

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Second Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc., for) CC Docket No. 98-121
Provision of In-Region, InterLATA)
Services in Louisiana)
)

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Joel I. Klein
Assistant Attorney General
Antitrust Division

A. Douglas Melamed
Principal Deputy Assistant Attorney General
Antitrust Division

Communications with respect to this document should be addressed to:

W. Robert Majure
Assistant Chief
Economic Regulatory Section

Donald J. Russell
Chief

David F. Smutny
Luin Fitch
Carl Willner
Brent E. Marshall
Anu Seam

Attorneys
Telecommunications Task Force

August 19, 1998

TABLE OF CONTENTS

Table of Contents	ii
Index of Full Citations	iii
Summary of Evaluation	xi
Introduction	1
I. The State of Competition in Louisiana	4
II. BellSouth’s Requirement That New Entrants May Combine UNEs Only Through Collocation Imposes Unnecessary Costs, Delay and Technical Obstacles	9
A. BellSouth’s Policy of Requiring Collocation for Combining UNEs Inevitably Imposes Unnecessary Costs and Technical Obstacles on Competitors	11
B. BellSouth Has Not Demonstrated That It Would Be Capable of Providing UNEs in a Manner Permitting Them to Be Combined In a Timely and Reliable Fashion Using Its Collocation Arrangements	16
III. BellSouth Has Not Demonstrated That Its Current or Future Prices for Unbundled Network Elements Will Permit Entry or Effective Competition by Efficient Firms	18
IV. BellSouth Has Failed To Demonstrate That Its Wholesale Support Processes Are Adequate To Ensure An Open Market	26
A. Inadequacies in BellSouth’s Evidence from Actual Commercial Usage	28
B. Inadequacies in BellSouth’s Evidence from Testing	36
C. Lack of Benchmarks or Other Guarantees of Future Performance	38
V. BellSouth’s “Public Interest” Arguments Do Not Justify Approval of This Application	40
VI. Conclusion	42

Index of Full Citations

Federal Orders and Decisions

SHORT CITE	FULL CITE
Louisiana Order	Memorandum Opinion and Order, <u>In re: Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana</u> , 13 FCC Rcd 6245 (1998).
Michigan Order	Memorandum Opinion and Order, <u>In re: Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan</u> , 12 FCC Rcd 20543 (1997).
South Carolina Order	Memorandum Opinion and Order, <u>In re: Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region , InterLATA Services in South Carolina</u> , 13 FCC Rcd 539 (1997).

State Orders

Florida PSC Final 271 Order	Florida Public Service Commission, Final Order On BellSouth Telecommunications, Inc.'s Petition Filed Pursuant to Section 271(C) of the Telecommunications Act of 1996 and Proposed Agency Action Order On Statement of Generally Available Terms and Conditions, Order No. PSC-97-1459-FOF-TL, <u>In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996</u> , Docket No. 960786-TL (Nov. 19, 1997), attached to MCI Comments as Ex. U.
Florida PSC Final Order on Arbitration	Florida Public Service Commission, Final Order on Arbitration, Order No. PSC-96-1579-FOF-TP, <u>In re: Petitions by AT&T, et al. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc., concerning interconnection and resale under the Telecommunications Act of 1996</u> , Docket Nos. 960833-TP, 960846-TP, 960916-TP (Dec. 31, 1996).

<p>Florida PSC Interconnection Order</p>	<p>Florida Public Service Commission, Final Order Resolving Interconnection Agreement Disputes, Addressing Retail Service Composition, and Setting Non-Recurring Charges, Order No. PSC-98-0810-FOF-TP, <u>In re: Motions of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., to compel BellSouth Telecommunications, Inc., to Comply with Order No. PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc., pursuant to their agreement</u>, Docket No. 971140-TP (June 12, 1998), attached to AT&T Comments as App. Vol. V, Attach. 29.</p>
<p>Georgia PSC OSS Order</p>	<p>Georgia Public Service Commission, Order Adopting OSS Report, <u>In re: Investigation into Development of Electronic Interfaces for BellSouth's Operations Support Systems</u>, Docket No. 8354-U (Apr. 21, 1998), attached to AT&T Comments as App. Vol. II, Attach. 2.</p>
<p>Georgia PSC Permanent Rate Order</p>	<p>Georgia Public Service Commission, Order Establishing Cost-Based Rates, <u>In re: Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services</u>, Docket No. 7061-U (Oct. 21, 1997), attached to this Evaluation as Ex. 5.</p>
<p>Louisiana ALJ Pricing Recommendation</p>	<p>Louisiana Public Service Commission, Final Recommendation, <u>In re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC cost studies submitted pursuant to sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as adopted by General Order dated March 15, 1996 in order to determine the cost of interconnection services and unbundled network components to establish reasonable, non-discriminatory, cost based tariffed rates</u>, Docket No. U-22022. Consolidated with <u>In re: Review and consideration of BellSouth Telecommunications, Inc.'s tariff filing of April 1, 1996, filed pursuant to section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market, which tariff introduces interconnection and unbundled services and establishes the rates, terms, and conditions for such service offerings</u>, Docket No. U-22093 (Oct. 17, 1997), attached to BellSouth Brief as App. C-3, Vol. 36, Tab 292.</p>

