FCC 98-17 - MEMORANDUM OPINION AND ORDER
RELEASED: February 4, 1998

BellSouth Louisiana Section 271 Application

I. INTRODUCTION

On November 6, 1997, BellSouth Corporation (BellSouth) filed an application for authorization under Section 271 of the Telecommunications Act of 1934, as amended, to provide interLATA services in the State of Louisiana. In many respects, the application is similar to the application filed in South Carolina. The FCC recently determined that the South Carolina application failed to show that BellSouth had fully implemented the 14 point checklist in Section 271(c)(2)(B). Based upon similar filings, the FCC was compelled to deny this application based upon the same two checklist items BellSouth failed to meet in South Carolina. Specifically, failure to provide to competing carriers non-discriminatory access to operations support systems (OSS) functions and failure to offer contract service arrangements for resale at a wholesale discount.

II. OVERVIEW

In the South Carolina order the Commission determined that BellSouth failed to provide to competing carriers non-discriminatory access to operations support systems (OSS) functions and failed to offer contract service arrangements for resale at a wholesale discount. Since BellSouth's OSS are region wide throughout a nine state region and this application was filed only 37 days after the South Carolina application, the FCC found that marginal improvements did not address the major deficiencies. As with South Carolina, BellSouth did not offer its contract service arrangements for resale at a wholesale discount.

Also, the FCC did not decide whether the Personal Communications Services (PCS) are competing providers of telephone exchange service in Louisiana. They concluded that PCS providers are not excluded from being considered facilities-based competitors. However, PCS providers are still in transition to becoming a competitive equivalent to wireline services.

III. 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 well as the applicable state commission to verify one or more state approved interconnection agreement with a facilities-based competitor.

B. State Verification of Compliance with Section 271(c)(1)

The FCC must consult with the applicable state commission to verify compliance with the requirements of subsection (c). Subsection (c)(1) defines the requirements for track A or track B, and subsection(c)(2)contains the competitive checklist. The 1996 Act does not prescribe any standard for the FCC consideration of the state's verification of compliance. While the FCC will consider the state's determination, it is the FCC's role to determine if the requirements of section 271 have been met.

On November 24, 1997, the Louisiana Commission submitted its comments to the FCC stating BellSouth should be granted interLATA authority, because it had satisfied the requirements of section 271. While each checklist item was addressed, Louisiana did not include an analysis of the state of competition within the state has encouraged by the FCC.

Louisiana also established cost based (long run, incremental cost studies) rates for interconnection and unbundle elements and established wholesale discount rates for services offered for resale.

C. The Department of Justice's Evaluation

Section 271 requires the FCC to consult with the Attorney General (AG) before either approving or denying a 271 application. The AG is entitled to use any standard it concludes is appropriate for its determination. While the FCC will consider the AG's evaluation, however the evaluation does not have a preclusive effect on the FCC's decision.

The Department of Justice (DOJ) recommended that BellSouth's application be denied because the Louisiana market is not fully and irreversibly open to competition and BellSouth is not offering access and interconnection that satisfies the requirements of the competitive checklist. In particular, adequate and nondiscriminatory access to OSS is not provided.

IV. CHECKLIST COMPLIANCE

A. Operations Support Systems

1. Background

ILECS are required to share their networks with new entrants to promote competition in the local exchange market. For all carriers to fairly compete, the ILEC must give its competitors nondiscriminatory access to its OSS. Access to these systems, databases and personnel allow a carrier to receive, process and install customers' orders accurately and promptly. This access is needed so new entrants may provide service at a level which matches the quality of the incumbent.

2. Discussion

BellSouth's OSS was found inadequate in the South Carolina Order. Since the same OSS is deployed throughout its nine state region, the FCC used this determination as a starting point and found only marginal improvement since the prior decision. The FCC found that BellSouth's OSS failed to offer nondiscriminatory access to OSS functions for pre-ordering, ordering and provisioning of resale services. Competing carriers do not have access to the basic functionalities at parity

a. Order and Provisioning functions

Evidence in the record shows that a significant number of orders submitted by competing carriers via BellSouth's electronic interface are rejected, resulting in significant delays in processing orders. Further BellSouth fails to provide carriers information on the status of their orders in a timely manner. The flow through rate through the Electronic Data Exchange is higher for BellSouth representatives than competitors, resulting in more competitor orders being done manually. This disparity in flow through rates impacts parity. Additionally, BellSouth does not electronically notify competing carriers that an order has been rejected resulting in further delays. Further the manual notification does not always state the reason for the rejection.

