

**FCC 98-121 - MEMORANDUM OPINION AND ORDER**  
**RELEASED: October 13, 1998**

**BellSouth Louisiana Section 271 Order (II)**

**I. INTRODUCTION**

On July 9, 1998, BellSouth filed its second application for authorization under the Section 271 of the Act to provide interLATA service in the state of Louisiana. The application is denied for failure to satisfy requirements. BellSouth did meet the requirements of 6 checklist items and one subsection of a seventh item. In areas where the applicant failed, the FCC provides guidance for future filings.

Congress had used the promise of long distance entry as an incentive to prompt the BOC's to open their local markets to competition. Accordingly Section 271 allows long distance entry only after a demonstration of compliance with the competitive checklist. While BellSouth has satisfied 6 checklist items, its main problem remains OSS. The FCC cautions applicants to correct the deficiencies identified in prior orders before filing new 271 applications or face the possibility of summary denial.

**II. OVERVIEW**

BellSouth has met the statutory requirements of the following checklist items: (1) poles, ducts, conduits and right of way; (2) 911 and E911 services; (3) white pages directory listings for competing LECs customers; (4) telephone numbers for assignment to other carrier's customers; (5) databases and associated signaling necessary for call routing and completion; (6) dialing parity and (7) reciprocal compensation arrangements. The next time BellSouth files it may incorporate by reference its prior showing for these checklist items.

If not for deficiencies in OSS, BellSouth would satisfy the following items: (1) local transport; and (2) services available for resale. Other compliance problems exist for these items; interconnection; local loop transmission; switching; directory assistance; operator call completion; and numbering portability. The FCC concluded the BellSouth's application was deficient with regard to nondiscriminatory access to unbundle network elements because it offers collocation as the only method for competitive LECs to combine unbundled network elements.

### **III. EXECUTIVE SUMMARY**

The Department of Justice recommends the application be denied because the Louisiana market is not fully open to competition and BellSouth failed to show it is offering access and interconnection that meet checklist requirements. The state of Louisiana recommends the application be approved, but did not conduct an evidentiary hearing.

The FCC concludes that broadband PCS satisfies the statutory definition of telephone exchange service for purposes of track A. However BellSouth has not shown that it is a substitute for the wireless service offered by BellSouth in Louisiana.

### **IV. BACKGROUND**

#### **A. Statutory Framework**

The 1996 act conditions entry into in-region interLATA services on compliance with section 271. In acting on a BOC's application the FCC must consult with the Attorney General as to its evaluation of the application. In addition, the FCC will consult the applicable state commission to verify one or more state approved interconnection agreements with a facilities-based competitor.

#### **B. The Attorney General's. Evaluation**

The Department of Justice recommends that the application be denied because the Louisiana market is not fully and irreversibly open to competition and BellSouth fails to demonstrate it is offering access and interconnection which meets the competitive checklist.

### **V. COMPLIANCE WITH SECTION 271 (C) (1) (A)**

#### **A. Background**

##### **1. Competition from PCS providers**

For the FCC to approve an application to provide in region interLATA service , a BOC must demonstrate it satisfies Section 271(c) (1) (A) (track A, showing presence of a facilities based competitor) or satisfy the 14 point checklist. The FCC concluded that BellSouth has not demonstrated it satisfies Track A requirements based upon the existence of broadband PCS carriers in Louisiana. The FCC did conclude that PCS service constitutes telephone exchange service for purposes of the above section. However, the BOC must show that broadband PCS is being used to replace wireline service, not as a

supplement.

**2. Competition from Facilities-based wireless companies**

To qualify for Track A, the BOC must have interconnection agreements with competing providers of telephone exchange service to provide both business and residential service. The ACT states this service must be offered either exclusively or predominantly over the competitors own facilities. Since BellSouth did not meet the competitive checklist, the FCC did not reach any conclusion on this issue.

**VI. Checklist Compliance**

The FCC uses the preponderance of evidence standard. The determination of whether a BOC has satisfied a checklist item is based on evidence supporting its prima facie case, and not on the absence of comments opposing the BOC's showing. BellSouth states it is obligated to provide all 14 checklist items through both its state approved interconnection agreements and its SGAT.

This section outlines the FCC's procedure for evaluating a 271 application.

**C. Checklist items**

**1. Interconnection** - BellSouth must allow other carriers to link their networks to its network for the mutual exchange of traffic. To do so, BellSouth must permit carriers to use any available method of interconnection at any available point in BellSouth's network. For the reasons stated in the BellSouth South Carolina Order, the Commission found BellSouth's showing on its collocation offering to be insufficient. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between BellSouth and an affiliate, or between BellSouth and another carrier. BellSouth does not show that it provides interconnection that meets this standard.

