

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

In the Matter of)	
)	File Nos. EB-02-IH-0683
)	EB-02-IH-0805
)	
)	Acct. No. 200332080018
)	
BellSouth Corporation)	FRN No. FRN No. 0004942-2447
)	

ORDER

Adopted: July 15, 2003

Released: July 17, 2003

By the Commission:

1. The Commission has been conducting investigations into possible violations by the BellSouth Corporation (“BellSouth”) of sections 271 and 272 of the Communications Act of 1934, as amended, in connection with (1) the marketing and provisioning of in-region interLATA services in states where BellSouth had not received authorization to provide such services pursuant to section 271 of the Act¹ and (2) allegations that BellSouth improperly rejected the local service requests of competitive local exchange carriers (“CLECs”).²

2. The Commission and BellSouth have negotiated the terms of a Consent Decree that would terminate the Commission’s investigations. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigations.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether BellSouth possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

¹ See Letter from Maureen F. Del Duca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Jonathan Banks, General Attorney, BellSouth, dated August 12, 2002 (“LOI”).

² See Letter from Maureen F. Del Duca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Jonathan Banks, General Attorney, BellSouth, dated November 6, 2002 (“LOI”).

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j) that the Consent Decree, incorporated by reference in and attached to this order, is hereby ADOPTED.

6. IT IS FURTHER ORDERED that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

7. IT IS FURTHER ORDERED that the above captioned investigations ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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CONSENT DECREE

1. The Federal Communications Commission (the “Commission” or the “FCC”) and BellSouth Corporation (“BellSouth”) hereby enter into this Consent Decree for the purpose of terminating Enforcement Bureau (“Bureau”) investigations into (1) whether BellSouth provided, marketed or sold in-region, interLATA services prior to its receipt of authorization pursuant to section 271 of the Communications Act of 1934 (the “Act”), as amended, and (2) whether BellSouth violated the non-discrimination requirements of sections 271 or 272 of the Act by improperly rejecting competitive local exchange carrier (“CLEC”) local service requests. As part of the first investigation, the Bureau has examined BellSouth’s compliance with sections 271(a) and (b) and section 272(g)(2) of the Act, 47 U.S.C. §§ 271(a) and (b), 272(g)(2), which prohibit a Bell Operating Company (“BOC”) from marketing or selling in-region interLATA services provided by an affiliate in states where it has not received authorization to provide such services pursuant to section 271 of the Act.³ As part of the second investigation, the Bureau has examined BellSouth’s compliance with section 271(c) and sections 272(b), (c), and (e) of the Act, 47 U.S.C. §§ 271(c), 272(b), 272(c), 272(e)(1), which impose certain non-discrimination and separate affiliate requirements on a BOC.⁴

2. For purposes of this Consent Decree, the following definitions shall apply.

³ See Letter from Maureen F. Del Duca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Jonathan Banks, General Attorney, BellSouth, dated August 12, 2002.

⁴ See Letter from Maureen F. Del Duca, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Jonathan Banks, General Attorney, BellSouth, dated November 6, 2002.

- (a) “FCC” or the “Commission” means the Federal Communications Commission and all of its bureaus and offices.
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “BellSouth” means the BellSouth Corporation, BellSouth Telecommunications, Inc. (“BST”) incumbent local exchange operating telephone companies, any affiliate, d/b/a, predecessor-in-interest, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or business, including BellSouth Long Distance, Inc. (“BSLD”), and their successors and assigns.
- (d) “Parties” means BellSouth and the Bureau.
- (e) “In-region state” is defined at 47 U.S.C. § 271(i)(1), and for BellSouth includes Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.
- (f) “Order” or “Adopting Order” means an order of the FCC adopting the terms of this Consent Decree without change, addition, or modification.
- (g) “Final Order” means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
- (h) “Investigation” means the investigation commenced by the Bureau on August 12, 2002 into allegations that BellSouth provided, marketed or sold in-region, interLATA services prior to its receipt of authorization pursuant to section 271 of the Act during the period from June 1, 2001 to December 19, 2002. The term specifically includes the Letters of Inquiry (and BellSouth’s responses) dated August 12, 2002, October 10, 2002, October 30, 2002, November 14, 2002 and December 19, 2002, and further includes, but is not limited to, all of the events discussed in the BellSouth voluntary disclosure letters to the Commission dated August 7, 2002, October 29, 2002 and December 18, 2002. “Investigation” also includes the investigation commenced by the Bureau on November 6, 2002, into allegations that BellSouth violated the nondiscrimination requirements of sections 202, 271 and 272 of the Act in relation to its policies on the provision of BellSouth long distance to CLEC end-users.
- (i) “Effective Date” means the date on which the Commission adopts the Adopting Order.

