
NOTICE

This document was converted from WordPerfect or Word to ASCII Text format.

Content from the original version of the document such as headers, footers, footnotes, endnotes, graphics, and page numbers will not show up in this text version.

All text attributes such as bold, italic, underlining, etc. from the original document will not show up in this text version.

Features of the original document layout such as columns, tables, line and letter spacing, pagination, and margins will not be preserved in the text version.

If you need the complete document, download the Word or WordPerfect version or Adobe Acrobat version, if available.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
) File No. EB-00-IH-0134
)
) Acct. No. X32080035
BellSouth Corporation)
)

CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the ``Commission'') and BellSouth Corporation (``BellSouth'' or the ``Company'') hereby enter into this Consent Decree for the purpose of terminating an informal investigation by Commission staff into whether BellSouth violated section 251(c)(1) of the Communications Act of 1934, as amended (``the Act''), and section 51.301 of the Commission's rules. The investigation focused on whether BellSouth had negotiated in good faith with Covad Communications Company (``Covad'') over the terms and conditions of an amendment to an interconnection agreement relating to BellSouth's provision of unbundled copper loops.

II. BACKGROUND

2. Section 251 of the Act imposes on BellSouth, as an incumbent LEC, several obligations designed to promote competition in local telephone markets. In section 251(c)(1), the

incumbent local exchange carrier and the requesting carrier have a duty to negotiate in good faith `` in accordance with section 252 [of the Act] the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of [section 251] and [section 251(c)].''¹

3. In implementing section 251(c)(1), the Commission adopted section 51.301(c) of its rules, which sets forth a non-exclusive list of actions or practices that, if proven, would violate the duty to negotiate in good faith.² Under section 51.301(c)(8), ``[r]efusing to provide information necessary to reach agreement'' constitutes such a violation.³ In the Local Competition Order, the Commission stated that ``an incumbent LEC may not deny a requesting carrier's reasonable request for cost data during the negotiation process, because . . . such information is necessary for the requesting carrier to determine whether the rates offered by the incumbent are reasonable.''⁴

4. Under section 51.301(c)(1), a telecommunications carrier violates the duty to negotiate in good faith by ``[d]emanding that another party sign a nondisclosure agreement that precludes such party from providing information requested by the Commission, or a state commission, or in support of a request for arbitration under section 252(b)(2)(B) of the Act. . . .''⁵ In the Local Competition Order, the Commission expressed particular concern about ``overly broad, restrictive, or coercive nondisclosure requirements [that] may well have anticompetitive effects.''⁶

5. In late 1999, the Enforcement Bureau (``Bureau'') received information from Covad suggesting that BellSouth may have failed to negotiate in good faith in violation of section 251(c)(1) of the Act and section 51.301 of the Commission's rules. The Bureau commenced an informal investigation into these matters on February 25, 2000. The Bureau's investigation disclosed that in April 1999, Covad made a request to BellSouth for cost data to support BellSouth's proposed rates for unbundled copper loops. BellSouth did not offer access to the data until September 1999, when it offered to permit Covad access subject to Covad's execution of a non-disclosure agreement (``NDA'') which the Bureau believes limited Covad's ability to disclose the cost data, as well as information concerning the course of the negotiations, to the Commission or a state commission. Covad objected to the terms of the NDA. In October 1999, BellSouth advised Covad that the proposed language did not limit Covad's ability to disclose any cost information to the Commission or a state commission. In October 1999, BellSouth offered access to the cost data without a NDA, but proposed to limit Covad's review to a period of two hours at BellSouth's offices. Covad also objected to this arrangement. The following month, BellSouth offered access to the data for 30 days without a NDA.

6. The Bureau's investigation concerned whether BellSouth's actions during the Relevant Period, as outlined above, violated the statutory good faith requirement, as implemented by the Commission. BellSouth denies that its actions constituted a failure to negotiate in good faith, and disputes that its proposed NDA would have precluded Covad from providing information to the Commission or a state commission.

III. DEFINITIONS

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

(a) The ``Commission'' or ``FCC'' means the Federal Communications Commission and all divisions of the Commission, including the Enforcement Bureau.

1.

(b) ``BellSouth'' or ``the Company'' means BellSouth Corporation and any subsidiaries, including its incumbent LEC operating telephone companies in the BellSouth states, as defined in subsection (i) below, and any successors or assigns of BellSouth Corporation or its incumbent LEC operating telephone companies.

(c) ``Parties'' means BellSouth and the Commission.

(d) ``Order'' or ``Adopting Order'' means an order of the Commission adopting this Consent Decree.

(e) ``Final Order'' means an order that is no longer subject to administrative or judicial reconsideration, review, appeal or stay.

(f) ``Relevant Period'' means the period prior to November 16, 2000.

(g) ``Inquiry'' means the enforcement action initiated by the Bureau's February 25, 2000 letter of inquiry regarding allegations about BellSouth's failure to negotiate in good faith.

