

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of AT&T Communications of
the Southern States, Inc., TCG South Florida,
and MediaOne Florida Telecommunications,
Inc. for Structural Separation of BellSouth
Telecommunications, Inc.

Docket No. 010345-TP

Filed: April 10, 2001

**The Florida Competitive Carriers Association's
Request for Commission Investigation Concerning the
Use of Structural Incentives to Open Local Telecommunications Markets
In Support of AT&T's Petition to Initiate Proceeding**

On March 21, 2001, AT&T Communications of the Southern States, TCG South Florida, and MediaOne Florida Telecommunications, Inc. petitioned this Commission to initiate a proceeding and " ...to enter an appropriate order requiring the structural separation of BellSouth Telecommunications, Inc. ("BellSouth") into two distinct wholesale and retail corporate subsidiaries."¹ The Florida Competitive Carriers Association (FCCA), representing the interests of a broad range of carriers attempting to offer competitive local, long distance and information services to Florida consumers, supports the Petition and similarly recommends that this Commission initiate an investigation to evaluate the role of structural incentives in opening Florida's communications markets.

By any measure, the competitive landscape hoped for when the Florida Legislature, and then the United States Congress, passed legislation to open local telecommunications markets has

¹ Petition Of AT&T Communications Of The Southern States, Inc. (et. al.) for Structural Separation Of BellSouth Telecommunications, Inc, March 21, 2001 ("AT&T Petition"), page 1.

failed to materialize. A recent industry journal succinctly summarized the situation:

We hate to say it, but the Telecommunications Act of 1996 is dead. As an instrument for encouraging robust and widespread local competition for narrowband services, delivered over incumbent local loops, it has failed.

By allowing competitors to take market share in monopoly markets, the Act was supposed to create a business framework within which all competitors would have clear incentives to innovate and build all the new broadband markets. In a two-stage competitive process, competitors initially would survive by capturing customers in known markets. Then they would grow by creating all the new products. It wasn't a bad theory. We wish it weren't so, but there is no point in pretending the emperor is wearing clothes. He isn't.²

Importantly, neither the nation nor Florida can accept an outcome where local competition fails. Communications services are becoming even *more* important in our economy at the very same time that the resources needed to regulate these services are becoming even more scarce. Without competition, local monopolies would inevitably extend their dominance to related markets, such as long distance and advanced data service, through packaging and other market strategies. The only viable alternative is competition – yet it is clear that achieving robust local competition will require new, more efficient, approaches.

The FCCA believes that it is now time for the Commission to explore ways to harness the power of standard commercial incentives to promote, rather than frustrate, local competition. Certainly nobody could seriously suggest that local competition has failed for a lack of effort or investment. Since the Act was passed, investors have pumped more than \$56 billion into the

² *Death Trap*, Gary Kim, FATPIPE Magazine, March 2001.

smaller competitive local entrants, attempting every conceivable entry strategy.³ In addition, larger entrants such as AT&T and MCI have invested billions more pursuing entry on a larger scale.

Moreover, it is not simply "new entrants" that have encountered difficulties competing with incumbents. The incumbents themselves have failed in their efforts to compete as entrants with each other. GTE was the first to attempt out-of-region entry, but quickly encountered barriers that forced it to abandon its strategy.⁴ Ultimately, GTE merged with Bell Atlantic – in part claiming that the union would give it the momentum needed to compete out-of-region – but has since retreated from this entry strategy as well.⁵ Similarly, SBC acquired Ameritech under the guise of a National-Local Strategy that would be "a broadscale [sic] facilities-based strategy providing both business and residential service".⁶ SBC has now suspended its entry strategy and announced it will no longer add customers.⁷ For its part, BellSouth has apparently *always* understood the difficulty

³ Source: Association for Local Telecommunications Services, February 20, 2001.

⁴ In an abundance of understatement, GTE admitted that:

Since its first launch into California in September 1997, GTECC [GTE's "CLEC" affiliate] has learned that the assumptions upon which it built its business plan were simply too optimistic.

Joint Declaration of Jeffery C. Kissell and Scott M. Zimmerman, CC Docket 98-184, p. 5, (December 21, 1998).

⁵ See Telecommunications Reports, *Verizon Unit to End CLEC Service in Nine States* (January 15, 2001).

⁶ Kahan Rebuttal, SBC-Ameritech Exhibit 1.1, Indiana Public Service Commission, page 48.

⁷ *SBC Scales Back*, Miami Herald, March 7, 2001:

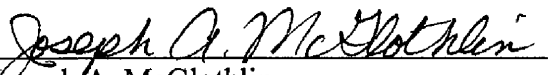
SBC Telecom, which appeared to be the first serious competitor to BellSouth for providing local phone service to consumers, is scaling back its operations. Hundreds of employees may have been laid off, according to news reports. The company declined to say how many in South Florida.

of competing with an incumbent, and avoided any meaningful effort accordingly.

It is not our intention, however, that the Commission initiate its investigation into structural alternatives for the purpose of affixing blame for the current state of local competition. The goal is far too important for debate that is non-constructive. The fact that local competition is in jeopardy should be enough justification to seek a solution. Moreover, we would not endorse (at this juncture) retreating to an environment of pervasive regulation, but in the absence of competition there will be little choice. Rather, we believe that the Commission should consider structural incentives that would naturally encourage efficient wholesale arrangements – and, therefore, meaningful local competition – and would lessen the need for regulatory oversight. Just as the integration of wholesale and retail roles within the incumbent gives rise to an inherent conflict of interest, the proper separation of these roles can unleash incentives far more effective than regulation.

Nor is it our intention that the Commission's consideration of structural incentives substitute for its obligations under Section 271 of the federal Telecommunications Act. We are all aware of the very real disagreements that will surface in that review concerning BellSouth's behavior and performance. But our support for structural review transcends that process. Certainly, a structurally realigned BellSouth would be better positioned to satisfy the requirements of Section 271 because its own self-interest would promote compliance; however, the need for correct structural incentives grows even *larger* after Section 271 has been granted and BellSouth is able to then leverage its dominance more freely. Consequently, we believe that the need for a structural investigation stands independently on its own merits, irrespective of the Commission's review under Section 271.

There are many issues that must be addressed to best align structural incentives to achieve the policy goal of local competition. The need is critical, the time is short, and delay serves no useful purpose. Accordingly, the FCCA recommends that the Florida Commission immediately convene a proceeding to address the possible forms, and very real benefits, of a structural incentive approach.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Florida Competitive Carriers Association's Request for Commission Investigation Concerning the Use of Structural Incentives to Open Local Telecommunications Markets in Support of AT&T's Petition to Initiate Proceeding has been furnished by (*) Hand Delivery or U.S. Mail this 10th day of April, 2001 to the following:

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