

FCC 97-418 - MEMORANDUM OPINION AND ORDER
RELEASED: December 24, 1997

BellSouth South Carolina Section 271 Application

I. INTRODUCTION

Bell South filed its Section 271 application on September 30, 1997. The FCC determined that since SBC had not satisfied section 271(c)(1)(A) and could not proceed pursuant to section 271(c)(1)(B), SBC did not satisfy the requirements of subsection 271(c)(1). Therefore, the Commission denied Bell South's application pursuant to section 271(d)(3).

II. BACKGROUND

A. Statutory Framework

This section discusses the statutory requirements in the Telecommunications Act of 1996 regarding conditions each Bell Operating Company (BOC) must satisfy in order to be able to provide interLATA services originating in any in-region state.

B. Overview

The Commission concluded that BellSouth has failed to demonstrate that it complies with the competitive checklist contained in section 271 of the Act. The Commission further stated that BellSouth has made progress in opening its local market to competition and commended BellSouth for the efforts that it has made thus far.

III. STATE AND DEPARTMENT OF JUSTICE CONSULTATION

A. State Review of BOC Compliance with Section 271

The South Carolina Commission recommended approval of BellSouth's application.

B. Department of Justice Evaluation

The Department of Justice found that BellSouth's application did not meet the statutory requirements for authorization to provide in-region long distance services.

IV. STANDARDS FOR EVALUATING SECTION 271 APPLICATIONS

A. Burden of Proof for Section 271 Application and Compliance with Requirement that Application be Complete When Filed

The Commission concluded that, when a BOC presents actual

evidence and arguments in support of its application for in-region, interLATA entry, such evidence must be clearly described and arguments must be clearly stated in its legal brief with appropriate references to supporting affidavits. The Commission stressed that an applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application.

B. Submission of New Factual Evidence and New Arguments in Reply Comments

The Commission required the BOC's application to be complete on the day it is filed. The Commission also expect other parties in the proceeding to submit arguments and evidence supporting or opposing the BOC's application in their comments, rather than withholding such information until the reply comments are filed.

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

A. Background

Section 271(c) (1) (B) allows a BOC to seek entry under Track B if no such provider has requested the access and interconnection described in Section 271(c) (1) (A).

B. Evidence in the Record

Bell South contends that it is entitled to proceed under Track B, unless a potential facilities-based competitor has made a timely request for interconnection and access from BellSouth in South Carolina. BellSouth concludes that, because no potential competitors are taking reasonable steps to satisfy the requirements of section 271(c) (1) (A), it is eligible to proceed under Track B.

The South Carolina Commission contends that non of BellSouth's potential competitors are taking reasonable steps toward implementing any business plan for facilities based local service. The South Carolina Commission further maintains that it is unaware of any actual facilities-based service to residential and business customers in South Carolina.

The South Carolina Consumer Advocates maintain that BellSouth should not be allowed to proceed under Track B because several carriers have taken steps to provide local service.

AT&T contends that there is no need for the Commission to consider whether BellSouth may proceed under section

271(c)(1)(B). AT&T further asserts that if the Commission does reach the issue it should find that AT&T has made qualifying request that forecloses Track B.

Ameritech and US West agree with BellSouth that its application should be allowed to proceed under track B on the basis that no competing provider is taking reasonable steps to provide facilities-based residential and business exchange service in South Carolina.

ALTS, MCI, and World Com dispute BellSouth's assertion that the Commission may not consider any reasonable steps taken after June 30, 1997.

The Department of Justice contends that there is no evidence in BellSouth's application or elsewhere in the record that BellSouth is providing access and inter connection to an operational competing provider of the type of telephone exchange service described in section 271(c)(1)(A).

C. Discussion

The Commission concluded that BellSouth failed to meet the competitive checklist. First, the Commission found that BellSouth failed to show that it currently provides to competing carriers nondiscriminatory access to its operations support systems (OSS). OSS refers to a variety of systems that enable a local telephone company to provide services to its customers, such as pre-ordering and ordering, installation, repair and maintenance, and billing. Competitors that resell a BOC's local telephone services or lease elements of the BOC's telephone network to provide local service are vitally dependent on access to a BOC's OSS to provide a level of local service to their customers comparable to that which the BOC provides.

VI. CHECKLIST COMPLIANCE

The Commission concluded that BellSouth did not demonstrate that it provides competitors access to its OSS that is equivalent to that which BellSouth provides to itself in connection with its own retail telephone services. As a result, competitors are much more likely to experience errors and delays when performing pre-ordering functions, such as the confirmation of customer information or the assignment of telephone numbers, than BellSouth experiences in performing its own pre-ordering and ordering functions. Similarly, the process BellSouth uses to handle competitors' orders is significantly more prone to error and delay than the process

that BellSouth uses to handle its own retail orders. In addition, the Commission found that BellSouth does not provide to competitors information on the status of their orders as quickly as it does for its own retail orders. Further, BellSouth did not include information in its application that compares the average time it takes to provide service to its own retail customers with the average time it takes to provide resale service to its competitors' customers.

Second, the Commission concluded that BellSouth failed to show that it is providing access to portions of its network, or "unbundled network elements," in a manner that allows competing carriers to combine these elements to provide service. Specifically, the Commission found that BellSouth's statement of generally available terms fails to include definite terms and conditions addressing the manner in which competitors may combine network elements. The statement identifies only one method by which competitors may have access to network elements for purposes of combining those elements. The Commission concluded that BellSouth did not demonstrate that this method would be performed in a timely manner or that the resulting provision of combined elements would be of an acceptable level of quality.

Third, the Commission concluded that BellSouth's failure to offer certain individually tailored customer contracts, or Contract Service Arrangements (CSAs), at a wholesale discount to competing carriers is in violation of the Communications Act and the Commission's implementing regulations. The Commission expressed concern that since a significant percentage of BellSouth's high-volume customers have already been moved to CSAs, competing carriers may be prevented from effectively competing for that segment of the local exchange market.

VII. JOINT MARKETING

A. Background

Section 271(d)(3)(B) prohibits the Commission from approving a BOC's application for in-region, interLATA authorization unless it finds that "the requested authorization will be carried out in accordance with the requirements of section 272." Section 272(g) allows BOC's and their affiliates to joint market their services, with certain restrictions. In adopting rules implementing this section with respect to inbound telemarketing in the Non-Accounting Safeguards proceeding, the Commission sought to balance the BOCs'

continuing equal access obligations pursuant to section 251(g) with right under section 272(g) to market and sell the service of their section 272 affiliates.

B. Discussion

The Commission concluded that BellSouth's telemarketing script as proffered in the record is in fact consistent with the requirements of section 251(g) and 272(g), as discussed in the Non-Accounting Safeguards Order.

VIII. CONCLUSION

The Commission stated that, in light of its conclusion that BellSouth has not demonstrated that it satisfies the competitive checklist or is eligible under Track B, it has denied BellSouth's application. Nevertheless, in an effort to provide further guidance to BellSouth and other BOCs, the Commission examined other aspects of BellSouth's application and cited areas where BellSouth did meet statutory requirements.

IX. ORDERING CLAUSES

The Commission ordered BellSouth's application filed on September 30, 1997, be denied. The Commission also ordered the motion filed by AT&T and LCI filed on October 1, 1997, be denied. The Commission further ordered the motion to strike filed by BellSouth on December 4, 1997, be granted and denied in part. Finally, the Commission ordered the motion to strike filed by BellSouth on December 19, 1997, be denied.