originating from its customers to
7 NewSouth's customers, and vice-versa. Both companies agree that these facilities,
8 or trunk groups, are to be maintained at an industry standard grade of service based
9 on the Erlang B traffic model.

10 **Q. What does NewSouth do in regard to these trunk groups?**

11 A. NewSouth monitors these trunk groups on a daily basis to maintain this grade of
12 service and provides regular forecasts to BellSouth which are vital for managing the
13 growth of the network. NewSouth, however, cannot monitor and effectuate proper
14 service to customers alone. BellSouth must monitor the local traffic flow and
15 identify and blockage or deflections in calls that originate from its customers to
16 NewSouth customers. With a few exceptions, BellSouth does not do an adequate job
17 in meeting this responsibility despite the fact that NewSouth provides forecasts to
18 BellSouth on a quarterly basis so that BellSouth may manage the growth of the
19 network and identify the resources necessary to support that growth.

20 **Q. Please explain.**

21 A. Despite the regular forecasts provided by NewSouth to BellSouth, NewSouth has
22 initiated almost every request for augmentation of BellSouth's reciprocal trunking.

1 For example, in Macon, Georgia, NewSouth's forecasts clearly showed that a total
2 of 72 trunks would be needed in the Second Quarter of 2001, 48 more than were then
3 being provided to NewSouth. BellSouth did not act upon this forecast, but instead
4 waited until NewSouth requested an augmentation of BellSouth's trunk group on
5 April 18, 2001. BellSouth responded almost three weeks later on May 8, 2001, and
6 informed NewSouth that the trunks would not be augmented until June 5, 2001.
7 Such a delay, in the face of previous forecasts showing trunk group growth and busy
8 hour occupancy rates of 99.9% on some days, (*see, e.g., Memorandum Opinion and*
9 *Order, In the Matter of Application of Verizon New England Inc., Bell Atlantic*
10 *Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance*
11 *Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc.,*
12 *for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC*
13 *Docket No. 01-9 (rel. April 16, 2001) (hereinafter "Verizon Mass. Order") at ¶ 189,*
14 *clearly shows that BellSouth is not "offering interconnection and access to network*
15 *elements on a nondiscriminatory basis."* (SBC Kansas Order at ¶ 28 (emphasis
16 added). (In other markets, NewSouth's occupancy rates have exceeded 100% on
17 several occasions, up to an occupancy rate of over 260% in one case.) In addition,
18 there have been four occasions since January 1, 2001 in which BellSouth has refused
19 to augment reciprocal trunks upon request. Again, the quantities requested were
20 consistent with the NewSouth forecasts previously provided to BellSouth. My
21 Exhibit No. _____ JF-1 provides more detail about trunk augmentation situations
22 NewSouth has experienced with BellSouth.

1 **Q. Your discussion above is not specific to Florida. Please explain.**

2 A. The above examples illustrate that trunk augmentation is a problem throughout the
3 BellSouth region. The BellSouth Capacity Managers in Florida are no more
4 proactive about augmenting reciprocal trunks than Bell managers in any other state.

5 **Q. In his direct testimony, beginning at page 21, Mr. Milner discusses the trunk**
6 **augmentation and forecasting process BellSouth employs. Do you have any**
7 **comments?**

8 A. Yes. While Mr. Milner’s discussion may sound good on paper, it is not put into
9 practice in NewSouth’s experience. As described in my testimony, despite
10 NewSouth’s provision of forecast information to BellSouth and continuing
11 discussions with BellSouth regarding this problem, BellSouth does not provision
12 trunking appropriately based on NewSouth’s forecast information.

13 **Q. Has NewSouth tried to work with BellSouth on this issue?**

14 A Yes. In an effort to improve this situation, NewSouth submitted inquiries to Mr. Jon
15 Rey Sullivan, BellSouth’s Assistant Vice President of Operations, and requested a
16 quarterly review of the capacity forecasts with BellSouth’s project managers. In his
17 response to NewSouth, Mr. Sullivan stated that BellSouth Capacity Managers will
18 “add trunks when the growth warrants” and “when NewSouth tells us of significant
19 end user customers adds.” Mr. Sullivan further stated that BellSouth does not “add
20 strictly from the forecast.” Such a cavalier response flies in the face of Section 271's
21 unambiguous mandate for nondiscriminatory interconnection and access to network
22 elements. Importantly, Mr. Sullivan’s response is representative of BellSouth’s

1 failure to timely and effectively address the interconnection problems it has casued.

