

**BEFORE THE  
LOUISIANA PUBLIC SERVICE COMMISSION**

**DIECA COMMUNICATIONS, INC. d/b/a  
COVAD COMMUNICATIONS COMPANY**

**DOCKET NO. U-28027**

**EX PARTE**

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*In re: Petition for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. Pursuant to Section 252(B) of the Telecommunications Act of 1996.*

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**STAFF’S BRIEF CONCERNING THE 47 USC § 271 STATUS OF LINE SHARING**

**NOW COMES STAFF**, of the Louisiana Public Service Commission (“LPSC”, “Commission”), who hereby submits the following brief in support of its position relative to Dieca Communications, Inc. d/b/a Covad Communications Company’s (“Covad”) petition for arbitration, restricted to the single issue currently being addressed, namely, ““Is BellSouth Telecommunications, Inc. (“BellSouth”) obligated to provide Covad access to line sharing after October 2004?”

**BACKGROUND**

Covad’s petition for arbitration, wherein it requested the Commission issue a decision on a number of issues, was published in the Commission’s Official Bulletin dated July 2, 2004. The threshold issue, as stated above, concerns whether BellSouth has a continuing obligation to provide access to line sharing after October 2004, pursuant to Section 271 of the Telecommunications Act.<sup>1</sup> In light of this fast approaching determination deadline, which will be explained supra, the parties at the August 12, 2004 status conference held in this

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<sup>1</sup> 47 USC § 271.

matter, established September 3, 2004 as a date to submit simultaneous briefs to the Administrative Hearings Division.<sup>2</sup>

The main parties to this proceeding, BellSouth and Covad, have provided a thorough discussion of the history of line sharing<sup>3</sup> in their respective briefs, a discussion which Staff will omit for the sake of brevity. Staff would like to emphasize the critical decision giving rise to this proceeding, the FCC's *Triennial Review Order*<sup>4</sup>, wherein the FCC essentially determined that the high frequency portion of the loop ("HFPL") was no longer required to be unbundled pursuant to Section 251 of the Telecommunications Act of 1996. The critical date referenced herein, October 2004, is the date after which no new line sharing arrangements subject to the requirements of Section 251 may be requested.

### **APPLICABLE LAW**

While there are numerous FCC and court decisions cited by the parties, as mentioned above, the threshold question to be answered is whether Section 271 of the Telecommunications Act of 1996 requires BellSouth to continue to provide "Line sharing." Section 271 provides, in pertinent part,

#### (B) Competitive checklist

Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

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<sup>2</sup> Staff originally agreed to submit a brief on this same date. Staff was subsequently advised that in all other jurisdictions in the BellSouth region, a different filing date was applied to the Staff response. Staff requested, and was granted, additional time to file.

<sup>3</sup> In simplistic terms, line sharing involves the sharing of the loop by two carriers, an ILEC providing voice service over the low frequency portion of the loop, in this instance BellSouth, and a CLEC providing data services (DLEC), providing broadband services over the high frequency portion of the loop.

<sup>4</sup> *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, et al., Federal Communications Commission ("FCC") 03-36 (rel. Aug. 21, 2003.)

- (IV) Local loop transmission from the central office to the customer's premises unbundled from local switching or other services.

## **DISCUSSION**

Initially, it should be noted that it is unmistakable that the FCC has determined that Incumbent Local Exchange Carriers ("ILECs") no longer have a Section 251 requirement to provide line sharing.<sup>5</sup> It is also unmistakable that the FCC recognized Regional Bell Operating Companies ("RBOCs") as having a continuing obligation to provide non-discriminatory access to network elements pursuant to § 271.<sup>6</sup> Unfortunately, the FCC did not address which network elements an RBOC has a continued 271 obligation to provide. Simply put, the *Triennial Review Order* makes no mention as to whether an RBOC has a continued obligation to provide line sharing pursuant to § 271. Thus, the central determination as to whether an obligation to provide line sharing under 271 exists may be couched on whether the definition of "Local loop transmission" includes line sharing. Unfortunately, while Congress provides no further explanation as to what composes local loop transmission, the pertinent FCC decisions provide some guidance.

### **1. Effect of the FCC's *Triennial Review Order***

In the *Triennial Review Order* the FCC issued new rules concerning the status of unbundling. As this tribunal is no doubt aware, the DC Circuit's decision in *United States Telecommunication Ass'n v. FCC*, 359 F.3<sup>rd</sup> 554 (D.C. Cir. 2004) ("USTA II") vacated a number of the FCC's findings. However, the portion of the decision wherein the FCC concluded that RBOCs are no longer required to continue making available as a UNE the High Frequency Portion of the Loop ("HFPL") for line sharing arrangements pursuant to

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<sup>5</sup> TRO at ¶255-263.