I. BACKGROUND

3. BellSouth was prohibited from providing interLATA services originating in a particular in-region state until it received authorization to provide such services in such state pursuant to section 271 of the Act. 47 U.S.C. § 271(a). To obtain authorization to provide in-region interLATA services under section 271, BellSouth was required to show, among other things, that it fully implemented a “competitive checklist” designed to give competitors nondiscriminatory access and interconnection to its network. 47 U.S.C. § 271(d)(3)(A).

4. Section 272(g)(2) of the Act prohibits a BOC from marketing or selling in-region interLATA service provided by an affiliate before it has satisfied the requirements of section 271. In particular, section 272(g)(2) states 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 States under section 271(d).”⁵

5. On May 15, 2002, BellSouth received authorization pursuant to section 271 to provide long distance services to customers in two of its in-region states, Georgia and Louisiana. On September 18, 2002, BellSouth received authorization to provide long distance services to customers in five additional in-region states, Alabama, Kentucky, Mississippi, North Carolina and South Carolina. On December 19, 2002, BellSouth received authorization to provide long distance service to customers in its remaining two in-region states, Florida and Tennessee. Before receiving approval in each of these states, to ensure compliance with sections 271 and 272, BellSouth states that it had established specified procedures to govern the introduction of its long distance services. In particular, BellSouth states that it had controls in place for each aspect of the long distance process – marketing, sales ordering and provisioning – and states that these applied to BellSouth as well as to the third-party vendors and suppliers.

6. On August 7, 2002, October 29, 2002 and December 18, 2002, BellSouth voluntarily disclosed to the FCC certain incidents that potentially constituted marketing, selling, and/or providing long distance services in pre-relief states. BellSouth states that it made these disclosures in good faith and as soon as BellSouth learned of the incidents and took immediate steps to correct the problems as described herein. On August 12, 2002, the Bureau began its Investigation. During the course of the investigation, BellSouth complied with the Bureau’s inquiry in a cooperative and good faith manner. The Bureau’s investigation included review of the following incidents:

⁵ The legislative history for section 272(g)(2) includes the statement that “the ability to bundle telecommunications, information and cable services into a single package to create ‘one-stop shopping’ will be a significant competitive marketing tool. As a result, and to provide for parity among competing industry sectors, the Committee has included restrictions on joint marketing...” S.Rep. No. 23, 104th Cong., 1st Sess. 22 (1995).

(a) Television Advertisements in May and June 2002. In a television commercial broadcast from May 24 to June 6, 2002, on stations out of Atlanta, Georgia, and Baton Rouge and New Orleans, Louisiana and from May 28 to June 6, 2002, on stations out of Augusta, Columbus, and Savannah, Georgia and Monore/El Dorado, Louisiana, BellSouth advertised long distance as a bundled service with local calling. The thirty second advertisement contained the following statement in both audio and video: "Introducing BellSouth Long Distance. Same Company, Longer Distance." The advertisement could have been seen by viewers not only in Georgia and Louisiana but also in Alabama, Mississippi, North Carolina and South Carolina. Although BellSouth had section 271 approval for Georgia and Louisiana, it did not receive approval for the other four states until September 18, 2002. BellSouth states that the commercial could have reached approximately 268,000 potential customers in unapproved states. The commercial did not contain any disclosure that long distance service was available to customers only in Georgia and Louisiana.

(b) Vendor Telemarketing in December 2002. From December 16 to 18, 2002, Communications Solutions and Technology ("CST"), a vendor working at the direction of BellSouth, made telemarketing calls to 205 small business customers in Florida and Tennessee offering them BellSouth long distance. BellSouth did not receive section 271 approval in Florida and Tennessee until December 19, 2002. Fifty-two customers selected BellSouth long distance. BellSouth states that it discovered the problem before any of the orders were entered into its order processing system. Upon discovery, BellSouth states that it reprimanded CST and contacted all but three (49) of the 52 customers and informed them that BellSouth was not yet able to provide long distance in their state and that their long distance service would not be switched. BellSouth states that on October 9, 2002, it provided CST with training materials, including instructions not to market long distance to customers in Florida and Tennessee prior to BellSouth's receipt of section 271 approval. While that direction was not repeated in the Florida and Tennessee marketing materials sent by BellSouth to CST on December 11, 2002, BellSouth states that no further direction other than that contained in the October 9 training materials was necessary and that the vendor was aware of the prohibition against pre-relief marketing in Florida and Tennessee. No other vendor began activity prior to relief in Florida and Tennessee.