2 **Q. What impact has BellSouth's failures to appropriately augment trunking had**
3 **on NewSouth?**

4 A. BellSouth's delays have caused irreparable harm to NewSouth, forcing NewSouth
5 to delay bringing new customers on-line and negatively impacting both NewSouth's
6 finances and its perceived quality and reliability among consumers. BellSouth's
7 failures appear even more egregious when compared to the finding of the FCC in
8 connection with Verizon's section 271 application in Massachusetts. (*See generally*
9 *Verizon Mass. Order.*). In the Verizon matter, the FCC determined that the delays
10 in trunk provisioning, as alleged by ICG, did not warrant a finding of noncompliance
11 with Competitive Checklist Item 1. (See *Verizon Mass. Order* at ¶ 190). ICG had
12 forecasted a need for over 24,000 *trunks*, however, which amounted to over 8% of
13 all interconnection trunks which Verizon installed during the last 4.5 years and which
14 was greater than the number of trunks Verizon had installed for all ALECs combined
15 in a two-month period. (*See id.* at ¶ 190, note 600). Importantly, the FCC found that
16 ICG's current trunks were under-utilized, with an *occupancy rate of only 33%*. (*Id.*
17 at ¶ 190). In these circumstances, the FCC held that the delays in provisioning
18 trunks to ICG were an "isolated situation" and did not warrant a finding of
19 noncompliance. In sharp contrast, as discussed above, NewSouth forecasted the need
20 for *only 72 trunks total*, only 48 more than were currently in service, and the
21 company made this request in the face of occupancy rates reaching *99.9%*.

22 **Q. Please summarize NewSouth's position on the trunking issue.**

1 A. Despite the clear mandates of Section 271, NewSouth cannot obtain equal access to
2 BellSouth's network. Therefore, BellSouth has clearly failed to meet the
3 requirements of Checklist Item No. 1.

4 **CHECKLIST ITEM 2: DOES BELL SOUTH CURRENTLY PROVIDE**
5 **NONDISCRIMINATORY ACCESS TO ALL REQUIRED NETWORK ELEMENTS,**
6 **WITH THE EXCEPTION OF OSS WHICH WILL BE HANDLED IN THE THIRD**
7 **PARTY OSS TEST, IN ACCORDANCE WITH SECTIONS 251(C)(3) AND 252(D)(1)**
8 **OF THE TELECOMMUNICATIONS ACT OF 1996, PURSUANT TO SECTION**
9 **271(C)(2)(B)(II) AND APPLICABLE RULES PROMULGATED BY THE FCC?**

10 **Q. What is your understanding of the requirements of this item?**

11 A. Item 2 of the Competitive Checklist requires BellSouth to provide
12 “[n]ondiscriminatory access to network elements in accordance with the requirements
13 of section 251(c)(3) and 252(d)(1).” (47 U.S.C. § 271(c)(2)(b)(ii)). The FCC’s
14 regulations implementing section 251(c)(3) require ILECs to provide ALECs with
15 combinations of unbundled network elements that are currently combined in the
16 ILECs’ networks. (47 C.F.R. § 51.31(b); *Iowa Utilities Board*, 525 U.S. at 393-395).

17 **Q. What is your understanding regarding how the Commission will evaluate**
18 **BellSouth’s compliance with this item as it relates to OSS?**

19 A. I understand that the Commission has ruled that BellSouth’s compliance with this
20 item, as it relates to OSS matters, will be handled in the content of the third party test
21 via a Commission workshop followed by written comments by the parties.

22 **Q. Does NewSouth plan to participate in that process?**

1 A. Yes, to the extent its resources permit it to. However, for consistency and coherence
2 of its presentation in this portion of the docket, NewSouth wants to go on record as
3 stating that, in NewSouth's view, BellSouth has not complied with this checklist
4 item because it still does not have adequate processes and procedures for the ordering
5 and provisioning of combinations of unbundled network elements in place.

6 **Q. Can you list NewSouth's general concerns in this area?**

7 A. Yes. The following deficiencies will be more fully addressed in the
8 workshop/comment phase of the third party test but generally it is NewSouth's
9 position that BellSouth's OSS is deficient in the following areas:

- 10 • Lack of mechanized process for submission of UNE-platform orders;
- 11 • Inability to place mechanized orders despite compliance with the BellSouth
12 Service Order Guide;
- 13 • Delay in delivery of Firm Order Confirmations (FOC);
- 14 • Delivery of FOCs unrelated to orders;
- 15 • Excessive number of orders in jeopardy;
- 16 • Excessive missed appointments;
- 17 • Multiple provisioning problems.

