

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

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

**MOTION OF AT&T CORP. TO STRIKE  
PORTIONS OF BELL SOUTH'S REPLY EVIDENCE**

AT&T Corp. ("AT&T") respectfully submits this motion to strike portions of the reply evidence submitted by BellSouth Corp. et al. ("BellSouth") on August 28, 1998.<sup>1</sup> In its reply brief and affidavits, BellSouth has once again submitted post-application evidence in violation of the Commission's rules for section 271 applications.<sup>2</sup> If it had the opportunity to do so, AT&T would demonstrate that this "evidence" is misleading, inaccurate and immaterial, and,

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<sup>1</sup> Exhibit 1 to this motion lists the improper material submitted by BellSouth.

<sup>2</sup> This Commission has previously and repeatedly held, both in establishing and enforcing procedural requirements for section 271 applications, that "a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making findings thereon." Order, In the Matter of Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, InterLATA Services in Michigan (CC Docket No. 97-1), ¶ 22 (February 7, 1997) ("Feb. 7 Order"), quoting Procedures For Bell Operating Company Applications Under New Section 271 Of The Communications Act, Public Notice at 2, FCC 96-469 (rel. Dec. 6, 1996) ("Public Notice") (emphasis supplied by Commission in Feb. 7 Order); see also Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997) ("Ameritech Michigan Order") ¶¶ 49-59; 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, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997) ("South Carolina Order") ¶¶ 39-45.

in all events, would not cure BellSouth's failure to demonstrate compliance with the competitive checklist. Yet, as the Commission recognized in both the Ameritech Michigan Order and the South Carolina Order, under the expedited procedures governing section 271 applications, commenters do not have the practical ability to respond to evidence presented for the first time in the applicant's reply comments. Allowing the applicant to introduce new information at the reply comment phase thus is unfair to "other parties," because it denies them a fair opportunity to respond to the information, and encourages applicants to "game the system." Ameritech Michigan Order ¶ 52 (citation omitted); South Carolina Order ¶ 45.

To avoid this problem here and -- equally important -- to deter future noncompliance with the Commission's rules, AT&T respectfully requests that the Commission strike BellSouth's improper material from the record. In the alternative, the Commission should disregard such material.

Respectfully submitted,

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Dated: September 17, 1998

**EXHIBIT 1**

**LIST OF BELLSOUTH'S EVIDENCE SUBMITTED IN VIOLATION  
OF THE COMMISSION'S RULES THAT THE COMMISSION SHOULD STRIKE**

Reply Brief:

- p. 23 (evidence of availability of CSRs after July 9th)
- p. 32 (evidence of business rules that were provided after July 9th)
- p. 34 (separation of EDI flow-through data; performance data for June and July that is not directly responsive)
- pp. 40, 67 (evidence of ADUF post-dating July 9th)
- pp. 56-58 (newly raised takings claim)
- p. 65 (performance data on cutover post-dating July 9th)
- pp. 82-83 (evidence and argument regarding resale restrictions that BellSouth should have anticipated and filed with original application)
- p. 87 (data on performance measures that post-date July 9th)

Milner Reply Aff.:

- ¶ 19 (performance data on loop cutovers post-dating July 9th)

Stacy Reply OSS Aff.:

- ¶ 26 (evidence of availability of CSRs after July 9th)
- ¶ 42 (evidence of business rules that were provided after July 9th)
- ¶¶ 62-64 (separation of EDI flow-through data that BellSouth should have anticipated and filed with original application; reconfiguration of flow-through data on reply; performance data for June and July that is not directly responsive)

Stacy Reply PM Aff.:

- ¶ 21 (explanation of CLEC errors that BellSouth should have anticipated and filed with original application; reconfiguration of flow-through data on reply; performance data for June and July that is not directly responsive)

Exhs. WNSPM Reply 4a-4e (reconfiguration of flow-through data on reply; performance data for June and July that is not directly responsive)

Exhs. WNSPM Reply 5a, 5b (explanation of CLEC errors that BellSouth should have anticipated and filed with original application)

Varner Reply Aff.:

- ¶¶ 50, 51 (evidence and argument regarding resale restrictions that BellSouth should have anticipated and filed with original application)