(c) Vendor Telemarketing in October 2002. From October 23 to 25, 2002, CST employees made eight telemarketing calls to small business customers in Florida and Tennessee offering BellSouth long distance. BellSouth did not receive section 271 approval in those states until December 19, 2002. Two customers in Florida and one in Tennessee selected BellSouth long distance. BellSouth states that two of the orders were identified by CST staff as improper prior to being input into BellSouth's order processing system. One order was input into BellSouth's order processing system but was then identified by CST staff as improper and cancelled. The customers were not switched to BellSouth long distance.

(d) Provisioning in October 2002. In October 2002, two customers in Florida, and 20 in Tennessee (covering 22 lines) ordered and received BellSouth long distance for approximately a week prior to BellSouth's receipt of section 271 authorization on December 19, 2002. BellSouth states that the situation was caused by a BellSouth software adjustment that was intended to allow the provisioning of long distance to end users located in section 271 authorized states that were served by central offices across a state border where BellSouth did not have section 271 approval. The adjustment, however, also allowed provisioning of service in unauthorized states when the end user was served by a central office in an approved state and the sales representative did not identify the restriction on service. BellSouth states that approximately half the customers made no long distance calls and a total of 86 such calls were connected. BellSouth states that no bills were issued, all migrations were the result of inbound customer requests, and BellSouth sales representatives and vendor staff that entered the orders acted contrary to their training. Upon discovery, BellSouth states messages were sent to all service representatives reminding them of section 271 restrictions. Affected customers were contacted, informed that BellSouth long distance was not available in their area, and allowed to select other intraLATA carriers. On October 9, 2002, BellSouth states it corrected the edits in its ordering system to block orders from unapproved states.

(e) Provisioning in September 2002. On September 16, 2002, one residential customer in Alabama ordered and received BellSouth long distance prior to BellSouth's receipt of section 271 approval in that state on September 18, 2002. BellSouth states that the incident was caused by the failure of a date specifications code in its electronic ordering system. The code was intended to prevent customers in the five states with then pending section 271 applications from ordering long distance service before a date certain. The code failed to prevent this Alabama customer from receiving service from a central office in Georgia, an approved state, prior to that date certain. BellSouth states that the incident was discovered at the same time as the provisioning issue described in paragraph 6(d) above and after BellSouth had received section 271 approval in Alabama.

(f) Provisioning in May 2002. On May 9, 2002, a small business customer in Georgia with two locations and three lines ordered and received BellSouth long distance for approximately a week prior to BellSouth's receipt of Section 271 approval in that state on May 15, 2002. BellSouth states that the employee acted contrary to his training and was reprimanded. BellSouth states that the customer was contacted, informed that BellSouth long distance was not yet available in his area, and selected to have no long distance service at that time. BellSouth states the customer made no long distance calls and was not billed.

7. On November 6, 2002, the Bureau commenced an investigation into allegations that BSLD refused to provide service to CLEC end-users. BellSouth responded to the Bureau on December 6, 2002. BellSouth states that it has operational procedures in place pursuant to which CLEC end-users can obtain BellSouth long distance.

II. AGREEMENT

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between BellSouth and the Commission of the Investigation. In consideration for the termination of this Investigation in accordance with the terms of this Consent Decree, BellSouth agrees to the terms, conditions, and procedures contained herein.

9. BellSouth and the Bureau agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by BellSouth with the requirements of the Act or the Commission's rules or orders. The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, BellSouth does not admit any noncompliance, violation or liability associated with or arising from its actions or omissions as described herein.

10. BellSouth states that the following corrective measures were taken in response to the incidents described in paragraph 6 herein:

BellSouth retrained personnel where necessary;

BellSouth implemented system fixes to ensure no inappropriate orders would be processed;

BellSouth issued appropriate employee and vendor reprimands;

Daily desk top priority system messages were initiated in order to remind service representatives that long distance was not available in Florida and Tennessee;

BellSouth contacted all other third-party vendors to ensure that they were in compliance with BellSouth's instructions regarding Florida and Tennessee. BellSouth confirmed that these vendors were in compliance. BellSouth also instructed the vendor in question to suspend all customer calls to BellSouth customers for the duration of the internal investigation;

All orders created by the third party vendor for sales of long distance were stopped from being entered into BellSouth's order provisioning system, ROS. BellSouth also tested system edits (SOER) to ensure their proper function with respect to ordering in any pre-relief states, and continued to

monitor those systems to ensure proper function.