<p>Louisiana PSC Amendments to General Order</p>	<p>Louisiana Public Service Commission, Amendments as Adopted 3/19/97 to Sections 901, 1001, and 1101 of the Regulations for Competition in the Local Telecommunications Market General Order Dated March 15, 1996 (as amended 10/16/96), <u>In re: Amendments to General Order dated March 15, 1996, as Amended October 16, 1996, In re: Regulations for Competition in the Local Telecommunications Market</u>, (Mar. 19, 1997), attached to BellSouth Brief as App. C-2, Vol. 23, Tab 194, App. A.</p>
<p>Louisiana PSC SGAT Revision Order</p>	<p>Louisiana Public Service Commission, Order No. U-22252-B, <u>In re: Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271(c)(2)(B) in order to verify compliance with Section 271 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region</u>, Docket No. U-22252 (June 18, 1998), attached to BellSouth Brief as App. C-1, Vol. 15, Tab 150.</p>
<p>Louisiana PSC Pricing Reconsideration Order</p>	<p>Louisiana Public Service Commission, Order No. U-22022/22093-B, <u>In re: Review and Consideration of BellSouth Telecommunications, Inc.'s (the Company or BellSouth) TSLRIC and LRIC cost studies submitted pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as adopted by General Order dated March 15, 1996 in order to determine the cost of interconnection services and unbundled network components to establish reasonable, non-discriminatory, cost based tariffed rates</u>, Docket No. U-22022. Consolidated on 10/9/96 with <u>In re: Review and Consideration of BellSouth Telecommunications' tariff filing of April 1, 1996, filed pursuant to Sections 901 and 1101 in the Regulations for Competition in the Local Telecommunications Market, which introduces interconnection and unbundled services</u>, Docket No. U-22093 (Nov. 19, 1997), attached to BellSouth Brief as App. C-3, Vol. 36, Tab 299.</p>

<p>Louisiana PSC Final Pricing Order</p>	<p>Louisiana Public Service Commission, Order No. U-22022/22093-A, <u>In re: Review and consideration of BellSouth’s TSLRIC and LRIC cost studies submitted per Sections 901.C and 1001.E of the LPSC Local Competition Regulations in order to determine the cost of interconnection services and unbundled network elements to establish reasonable, non-discriminatory, cost-based tariffed rates</u>, Docket No. U-22022. Consolidated with <u>In re: Review and Consideration of BellSouth’s tariff filing per Section 901 and 1001 of the LPSC Local Competition Regulations, which tariff introduces interconnection and unbundled services</u>, Docket No. U-22093 (Oct. 22, 1997), attached to BellSouth Brief as App. C-3, Vol. 36, Tab 293.</p>
<p>Massachusetts DPU Order</p>	<p>Massachusetts Department of Public Utilities, Phase 4 Order, <u>In re: Consolidated Petitions of New England Telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between NYNEX and the aforementioned companies</u>, Docket Nos. D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 (Dec. 4, 1996).</p>
<p>Michigan PSC Order</p>	<p>Michigan Public Service Commission, Opinion and Order, <u>In the matter of the application and complaint of MCImetro Access Transmission Services, Inc., against Ameritech Michigan requesting non-discriminatory, efficient and reasonable use of unbundled loops using GR303 capability</u>, Case No. U-11583 (June 3, 1998), attached to AT&T Comments as App. Vol. VI, Attach. 31.</p>
<p>Montana PSC Order</p>	<p>Montana Public Service Commission, Order on Supplemental Disputed Issues, Order No. 5961d, <u>In the matter of the Petition of AT&T Communications of the Mountain States, Inc. Pursuant to 47 U.S.C. Section 252(b) for Arbitration of Rates, Terms, and Conditions of Interconnection with US WEST Communications, Inc.</u>, Docket No. D96.11.200 (Apr. 30, 1998), attached to AT&T Comments as App. Vol. V, Attach. 30.</p>

<p>New York PSC Order</p>	<p>New York Public Service Commission, Opinion and Order Setting Rates for First Group of Network Elements, Opinion No. 97-2, <u>In re: Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a LDDS WorldCom and the Empire Association of Long Distance Telephone Companies, Inc. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone Company and Sections of New York Telephone Company's Tariff No. 900</u>, Case No. 95-C-0657; <u>In re: Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market</u>, Case No. 94-C-0095; <u>In re: Proceeding on Motion of the Commission Regarding Comparably Efficient Interconnection Arrangements for Residential and Business Links</u>, Case No. 91-C-1174 (Apr. 1, 1997).</p>
----------------------------------	--

