

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	DA 95-1676
	)	
<b>BellSouth Telecommunications, Inc.</b>	)	
	)	
<b>Petition to Establish New Rate</b>	)	
<b>Elements for Direct Access Directory</b>	)	
<b>Assistance Service</b>	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 27, 1995**

**Released: July 27, 1995**

By the Chief, Common Carrier Bureau:

1. On February 28, 1995, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for waiver of Part 69 of the Commission's rules, 47 C.F.R. Part 69, to establish new rate elements under the Information rate category to recover the costs for "Direct Access to Directory Assistance Service" (DADAS) that it plans to offer interexchange carriers (IXCs). BellSouth proposes to establish rate elements for three separate DADAS charges: (1) a database service charge; (2) a per-query charge; and (3) a service establishment charge. This new directory assistance service will permit IXC customers direct access to BellSouth's database of subscriber listings. BellSouth Petition at 1.

2. While queries to the DADAS database will be answered in the same manner as basic directory assistance queries are answered, the DADAS database may also be connected with a customer-provided "audio subsystem," which will release automated messages and telephone numbers to callers. *Id.* at 2. In addition, the database for DADAS will be equipped with software that allows subscribers to use their own switching and transport facilities to complete their end users' calls. *Id.* BellSouth states that grant of a waiver is necessary because the rate elements currently authorized for the Information rate category will not permit it to recover all of the costs of providing DADAS from subscribers to that service. *Id.* BellSouth further asserts that this service provides an alternative to traditional directory assistance access service and is designed to meet the needs identified by potential customers. *Id.* at 3. Accordingly, BellSouth argues that the availability of this new service will serve the public interest. *Id.*

3. On March 10, 1995, BellSouth's petition for waiver of Part 69 of the

Commission's rules was placed on Public Notice.<sup>1</sup> No comments were received in response to the Public Notice.

4. Commission rules may be waived for good cause shown.<sup>2</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>3</sup> In addition, the United States Court of Appeals for the District of Columbia Circuit has stated that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>4</sup> Waiver is thus appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than strict adherence to the general rule.<sup>5</sup>

5. In determining whether the requested waiver better serves the public interest than adherence to the general rule, we consider some of the goals of the access charge proceeding that led to the establishment of the access charge rate elements.<sup>6</sup> Two of the goals in that proceeding were to establish a competitive interstate market structure for telecommunications and to adopt a set of access rules that would cover all access facilities and services.<sup>7</sup> In order to further the goals of that proceeding, the Commission prescribed in Part 69 a set of rate elements for the access services that local exchange carriers (LECs) -- such as the Bell Operating Companies (BOCs) -- would be likely to provide at the time of divestiture. The Commission

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<sup>1</sup> Public Notice, BellSouth Telecommunications, Inc. Petition for Waiver of Part 69 of the Commission's Rules, DA 95-467, released March 10, 1995.

<sup>2</sup> See 47 C.F.R. § 1.3.

<sup>3</sup> *Northeast Cellular Tel. Co. v. F.C.C.*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>5</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</sup> See, e.g., MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, Phase I, 93 FCC 2d 241, 308-09 (para. 229) (1983) (*Access Charge Order*), *modified on recon.*, 97 FCC 2d 682 (1983), *modified on further recon.*, 97 FCC 2d 834 (1984), *aff'd in principal part and remanded in part*, *National Association of Regulatory Utility Commissioners v. F.C.C.*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985), *modified on further recon.*, 99 FCC 2d (1984), 101 FCC 2d 1222 (1985), *aff'd on further recon.*, 102 FCC 2d 849 (1985).

<sup>7</sup> See MTS and WATS Market Structure, Notice of Inquiry and Proposed Rulemaking, CC Docket No. 78-72, 67 FCC 2d 757 (1978); *Access Charge Order*, 93 FCC 2d at 245-47 (paras. 9-15).

established in Section 69.109 of the rules<sup>8</sup> a separate Information category to facilitate recovery of information- related costs from users of directory assistance.<sup>9</sup> The Information category does not, however, contain the specific rate elements that would be necessary to recover the costs of providing BellSouth's new directory assistance service.

6. The Bureau finds that BellSouth's proposed service will offer IXCs and their customers a greater range of service choices which, in turn, will foster greater competition in the telecommunications market. As noted above, however, existing access rate elements are not designed to recover all the costs of this proposed service. Hence, grant of a waiver of Part 69 will enable BellSouth to establish new rate elements for this service that are tailored precisely to that service. Creation of new rate elements will also advance the goals of the Commission's access charge regime by enabling BellSouth to recover the cost of this service from those customers who use it. In light of these two important benefits -- fostering competition and advancing a more economically efficient regulatory scheme -- we conclude that grant of a waiver of Part 69 will serve the public interest more effectively than requiring BellSouth to use the existing Part 69 rate elements.

7. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, the petition for waiver filed by BellSouth Telecommunications, Inc. IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Kathleen M.H. Wallman  
Chief, Common Carrier Bureau

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<sup>8</sup> 47 C.F.R. § 69.109.

<sup>9</sup> See *Access Charge Order*, 93 FCC 2d at 308 (1983).