(h) ``Effective Date'' means the date on which the Commission releases the Adopting Order.

(i) The term ``BellSouth States'' means Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

IV. AGREEMENT

8. The Commission and BellSouth agree that this Consent Decree does not constitute either an adjudication of the merits or a factual or legal finding or determination regarding any compliance or noncompliance by BellSouth with the requirements of the Communications Act, including section 251 thereof, and the Commission's implementing rules, arising out of any alleged actions or failures while negotiating with Covad Communications Company the terms and conditions of an amendment to an interconnection agreement relating to BellSouth's provision of unbundled copper loops during the Relevant Period in nine states. 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 such actions or failures, including any actions or failures described in the Commission's February 25, 2000 and June 7, 2000 letters of inquiry, in any follow-up correspondence, in any meetings between BellSouth and the Commission concerning BellSouth's negotiations, or in any formal or informal complaints, ex parte communications or other information received by the Commission.

9. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Inquiry at such time as the Commission releases an Order adopting this Consent Decree.

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

11. BellSouth admits the jurisdiction of the Commission to adopt this Consent Decree.

12. BellSouth shall be obligated under this Consent Decree to adopt a standard NDA for requests under section 251 for access to confidential information that (1) authorizes the requesting carrier to provide confidential information requested by the FCC or a state commission, or in support of a request for arbitration or an allegation of failure to negotiate in good faith; and (2) contains no language requiring that requesting carriers treat the negotiations themselves as confidential.

13. In addition, BellSouth shall be obligated to revise, within 30 calendar days of the execution of this consent decree, its existing negotiation manual to include (1) a copy of the statutory and regulatory obligations regarding BellSouth's duty to negotiate in good faith; (2) a copy of the standard NDA described above; and (3) procedures for expedited access to confidential information, including a timeline for proposing the standard NDA and for prompt release of confidential information to the CLEC, and escalation procedures for issues regarding disclosure of confidential information.

14. BellSouth shall also be obligated to conduct, within 30 calendar days of the execution of this consent decree, a training session for all of its negotiators that focuses on the statutory and regulatory obligations regarding BellSouth's duty to negotiate in good faith; and to revise its current training schedule to include a session every six months that focuses on BellSouth's statutory and regulatory duty to negotiate in good faith. BellSouth shall be further obligated to provide new employees who have negotiation duties a copy of the revised negotiation manual prior to their assumption of such duties, and to ensure that supervisors will review the negotiation manual with such employees, highlighting BellSouth's statutory and regulatory duty to negotiate in good faith.

15. BellSouth agrees to make a voluntary contribution to the United States Treasury in the amount of seven hundred fifty thousand dollars (\$750,000) within 10 calendar days after the time that the Order adopting this Consent Decree becomes a Final Order. Payment should be made by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order to ['`Acct No. X32080035``']. Such remittances must be mailed to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 60673-7482.

16. The Commission agrees that, based on the facts developed in the Inquiry and in the absence of material new evidence related to this matter, it will not use the facts

developed in this Inquiry through the date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against BellSouth concerning the matters that were the subject of the Inquiry. The Commission also agrees that, based on the facts developed in the Inquiry, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Inquiry through the date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against BellSouth with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to adjudicate any complaint that may be filed pursuant to section 208 or 251 of the Communications Act, as amended, 47 U.S.C. §§ 208, 251, and to take any action in response to such complaint. If any such complaint is made by a third party, the Commission's adjudication of such complaint shall be based solely on the record developed in that proceeding.

17. 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 Order adopts the Consent Decree without change, addition, or modification.

18. BellSouth and the Commission agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of an Order that is consistent with the Consent Decree and which adopts the Consent Decree without change, addition, or modification.

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

20. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither BellSouth nor the Commission shall contest the validity of the Consent Decree or Order, and BellSouth and the Commission will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

21. BellSouth waives any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501, et seq.

22. Any violation of the Consent Decree or the Order adopting this Consent Decree 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.

23. The Parties also agree that any provision of the Consent Decree that would require the Company to act in violation of a rule or order adopted by the Commission will be superseded by such Commission rule or order.

24. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____

Magalie Roman Salas, Secretary

BELLSOUTH CORPORATION

By: _____

Margaret Greene, Executive Vice President - Regulatory and
External Affairs

1 47 U.S.C. § 251(c)(1).

2 See 47 C.F.R. § 51.301(c).

3 47 C.F.R. § 51.301(c)(8).

4 Implementation of the Local Competition Provisions of the
Communications Act of 1996, CC Docket No. 96-98, First Report
and Order, 11 FCC Rcd 15499, 15577-78 ¶ 155 (1996) ('Local
Competition Order') (subsequent history omitted).

5 47 C.F.R. § 51.301(c)(1).

6 Local Competition Order 11 FCC Rcd at 15575-76 ¶ 151.