**2. Unbundled Network Elements** - The telephone network is comprised of individual network elements. In order to provide "access" to an unbundled network element, BellSouth must provide a connection to the network element at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory. To do so, BellSouth must provide access to its operations support systems (OSS), meaning the information, systems, and personnel necessary to support the elements and services. This is important because

access to BellSouth's OSS provides new entrants with the ability to order service for their customers and to communicate effectively with BellSouth regarding such basic activities as placing orders and providing repair and maintenance service for customers.

BellSouth does not demonstrate that its OSS enables other carriers to integrate electronically its pre-ordering and ordering functions, thus placing those carriers at a competitive disadvantage relative to BellSouth's own retail operation. For example, BellSouth processes orders without delay for more than 96% of its own residential customers and more than 82% of its own business customers, but BellSouth processes orders without delay for only 35% of its competitors' residential and business customers combined. Although BellSouth has made some progress in addressing deficiencies in its OSS, it has failed to address successfully other problems that the Commission specifically identified in previous 271 decisions.

In addition, BellSouth must provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Other carriers are entitled to request any "technically feasible" method for combining network elements. As the Commission held in the BellSouth South Carolina Order, BellSouth fails to demonstrate that it can provide nondiscriminatory access to unbundled network elements through the only method it identified for such access, collocation.

3. **Poles, Ducts, Conduits, and Right of Way** - Access to Poles, Ducts, Conduits, and Rights-of-Way. In order to serve customers, telephone company wires must be attached to, or pass through, poles, ducts, conduits, and rights-of-way. BellSouth demonstrates that other carriers can obtain access to its poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices.
4. **Unbundled Local Loops** - Local loops are the wires, poles, and conduits that connect the telephone company end office to the customer's home or business. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business. BellSouth failed to demonstrate that it can efficiently furnish unbundled loops to other carriers within a reasonable

time frame, with a minimum level of service disruption, and at the same level of service quality it provides to its own customers.

5. **Unbundled Local Transport** - Nondiscriminatory access to BellSouth's transport facilities ensures that calls carried over competitors' lines are completed properly. Although BellSouth demonstrates that it provides both shared and dedicated transport on terms and conditions consistent with FCC regulations, it does not provide evidence, such as meaningful performance data, that it provides nondiscriminatory access to OSS for the purpose of providing transport facilities. Adequate OSS is necessary so that carriers may order transport. But for deficiencies in its OSS, BellSouth would satisfy this item.
6. **Unbundled Local Switching** - A switch connects end user lines to each other and to trunks used for transporting calls. Switches can also provide customers with features such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competitor's operator services. BellSouth did not show that it provides competitors with all of the features, functions, and capabilities of the switch.
7. **911 and E911 Services, Operator Services, and Directory Assistance** - It is critical that BellSouth provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. BellSouth satisfies this requirement. BellSouth does not demonstrate, however, that it provides other carriers with the same access to directory assistance and operator services that it provides itself.
8. **White Pages Directory Listings** - These are the listings of customers' telephone numbers in a particular area. BellSouth demonstrates that its provision of white pages listings to its competitors' customers is nondiscriminatory in terms of appearance and integration, and that it provides listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.
9. **Numbering Administration** - BellSouth demonstrates that it is in compliance with industry guidelines and FCC requirements to ensure that its competitors have the same access to new telephone numbers in a given area code that BellSouth enjoys.
10. **Databases and Associated Signaling** - New entrants must have

the same access as BellSouth to these databases and signaling systems in order to have the same ability as BellSouth to transmit, route, complete, and bill for telephone calls. BellSouth demonstrates that it provides competitors with nondiscriminatory access to these functions.

11. **Number Portability** - Number portability enables consumers to take their phone number with them when they change local telephone companies. BellSouth does not sufficiently demonstrate that it provides number portability to competitors in a reasonable time frame, which may prevent a customer from receiving incoming calls for a period of time after switching from BellSouth to a competitor.
12. **Local Dialing Parity** - BellSouth demonstrates that its competitors' customers do not need to dial extra digits to make a local call nor do they experience inferior quality, such as unreasonable dialing delays, compared to BellSouth customers. Local dialing parity ensures that consumers are not inconvenienced simply because they subscribe to a new entrant for local telephone service.
13. **Reciprocal compensation** - BellSouth must compensate other carriers for the cost of transporting and terminating its local calls unless it agrees with the terminating carrier to another arrangement. BellSouth demonstrates that it has such reciprocal compensation arrangements in place, and that it is making all required payments in a timely fashion. The Louisiana Commission, however, has not made a final determination regarding BellSouth's obligation to pay reciprocal compensation for traffic delivered to Internet service providers.
14. **Resale** - BellSouth must offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations so that other carriers may resell those services to customers. BellSouth demonstrates that it offers all of its retail services for resale at wholesale rates without unreasonable or discriminatory conditions or limitations. It does not show, however, that it provides nondiscriminatory access to OSS for the resale of its retail telecommunications services. Carriers need adequate OSS in order to resell BellSouth's services.