The FCC concluded that BellSouth fails to provide competitors with information about the status of their orders in substantially the same time and manner as it provides such information to itself. These notices allow carriers to monitor the status of resale orders. If competing carriers are not informed of changes to orders or a due date is in jeopardy, customers will blame the competing carrier, even if they are without fault.

The FCC concluded that rejection and error notices were not

delivered in a timely fashion. BellSouth's manual provision of order error and rejection notices to competing carriers via facsimile is not equivalent access that BellSouth provides its retail operations.
Firm Order Confirmation Notices confirms that an order has been accepted and advises the due date for installation. Prompt notice to competitors so they may advise their customers, who in turn may need special arrangements for installation. The inability of competing carriers to inform customers of due dates in a timely manner, leads to the perception of inferior service. The FCC concluded that BellSouth failed to provide evidence to demonstrate that its delivery of confirmation orders to competing carriers were equivalent to notices for its own retail operation, thereby, not meeting the checklist standard .

Order Jeopardy Notices advise the competing carrier that BellSouth will not be able to complete installation on or before the scheduled due date. Evidence showed that BellSouth provides notice of those order jeopardies caused by the competitor or its customers, but not for delays caused by BellSouth. Therefore the FCC concluded that BellSouth was not providing nondiscriminatory access to OSS functions.

The most meaningful average installation interval is the average time it takes from when BellSouth first receives an order from a competing carrier until it provisions the service for the order. For evaluation purposes, The FCC wants data to compare the time from ordering to installation between competitors and BellSouth. This is the only way to evaluate parity. Since this data was not provided, BellSouth could not show it met this standard.

b. Pre-Ordering Functions
Pre-ordering includes activities that a carrier undertakes with a customer to gather and confirm information needed to place an accurate order for that customer. The FCC concluded that BellSouth's current pre-ordering system does not provide competing carriers with equivalent access to OSS for pre-ordering. BellSouth currently provides access to pre-ordering functions through its Local Exchange Navigation System (LENS). Competing carriers cannot readily connect LENS electronically to their OSS systems and to the EDI ordering interface. Also BellSouth did not provide equivalent access to due dates for service installations. The FCC concluded that BellSouth has not met its obligation to provide complete, detailed and updated specifications that competing carriers need to connect electronically their OSS systems to BellSouth's interface

B. Resale of Contract Service Arrangements

1. Background

The competitive checklist contained in Section 271 requires that service be available for resale in accordance with the requirements of sections 251 and 252. As in the South Carolina decision, BellSouth does not make contract service arrangements available at a wholesale discount in Louisiana through either its interconnection agreements or its Statement of Generally Available Terms and Conditions (SGAT). The Louisiana Commission did not address this issue when it approved BellSouth's SGAT.

2. Discussion

The FCC concluded as in the South Carolina decision that BellSouth has created through its interconnection agreements and SGAT in Louisiana, a general exemption from the requirement that ILECS offer their promotional or discounted offering, including contract service arrangements at a wholesale discount. Such exemption is not permitted. Therefore, the FCC concludes that BellSouth does not comply with the competitive checklist. BellSouth's refusal to provide these wholesale discounts may impede resale as a method for entry into the BOC's monopoly market.

B. State Jurisdiction

The FCC concludes that BellSouth's refusal to offer contract service arrangements at a wholesale discount is not a local pricing matter within the exclusive jurisdiction of the state commission.

V. COMPLIANCE WITH SECTION 271(c)(1)(A)

For the Commission to approve a BOC's application, that BOC must demonstrate it satisfies the requirements of Section 271(c)(1)(A).

In this instance, BellSouth argues that its agreements with three Personal Communications Services (PCS) providers shows competing providers of telephone exchange service. The FCC concluded that Section 271 does not preclude it from considering a PCS provider as a facilities based competitor. The FCC stated based upon BellSouth's failure to meet the checklist it would not make a determination herein. The FCC did note that PCS service is in transition to becoming a competitive equivalent to wireless service.

VI. CONCLUSION

The application was denied.