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ATTACHMENT B

BellSouth Telecommunications, Inc.
FPSC Docket No. 020507-TL
Request for Confidential Classification
Page 1 of 1
9/9/03

REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S POST-HEARING BRIEF AS FILED AUGUST 19, 2003, IN FLORIDA DOCKET NO. 020507-TL

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PUBLIC VERSION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida	)	
Competitive Carriers Association	)	Docket No. 020507-TL
Against BellSouth Telecommunications, Inc.	)	
And Request for Expedited Relief	)	Filed: August 19, 2003

BELLSOUTH TELECOMMUNICATIONS, INC.'S POST-HEARING BRIEF

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Post-Hearing Brief in this case, which involves the efforts of certain competitive local exchange telecommunications companies ("CLECs")[1] to expand prior panel decisions and force BellSouth to provide its retail wireline broadband service, BellSouth FastAccess® DSL ("FastAccess®"), to any voice customers served by the CLECs. The CLECs have also rejected the method by which BellSouth is currently complying with prior arbitration rulings pending the appeals of such orders, which is a standalone offering. Instead, the CLECs seek to force BellSouth to change the processes and procedures that are in place and working today by compelling BellSouth to provide FastAccess® over UNE loops or UNE-P loops, which would require new processes and procedures.

Without belaboring BellSouth's fundamental jurisdictional disagreement with prior decisions concerning FastAccess®, no one can deny the rationale for the first of these orders centered on "*possible* barriers to competition in the local telecommunications voice market that *could* result from BellSouth's practice . . ." Order No. PSC-02-0765-FOF-TP, p. 8 ("FDN

[1] The CLEC parties in this case are Access Integrated Networks, Inc. ("AIN"); AT&T Communications of the Southern States, Inc. ("AT&T); ITC^DeltaCom Communications, Inc. ("DeltaCom"); MCI WorldCom Communications, Inc. and MCImetro Access Transmission Services, LLC (both entities referred to as "MCI") (all companies collectively referred to as "CLECs" or "the CLEC parties").

from taking service from the carrier they prefer." Complaint, ¶¶ 7, 14. At the hearing, however, the consumers were conspicuously absent. No consumer came forward to testify as a public witness. No consumer presented written comments as an interested party at the hearing. No CLEC sponsored actual customer testimony, either formally, in affidavit form, or even in anecdotal form. No consumer claimed that he or she was actually reluctant to change providers or was prevented from obtaining voice service from the carrier of his or her choice. The Commission should not a be swayed into believing that it is acting in furtherance of consumer choice or welfare when the reality is that the CLEC parties are in business to advance their own agendas and not those of the general Florida populace.

The record evidence indicates that competition is thriving in Florida. 149 operational CLECs currently serve 1.3 million access lines, which is 20.0% of the total lines in Florida. (Exh. 7). This Commission has documented CLEC increases in market share, as well as the heavy CLEC presence in BellSouth territory in its 2002 Annual Report on Competition. (*See* Annual Report on Competition, published by the Florida Public Service Commission's Office of Market Monitoring and Strategic Analysis, December 2002). Such market share increases have continued over time, unaffected whatsoever by BellSouth's FastAccess® policy.

Not only is competition alive and well in Florida, the CLEC parties in this case have experienced extraordinary growth. For example, AIN has grown its lines from 4,368 in 2001 to 11,894 in 2002 to 12,147 lines in mid 2003. (Exh. 1). AIN failed to provide this Commission with any evidence of customers that refused to migrate voice service because of BellSouth's FastAccess policy. (*Id.*) Similarly, AT&T has grown its total lines from in 1999, to in 2000, to in 2001 to 175,667 in 2002. (Exh. 1). AT&T also failed to provide any evidence of customers that refused to migrate voice service to it because of BellSouth's FastAccess policy. (*Id.*).

Likewise, DeltaCom has grown its lines from in 2001 to lines in 2003. (Exh. 1). DeltaCom provided an unsupported estimate of alleged lost sales due to BellSouth's policy; however, DeltaCom did not support any witness testimony in this proceeding. Without evidence of the methodology underlying DeltaCom's estimate, or the ability to cross-examine a witness about the validity of the estimate, DeltaCom's claims cannot withstand scrutiny. Thus, DeltaCom also failed to provide actual evidence of customers that refused to migrate voice service to DeltaCom because of BellSouth's FastAccess policy.

Finally, CLEC MCI has also experienced line growth. (Exh. 1). Initially, MCI's analog line numbers were up and down, however, most recently MCI has grown exponentially. MCI's line data reveals it went from lines in 1999 to in 2000, to in 2001. (*Id.*) Thereafter, MCI reached lines in 2002, and subsequently achieved lines by mid-2003. (*Id.*) MCI also failed to provide evidence establishing the number of customers that actually refused to establish voice service with MCI due to BellSouth's FastAccess policy.[2]

The line growth experienced by the CLEC parties illustrates why the relief requested in this proceeding is - at best - unjustified, and more accurately - completely frivolous. The CLEC parties have grown lines during the time BellSouth's alleged anticompetitive policy has been in place. Despite this proceeding having been initiated over a year ago, the CLEC parties are requesting extraordinary relief that requires BellSouth alone to incur costs, change its processes,

[2] MCI's reliance on rejected local service requests as a surrogate proves nothing. BellSouth reviewed a sample of MCI's account records, and found that one in five customers decided to migrate to a voice provider other than BellSouth, which indicates that customers are not "reluctant" to change voice carriers as the CLEC witnesses claim. (Exh. 7). Moreover, MCI's conclusions concerning the rejected LSRs are misleading. MCI initially testified that 260 customers established voice service with MCI after an initial reject was received; at hearing Ms. Lictenberg conceded the number was 317. (Tr. at 180).

were already available in the marketplace. (Id.) Consequently, BellSouth began investing the resources necessary to support its DSL product offerings. (Id.)

To date, BellSouth has invested more than $393 million in Florida to support its DSL offerings. (Tr. at 523). That investment includes the cost of upgrading BellSouth's backhaul network and deploying DSL capability in 191 BellSouth central offices and 3,945 BellSouth remote terminals. (Tr. at 530). In deploying DSL, BellSouth took a careful approach. Demand for high-speed Internet access was analyzed at the neighborhood level. Through this process of targeted deployment, BellSouth selected what it believed were the best locations to place central office and remote terminal Digital Subscriber Line Access Multiplexers ("DSLAMs"). (Id.) This efficient use of capital has been critical to the competitive nature of BellSouth's DSL service and has allowed BellSouth to deploy DSL service throughout Florida. (Id.) This is significant because BellSouth's strategy involved only investing in areas where BellSouth believed it could successfully market DSL service as a complement to its existing voice service and thereby realize a favorable return on its investment. (Tr. at 524). BellSouth would not have made as substantial an investment in broadband technology if it knew that it would be required to offer its services to CLEC end users. (Tr. at 533).

Since 1998, BellSouth has grown its FastAccess® customer base in Florida. As of June 30, 2003, BellSouth had FastAccess® customers. Over time BellSouth has also experienced customer disconnections and churn relating to FastAccess®. For example, 235,022 Florida customers have disconnected FastAccess® service while retaining BellSouth voice service since August 1999. (Exh. 7). Such disconnections reflect customer churn; in the broadband market average customer churn rates range from three to five percent per month. (Tr.