## VII. SECTION 272

### A. Background

Section 271(d) (3) (B) requires that the FCC shall not approve

a BOC's application to provide interLATA services unless the BOC demonstrates that the requested authorization will be carried out in accordance with the requirements of section 272. In Ameritech Michigan Order, the FCC stated compliance with Section 272 is of critical importance because the structural and nondiscrimination safeguards seek to ensure that competitors of the BOC will have nondiscriminatory access to essential inputs on terms that do not favor the BOCs affiliates. These safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.

**B. Discussion**

Although BellSouth has undertaken significant efforts to institute policies and procedures to ensure compliance with section 272, it does not meet all of that provision's requirements. In particular, it does not demonstrate adequately that it discloses all transactions with its long distance affiliate, which means its affiliate has superior access to information about these transactions compared with unaffiliated competitors. As a result, unaffiliated entities lack the information necessary to take advantage of the same rates, terms, and conditions enjoyed by BellSouth's affiliate. In addition, BellSouth does not provide nondiscriminatory access to its OSS, and thereby fails to provide the same information to unaffiliated entities that it provides to its affiliate.

**1. Structural Separation, Transactional, and Accounting Requirements of Section 272**

**Section 272(a) - Separate Facilities** - This section requires that BOCs and their affiliates subject to Section 251© provide manufacturing activities and certain competitive services through separate affiliates. Since BellSouth does not meet the requirement to disclose past transactions pursuant to Section 275(b) (5), it fails to satisfy this requirement.

**Section 272(b) (1) - Operate Independently** - This section requires that separate facilities operate independently from the Bell operating company. There are four important restrictions: (1) No joint BOC-affiliate ownership of switching and transmission facilities; (2) no joint ownership of land or building upon which facilities are located; (3) No provision by the BOC of operation, installation or maintenance services with respect to section 272 affiliate's facilities; and (4) no provision by the section 272 affiliate of operation, installation, or maintenance services with respect to the BOC's facilities. BellSouth meets this requirement.

**Section 272(b)(2) - Books, Records, and Accounts** - This section requires that the Section 272 separate affiliate shall maintain books, records, and accounts in the manner prescribed by the FCC separately from books etc. maintained by the BOC of which it is an affiliate. BellSouth meets this measure.

**Section 272(b)(3) - Separate Officers, Directors and Employees** - This section require that the section 272 affiliate shall have separate officers, directors, and employees from the BOC of which it is an affiliate. BellSouth meets this requirement.

**Section 272(b)(4) - Credit Arrangements** - This section requires that the section 271 affiliate may not obtain credit under any arrangement that would permit a creditor, upon default to have recourse to assets of the BOC. BellSouth meets this requirement.

**Section 272(b)(5) - Affiliate Transactions** - This section has two requirements: (1) that affiliate transactions be publicly disclosed, and (2) that affiliate transactions be arms length. BellSouth does not meet this requirement because it does not have its transitions between it and its affiliate available for public inspection and does not disclose its rates for transactions between it and its affiliates.

**2. Nondiscrimination Safeguards for Section 272** - The FCC concludes that BellSouth does not comply with the nondiscrimination requirement of this section. The section requires that a BOC in its dealings with its section 272 affiliate may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities and information, or in the establishment of standards. Basic problems are BellSouth's failure to disclose all of its affiliate transactions and provide OSS on a nondiscriminatory manner.

**Section 272(e)(1) - Fulfillment of requests for Telephone Exchange Service** - The BOC must fulfill any requests for telephone exchange service from an unaffiliated entity within the same time period it provides service to itself or its affiliates. BellSouth does not meet this requirement based upon its failure to provide nondiscriminatory access to its OSS.

### **3. Joint Marketing Requirements of Section 272**

**Section 272(g)(1) - Affiliate Sales of Telephone Exchange**



**Service** - BellSouth meets this requirement with the exception that its 272 affiliate makes no mention of marketing information services.

**Section 272(g) (2) - Bell Operating Company Sales of Affiliated Services** - This section requires that a BOC may not market or sell InterLATA service provided by an affiliate required by this section within any of its in-region states until such company is authorized to provide interLATA services in such state under 271(d). BellSouth complies with this requirement.

#### **VII. PUBLIC INTEREST**

Because BellSouth does not meet the other requirements of the statute, it was unnecessary for the Commission to conduct an analysis of whether BellSouth's entry into the Louisiana long distance market would be in the public interest. The Commission nevertheless took the opportunity to reaffirm its prior conclusion that it has discretion to identify and weigh relevant factors in determining whether BOC entry into a particular in-region long distance market is consistent with the public interest. For example, the Commission would consider whether a BOC has agreed to performance monitoring (including performance standards and reporting requirements) and whether the BOC has agreed to enforcement mechanisms. The Commission also reaffirmed that it will consider as part of its public interest inquiry whether approval of a section 271 application will foster competition in all relevant markets, including the local market, not just the in-region, long distance market.

**VII. CONCLUSION** - The application was rejected.