

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

In the Matter of)
)
Wireline Competition Bureau)
Network Change Notification) Report No. NCD-836
Filed by BellSouth)
)

ORDER

Adopted: January 9, 2004

Released: January 9, 2004

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we deny Covad Communications Company’s (Covad) Opposition¹ to a notice of network change (No. ND20030167) filed by BellSouth Telecommunications, Inc. (BellSouth) pursuant to section 251(c)(5) of the Communications Act of 1934, as amended (the Act).² We find that BellSouth’s notice cannot be considered a “short term notice” of network change under the Federal Communications Commission’s (Commission) rules, and accordingly, the notification did not trigger a right for parties to object to the change under the Commission’s rules in effect at the time the network change notification was filed.³ We also clarify that BellSouth may not implement the network change prior to May 1, 2004, the implementation date proposed by BellSouth in its original notice.⁴

II. BACKGROUND

2. Section 251(c)(5) of the Act requires incumbent LECs to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier’s facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks.⁵ The Commission has stated that this section requires notice when an incumbent LEC makes a decision to implement a change that either: (1) affects competing service providers’ performance or ability to provide service; or (2)

¹ Opposition of Covad Communications Company, Report No. NCD-836 (filed Oct. 10, 2003) (Covad Opposition).

² 47 U.S.C. §§ 151 *et seq.*

³ 47 C.F.R. § 51.333.

⁴ Letter from Kathleen Levitz, Vice-President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC (filed Aug. 29, 2003) (BellSouth Certification Letter).

⁵ 47 U.S.C. § 251(c)(5). *See also* 47 C.F.R. §§ 51.325 *et seq.*

otherwise affects the ability of the incumbent LEC's and a competing service provider's facilities or network to connect, to exchange information, or to use the information exchange.⁶

3. On August 27, 2003, BellSouth, pursuant to section 51.329(a) of the Commission's rules, provided required notice to the public through its Internet web site of network changes for copper facilities replacement in Louisville, Kentucky (No. ND20030167).⁷ According to BellSouth's notice, this change is scheduled to take place May 1, 2004.⁸ On August 29, 2003, BellSouth filed its certification of the network change with the Commission.⁹ On September 29, 2003, the Wireline Competition Bureau issued its Public Notice of BellSouth's certification.¹⁰

4. On October 10, 2003, Covad filed an opposition to BellSouth's proposed network change in Louisville, Kentucky, stating that at least one customer of Covad will see its broadband service disconnected unless the Commission issues a stand-still order preventing BellSouth from removing the copper loops that serve Covad customers.¹¹ On October 20, 2003, BellSouth filed a response to Covad's Opposition.¹²

5. The Commission's network change notification rules in effect at the time of BellSouth's filing distinguish network changes that can be implemented within six months (*i.e.*, short term notices") from those network changes that the incumbent LEC does not seek to implement within six months (*i.e.*, "long term notices").¹³ Specifically, section 51.333 of the

⁶ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19404, paras. 16-17 (1996).

⁷ BellSouth Response, Report No. NCD-836 at 1 (filed Oct. 20, 2003) (BellSouth Response).

⁸ BellSouth Certification Letter at 2.

⁹ BellSouth Certification Letter at 1. Through the same certification, BellSouth also provided notice of network change for copper facilities replacement in Allapattah, Florida (No. ND20030168). *Id.* at 11. We note that Covad only raises specific concerns regarding the Louisville, Kentucky change. Nonetheless, the Commission's analysis and conclusions in this Order would apply equally to the Allapattah, Florida notice of network change.

¹⁰ Wireline Competition Bureau Network Change Notification Filed By BellSouth, Public Notice, Report No. NCD-836 (Sept. 29, 2003).

¹¹ Covad Opposition at 1.

¹² BellSouth Response at 1-8.