Prior Section 271 Evaluations

<p>DOJ Louisiana I Evaluation</p>	<p>Evaluation of the United States Department of Justice, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u>, CC Docket No. 97-231 (Dec. 10, 1997), attached to this Evaluation as Ex. 3.</p>
<p>DOJ Michigan Evaluation</p>	<p>Evaluation of the United States Department of Justice, <u>In re: Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Michigan</u>, CC Docket No. 97-137 (June 25, 1997).</p>
<p>DOJ Oklahoma Evaluation</p>	<p>Evaluation of the United States Department of Justice, <u>In re: Application of SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma</u>, CC Docket No. 97-121 (May 16, 1997).</p>

DOJ South Carolina Evaluation	Evaluation of the United States Department of Justice, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina</u> , CC Docket No. 97-208 (Nov. 4, 1997).
--------------------------------------	---

Filings and Comments in the Current Louisiana Application

BellSouth Brief	Brief in Support of Second Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (July 9, 1998).
ALTS Comments	Comments of the Association for Local Telecommunications Services in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
AT&T Comments	Comments of AT&T Corp. in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
CompTel Comments	Comments of the Competitive Telecommunications Association in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).

Cox Comments	Comments of Cox Communications, Inc., in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
e.spire Comments	Comments of e.spire Communications, Inc. (public version), in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
Hyperion Comments	Comments of Hyperion Telecommunications, Inc., in Opposition to BellSouth's Second Section 271 Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket 98-121 (Aug. 4, 1998).
Intermedia Comments	Comments of Intermedia Communications, Inc., in Opposition to BellSouth's Application for In-Region, InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
KMC Comments	Comments of KMC Telecom, Inc., In Opposition to BellSouth's Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
LPSC Comments	Comments of the Louisiana Public Service Commission in Support of BellSouth's Application for In-Region, InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).

MCI Comments	Comments of MCI Communications Corp., in Opposition to BellSouth's Second Section 271 Application for Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
OmniCall Comments	Comments of OmniCall, Inc., In Opposition to BellSouth's Second Application for In-Region, InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
Sprint Comments	Petition to Deny of Sprint Communications Company, L.P., <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
State Communications Comments	Comments of State Communications, Inc., in Opposition to BellSouth's Second Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
Time Warner Comments	Petition to Deny of Time Warner Telecom, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).
WorldCom Comments	Comments of WorldCom, Inc., in Opposition to BellSouth's Second Application for InterLATA Authority in Louisiana, <u>In re: Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121 (Aug. 4, 1998).

Summary of Evaluation

Based upon the record before us, BellSouth's second application to provide in-region interLATA service in Louisiana should be denied because BellSouth has not yet satisfied the requirements of section 271 of the Telecommunications Act of 1996.

Applications under section 271 should be granted only when the local markets in a state have been fully and irreversibly opened to competition. This standard seeks to ensure that the barriers to competition that Congress sought to eliminate in the 1996 Act have in fact been fully eliminated and that there are objective criteria to ensure that competing carriers will continue to have nondiscriminatory access to the facilities and services they will need from the incumbent BOC.

At the time of BellSouth's first section 271 application in Louisiana, there was no significant competition in Louisiana, and there were critical barriers that impeded the growth of competition. In the nine months since the first application was filed, there have been encouraging developments in competition by resellers and facilities-based entrants, but the market penetration of those competitors is still quite modest, and not all barriers have been removed for these types of competition. Most significantly, however, there is still virtually no competition in Louisiana through the use of unbundled network elements, and every reason to believe there would be such competition if most of the impediments, which we discussed in our previous evaluation, were not still in place.

As before, BellSouth has failed to demonstrate that it offers access to unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide

telecommunications service, as required by the 1996 Act. Similarly, in a few significant areas, such as geographic deaveraging and collocation pricing, BellSouth has again failed to demonstrate that its prices permit entry and effective competition by efficient competitors.

Despite a number of encouraging improvements since its earlier applications in South Carolina and Louisiana, BellSouth has not yet demonstrated that it has developed and deployed wholesale support processes that are adequate to ensure an open market. BellSouth's evidence based on actual commercial usage is unconvincing because of the relatively small volume of transactions processed by those systems, the absence of data measuring some important dimensions of performance, and indications of inadequate performance in some of BellSouth's performance data. Likewise, BellSouth's testing evidence does not overcome these problems because in critical respects it either fails to address certain key issues or does so only in a conclusory fashion. Even if BellSouth could overcome these problems, the lack of performance commitments or enforceable benchmarks suggests that the current limited development of local competition in Louisiana has not yet been shown to be irreversible.

Finally, in light of our determination that BellSouth's local markets have not been fully and irreversibly opened to competition, we conclude once again that the potential for competitive benefits in markets for interLATA services does not justify approving this application. BellSouth's estimates of the magnitude of those benefits rest on unconvincing analytical and empirical assumptions, but more importantly, its analysis fails to give adequate consideration to the more substantial benefits from increased competition in local markets that will be gained by requiring that local markets be opened before allowing interLATA entry.