<sup>6</sup> TRO at ¶ 650.

Section 251 remained in affect. Nonetheless, as mentioned above, the FCC also concluded that,

“BOCs have an independent obligation, under Section 271 (c)(2)(b) to provide access to certain network elements that are no longer subject to unbundling under Section 251, and to do so at just and reasonable rates.”<sup>7</sup>

Thus, regardless of the FCC’s position regarding the obligation to provide line sharing pursuant to § 251, it may still be the case that access is required to be provided pursuant to § 271.

## **2. Section 271 Orders**

Section 271 of the Telecommunications Act of 1996 sets forth the process whereby an RBOC can seek entry into the long distance market. Central to the process is the RBOCs compliance with a number of factors contained in a detailed checklist of requirements established by the Act. While the above provides a very simplistic overview of § 271, it should be noted that the requirements of 271 essentially provide conditions which must be satisfied before the proverbial “carrot” was offered to RBOCs in the form of authority to provide long distance services. Among the requirements considered in the review process, specifically in Checklist Item 4<sup>8</sup>, was the requirement that BellSouth provide non-discriminatory access to line sharing.

While Staff is well aware the present issue concerns the obligations arising from Section 271 of the Federal Act, Staff would be remiss if it did not advise this tribunal that BellSouth submitted data relative to its provision of line sharing in Louisiana to be reviewed in connection with Checklist Item 4. Staff considered said information as part of its Final

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<sup>7</sup> TRO at ¶ 650.

<sup>8</sup> 47 USC 271(C)(2)(b)

Recommendation issued in Docket U-22252-E, adopted by the LPSC in Order U-22252-E, which approved BellSouth's Louisiana 271 application at the state level.

The FCC, when jointly deciding BellSouth's Section 271 applications for Georgia and Louisiana, likewise considered line sharing in connection with Checklist Item 4, and approved BellSouth's performance by stating as follows:

Our conclusion is based on our review of BellSouth's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL capable loops, high capacity loops and digital loops, and our review of BellSouth's processes for line sharing and line splitting."<sup>9</sup>

While the FCC never definitively stated whether line sharing is a loop transmission facility as contemplated by Section 271(c)(2)(b), it is nonetheless clear that it found that BellSouth had at the time of its 271 application, an obligation to provide line sharing in connection with Checklist Item 4. Additionally, the FCC has made no pronouncement absolving BellSouth of a continuing obligation to comply with the requirements of Section 271, including, but not limited to, line sharing. Absent such a pronouncement, Staff must conclude the obligation continues to exist.

Certainly, it would be preferable if the FCC reached a definitive determination on § 271 status of line sharing. Indeed, two current proceedings pending before the FCC may reach a decision on this issue, including the *Order and Notice of Proposed Rulemaking in Docket 01-338*, released August 20, 2004, which seeks comment on, upon other things,

(H)ow various incumbent LEC service offerings and obligations, such as tariffed offerings and BOC section 271 access obligations, fit into the Commission's unbundling framework. *Id.* at ¶ 9.

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<sup>9</sup> *Joint Application by BellSouth Corporation, BellSouth Telecommunication, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Released May 15, 2002, FCC 02-147.

Additionally, as mentioned by Covad, BellSouth has pending a Petition for Forbearance, filed pursuant to 47 USC 160(c), whereby it is seeking forbearance from its Section 271 obligations. However, in light of the impending change in the § 251 status of line sharing, the LPSC cannot wait for such a determination.

**3. BellSouth's Pending Motion to Modify SEEMS Plan in Docket U-22252-C 6-Month Review Proceeding.**

Staff would be remiss if it did not mention a Motion to Modify SEEMS Plan filed by BellSouth in Docket U-22252-C, which is currently the subject of an ongoing Staff review. Said motion is no different than similar motions filed by BellSouth throughout its region, and referenced in both BellSouth and Covad's filings in this matter. In no way is Staff's position, as stated herein, to be considered as determinative of that issue. Additionally Staff does not waive its right to fully address the motion in that proceeding.

**CONCLUSION**

Absent a definitive pronouncement from the FCC, Staff's position is that BellSouth has a continuing obligation to provide line sharing, in accordance with its grant of Section 271 authority.

*Dated this 10th day of September 2004.*

Respectfully submitted,  
**LPSC LEGAL DIVISION**

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