18 Until these deficiencies are corrected, BellSouth cannot be in compliance with Item 2 of the
19 Checklist.

20 **Q. Does that conclude your testimony at this time?**

21 A. Yes.

Macon Reciprocal Trunk Group Busy Hour Occupancy				Birmingham Reciprocal Trunk Group Busy Hour Occupancy			
Busy Hour occupancy based on P.01 GoS for 24 members				Busy Hour occupancy based on P.01 GoS for 72 members			
Data shown is for business days only.				Data shown is for business days only.			
Two Six AC217811				Two Six AF411009			
Jan 31, 2001, forecast showed 72 trunks needed in Q2				July 1, 2000, forecast showed 120 trunks needed in Q1			
Made initial augment request on 4/18/01				Made initial augment request on 1/24/01			
Received augment order on 5/8/01 with a due date of 6/5/01				Received augment order on 2/2/01 with a due date of 2/16/01			
Order actually completed on 3/9/01				Order actually completed on 3/9/01			
18-Apr-01	54.5%	1-May-01	74.1%	24-Jan-01	79.4%	15-Feb-01	53.4%
19-Apr-01	52.3%	2-May-01	84.3%	25-Jan-01	64.6%	16-Feb-01	63.2%
20-Apr-01	51.6%	3-May-01	81.8%	26-Jan-01	79.1%	19-Feb-01	59.0%
23-Apr-01	72.3%	4-May-01	71.6%	27-Jan-01	35.5%	20-Feb-01	34.0%
24-Apr-01	63.9%	7-May-01	87.9%	29-Jan-01	122.8%	21-Feb-01	67.0%
25-Apr-01	66.5%	8-May-01	76.7%	30-Jan-01	109.1%	22-Feb-01	65.7%
26-Apr-01	69.4%	9-May-01	78.1%	31-Jan-01	69.0%	23-Feb-01	63.1%
27-Apr-01	61.0%	10-May-01	92.7%	1-Feb-01	66.3%	26-Feb-01	80.0%
30-Apr-01	77.4%	11-May-01	66.1%	2-Feb-01	66.1%	27-Feb-01	80.5%
		14-May-01	88.7%	5-Feb-01	59.2%	28-Feb-01	66.0%
		15-May-01	81.4%	6-Feb-01	63.7%	1-Mar-01	63.7%
		16-May-01	85.4%	7-Feb-01	58.8%	2-Mar-01	66.9%
		17-May-01	73.8%	8-Feb-01	66.0%	5-Mar-01	65.6%
		18-May-01	74.5%	9-Feb-01	64.8%	6-Mar-01	62.2%
		21-May-01	99.9%	12-Feb-01	68.1%	7-Mar-01	64.8%
		22-May-01	94.8%	14-Feb-01	60.2%	8-Mar-01	65.7%
						9-Mar-01	63.4%
Baton Rouge Reciprocal Trunk Group Busy Hour Occupancy				Knoxville Reciprocal Trunk Group Busy Hour Occupancy			
Busy Hour occupancy based on P.01 GoS for 48 members				Busy Hour occupancy based on P.01 GoS for 48 members			
Data shown is for business days only.				Data shown is for business days only.			
Two Six AF430232				Two Six AF190195			
August 10, 2000, forecast showed 72 trunks needed in Q1				Jan 31, 2001, forecast showed 96 trunks needed in Q2			
Made initial augment request on 1/3/01				Made initial augment request on 4/4/01			
Received augment order on 1/4/01 with a due date of 1/9/01				Received augment order on 4/12/01 with a due date of 5/8/01			
Order actually completed on 1/30/01				Order actually completed on 5/1/01			
3-Jan-01	264.6%	16-Jan-01	140.4%	9-Apr-01	65.69%	20-Apr-01	60.31%
4-Jan-01	216.7%	17-Jan-01	140.4%	10-Apr-01	64.31%	23-Apr-01	54.77%
5-Jan-01	158.3%	18-Jan-01	140.4%	11-Apr-01	63.69%	24-Apr-01	59.08%
8-Jan-01	191.7%	19-Jan-01	244.2%	12-Apr-01	62.77%	25-Apr-01	66.93%
9-Jan-01	170.8%	22-Jan-01	142.8%	13-Apr-01	66.31%	26-Apr-01	61.08%
10-Jan-01	142.8%	23-Jan-01	142.8%	16-Apr-01	59.54%	27-Apr-01	68.16%
11-Jan-01	142.8%	24-Jan-01	133.1%	17-Apr-01	66.62%	30-Apr-01	76.00%
12-Jan-01	140.4%	25-Jan-01	140.4%	18-Apr-01	60.16%	1-May-01	70.93%
15-Jan-01	140.4%	26-Jan-01	138.0%	19-Apr-01	55.23%		
		29-Jan-01	140.4%				
		30-Jan-01	150.2%				

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Rebuttal Testimony and Exhibit of John Fury on Behalf of NewSouth Communications Corp. has been furnished by (*) hand delivery or by U. S. Mail on this 20th day of July, 2001, to the following:

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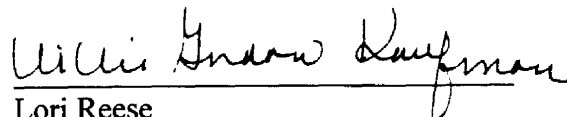
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