¹³ 47 C.F.R. §§ 51.329(c)(1); 51.331(a); 51.333. We evaluate BellSouth's notice of network change under the rules in effect at the time BellSouth filed its certification with the Commission. In the *Triennial Review Order*, the Commission changed its network modification rules, by establishing a new right for parties to object to both short-term and long-term notifications by incumbent LECs when a copper loop is retired and replaced with a fiber-to-the-home (FTTH) loop. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, paras. 282-83 (2003) (*Triennial Review Order*), corrected by *Errata*, 18 FCC Rcd 19020 (2003) (*Triennial Review Order Errata*), petitions for review pending, *United States Telecom Ass'n v. FCC*, D.C. Cir. No. 00-1012 (and consolidated cases). Since the *Triennial Review Order* did not become effective until October 2, 2003, the revisions to the Commission's network change notification rules adopted in the *Triennial Review Order*, are not applicable to this case. 68 Fed. Reg. 52276 (Sept. 2, 2003). We also note that the modifications adopted in the *Triennial Review Order* apply only to retirement of copper loops and copper subloops and replacement with FTTH loops. See Letter from Kathleen Levitz, Vice-President – Federal Regulatory, BellSouth, to Marlene H. Dortch, Secretary, FCC at 2 (filed December 17, 2003) (BellSouth Network Change Clarification Letter) (“[I]f the amended rules were to apply, a

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Commission's rules provides parties with the opportunity to object to an incumbent LEC's short term network change notice.¹⁴

III. DISCUSSION

6. We find that BellSouth's notice of network change for Louisville, Kentucky constituted a "long term notice" of network change under section 51.331(a)(1) of the Commission's rules. The Louisville change was scheduled to take place May 1, 2004, more than nine months after BellSouth filed its notice.¹⁵ Therefore, the Louisville change is governed by section 51.331(a)(1) of the Commission's rules and not by section 51.333 of the Commission's rules.¹⁶ We find that, because BellSouth's notice cannot be considered a "short term notice" of network change, the notification did not trigger a right for parties to object to the change under the Commission's rules in effect at the time the network change notification was filed.¹⁷ Thus, we find that Covad may not object to BellSouth's proposed network change in Louisville.

7. Although BellSouth proposes in its Response to alter the implementation date of the Louisville change,¹⁸ we clarify that the date for the Louisville change remains May 1, 2004 and BellSouth may not make its proposed network changes prior to the dates specified in the BellSouth Certification Letter. First, we find that section 51.333, the mechanism BellSouth cites for this proposed amendment, applies only to "short term notices" and is thus unavailable to BellSouth for the same reasons that it is unavailable to Covad for the purpose of its Opposition. Second, even if section 51.333 were to apply, we find no agreement among the parties to move the implementation date forward by three months.¹⁹

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to section 251(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(c)(5), and pursuant to section 51.331 of the Commission's rules, 47 C.F.R. § 51.331, Covad's Opposition IS DENIED.

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valid objection to the notice could arise only if the proposed network change involved replacement of copper facilities with fiber-to-the-home loops or subloops. This is not the case, however.")

¹⁴ 47 C.F.R. § 51.333.

¹⁵ BellSouth Response at 1.

¹⁶ 47 C.F.R. § 51.331(a)(1); 47 C.F.R. § 51.333.

¹⁷ See *supra* note 13.

¹⁸ Through its Response, BellSouth seeks to amend its public notice of the Louisville change to specify an implementation date of February 27, 2004.

¹⁹ We find that BellSouth misconstrues Covad's Opposition and proposed implementation date. In response to BellSouth's proposed May 29, 2004 implementation date, Covad requests a "stand-still order" and a "six month period" to negotiate contracts. While Covad does not specifically identify an alternative implementation date, we do not find support for BellSouth's contention that Covad proposed a February 29, 2004 implementation date in its Opposition. Rather, we find that the more reasonable interpretation of Covad's request is that Covad sought an additional six months beyond BellSouth's original May 29, 2004 implementation date.

9. IT IS FURTHER ORDERED that BellSouth shall implement network change notice ND20030167 regarding Louisville, Kentucky on May 1, 2004, in accordance with the date specified in BellSouth's certification filed with the Commission on August 29, 2003.

FEDERAL COMMUNICATIONS COMMISSION

William F. Maher, Jr.
Chief, Wireline Competition Bureau