11. For purposes of settling the matters set forth herein, BellSouth agrees to take the actions described below:

(a) Separate affiliate requirements

(i) BellSouth agrees that it will voluntarily comply with the separate affiliate requirements set forth in 47 U.S.C. 272, including section 272(d), until such time as each of the nine states in BellSouth's region is relieved from the requirements;⁶

(ii) BellSouth agrees that it will be subject to enforcement proceedings for noncompliance with section 272 that occurs after the effective date of this Adopting Order in any of the nine states in BellSouth's region until such time as each of the nine states in BellSouth's region is relieved from the requirements;

(iii) BellSouth agrees that it will revise the section 272 training for employees of BellSouth Corporation, which includes employees of BST and BSLD, as well as BellSouth's small business third party telemarketing vendors, with new materials more focused on the operational working relationship between BST and BSLD. BellSouth will require a Mastery Test to be taken by each BellSouth employee and each employee of the affected third party (as described above). BellSouth will endeavor to start this mandatory training in June 2003, but will finish the training in no case later than December 2003;

(iv) BellSouth agrees that it will replace its current compliance program in the Small Business organization with a centralized Small Business Compliance Group (or a successor group) to monitor and evaluate compliance obligations for both BellSouth small business employees and small business third party telemarketing vendors. The Compliance Group will maintain a certification program and a tracking mechanism to ensure that all small business training programs are completed and completed in a timely manner;

(v) BellSouth agrees that its section 272(d) audits will include steps evaluating BellSouth's compliance with the measures contained in paragraph 11(a)(i) to 11(a)(iv) herein.

(b) BSLD operational agreements with CLECs

(i) For a one year period beginning within two weeks of the effective date of the Adopting Order, BellSouth agrees that it will post a notice on the BellSouth

⁶ Nothing in section 11(a) shall be construed to prevent BellSouth from asserting any position on section 272 it deems appropriate in another Commission proceeding.

Corporation website (<http://bellsouthcorp.com/policy/>) reminding CLECs of their ability to have their end user customers purchase BellSouth long distance if the CLEC avails itself of the available operational procedures;

(ii) For a one year period beginning within two weeks of the effective date of the Adopting Order, BellSouth agrees that it will post the operational procedures pursuant to which CLECs may obtain BellSouth long distance for their end users on the BellSouth Corporation website (<http://bellsouthcorp.com/policy/>);

(iii) On a quarterly basis for a one year period beginning within two weeks of the effective date of the Adopting Order, BellSouth will post a Carrier Notification Letter on its interconnection website reminding CLECs of their ability to have their end user customers purchase long distance if the CLEC avails itself of the available operating procedures;

(iv) Beginning within 30 days of the effective date of the Adopting Order, BellSouth will amend the error message sent to CLECs by BellSouth when BellSouth clarifies an otherwise valid local service request because the requesting CLEC has not entered into an operational agreement with BSLD to include citation to the first Carrier Notification Letter described in paragraph 11(b)(iii) herein;

(v) Beginning within six months of the effective date of the Adopting Order, BellSouth agrees that it will ensure that when a CLEC end user customer selects BSLD services, BellSouth will not reject or delay fulfillment of the otherwise valid local service request because the requesting CLEC has not entered into an operational agreement with BSLD unless BellSouth can establish to the Commission that it has complied fully with paragraph 11(b) herein.

12. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigation.

13. BellSouth will make a voluntary contribution to the United States Treasury in the amount of \$1.4 million within 10 calendar days after the Commission Order adopting this Consent Decree becomes final. BellSouth must make this payment by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order should refer to "Acct. No. 200332080018" and "FRN No. 0004942447." If BellSouth makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P. O. Box 73482, Chicago, Illinois, 60673-7482. If BellSouth makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

14. The Commission agrees that, in the absence of material new evidence relating to

incidents that BellSouth has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in this Investigation, or the existence of this Consent Decree, to institute, on its own motion, any new proceedings, formal or informal, or to make any actions on its own motion against the Company concerning the matters that were the subject of the Investigation. The Commission also agrees that, in the absence of material new evidence relating to incidents that BellSouth has not disclosed to the Bureau through the Effective Date of this Consent Decree, it will not use the facts developed in the Investigation to institute on its own motion any proceeding, formal or informal, or take any action against BellSouth with respect to its basic qualifications, including its character qualifications, to be a Commission licensee. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any formal complaint that may be filed pursuant to sections 208 or 271 of the Communications Act, as amended, and to take any action in response to such formal complaint.

15. BellSouth waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, or modification.

16. BellSouth's decision to enter into this Consent Decree is expressly contingent upon the Commission's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

17. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. If either party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Adopting Order, neither BellSouth nor the Commission shall contest the validity of the Consent Decree or Adopting Order, and BellSouth will waive any statutory right to a trial *de novo*.

19. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

20. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which BellSouth does not consent) that provision will be superseded by such Commission rule or order.

21. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____
Marlene H. Dortch
Secretary

BELLSOUTH CORPORATION

By: _____