

EPA received much support for revising criteria based on partially updated components of the criteria equations as a way of increasing the frequency of scientific improvements to the nationally recommended criteria that currently-available information would allow. For a water quality criterion revision based on a partial update to be considered acceptable to EPA, a component of the criterion (e.g., the toxicological risk assessment) should be comprehensive (e.g., a new or revised RfD or cancer dose-response assessment, as opposed to simply a new scaling factor), stand alone and be based on new national or local data. The recalculation of all fifteen water quality criteria integrates the updated national default freshwater/estuarine fish consumption rate of 17.5 grams/day. Thirteen of the criteria integrate a previously-determined relative source contribution (RSC) value from the national primary drinking water standards for the same chemicals. EPA also incorporated into the recalculations a new cancer potency factor (q1\*) for 1,3-dichloropropene and vinyl chloride, and a new reference dose (RfD) for 1,1-dichloroethylene, hexachlorocyclopentadiene and lindane. These values have already been published in the Agency's Integrated Risk Information System (IRIS). Both an RfD and q1\* are available in IRIS for 1,3-dichloropropene and vinyl chloride. EPA used the q1\* to derive the criteria in these cases rather than the RfD because it resulted in more protective criteria.

Today's revisions of the water quality criteria used the bioconcentration factor (BCF) or field-measured BAF developed using the 1980 Methodology. The BCFs used in deriving today's criteria are consistent with the BCFs used in promulgating human health criteria for priority toxic pollutants in rules such as the 1992 National Toxics Rule and the 2000 California Toxics Rule.

EPA has partially revised 83 additional human health criteria which are available on the Office of Science and Technology's website under Criteria Table (see <http://www.epa.gov/waterscience/humanhealth/>). Again, as previously described, EPA has published the compilation including the 83 recalculated criteria directly as the Agency's national recommended water quality criteria because the updates result in minor changes.

#### IV. What Is the Relationship Between the Water Quality Criteria and Your State or Tribal Water Quality Standards?

As part of the water quality standards triennial review process defined in section 303(c)(1) of the CWA, the States and authorized Tribes are responsible for maintaining and revising water quality standards. Water quality standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and general policies for application and implementation. Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years.

States and authorized Tribes must adopt water quality criteria that protect designated uses. Protective criteria are based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses. Criteria may be expressed in either narrative or numeric form. States and authorized Tribes have four options when adopting water quality criteria for which EPA has published section 304(a) criteria. They can:

- (1) Establish numerical values based on recommended section 304(a) criteria;
- (2) Adopt section 304(a) criteria modified to reflect site specific conditions;
- (3) Adopt criteria derived using other scientifically defensible methods; or
- (4) Establish narrative criteria where numeric criteria cannot be determined (40 CFR 131.11).

Consistent with 40 CFR 131.21 (see: *EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641, April 27, 2000)), water quality criteria adopted by law or regulation by States and authorized Tribes prior to May 30, 2000, are in effect for CWA purposes unless superseded by federal regulations (see, for example, the *National Toxics Rule*, 40 CFR 131.36; *Water Quality Standards for Idaho*, 40 CFR 131.33). New or revised water quality criteria adopted into law or regulation by States and authorized Tribes on or after May 30, 2000 are in effect for CWA purposes only after EPA approval.

#### V. What Is the Status of Existing Recommended Criteria While They Are Under Revision?

Water quality criteria published by EPA remain the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. For example, while undertaking recent reassessments of dioxin and other chemicals, EPA has

consistently supported the use of the current section 304(a) criteria for these chemicals and considers them to be scientifically sound until the Agency reevaluates the 304(a) criteria, subjects the criteria to appropriate peer review, and publishes revised 304(a) criteria.

#### VI. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: *Water Quality Standards Handbook* (EPA 823-B94-005a); *Advanced Notice of Proposed Rule Making (ANPRM)*, (63FR36742); *Water Quality Criteria and Standards Plan—Priorities for the Future* (EPA 822-R-98-003); *Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents* (45FR79347); *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA-822-B-00-004, October 2000); *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA 822/R-85-100); *National Strategy for the Development of Regional Nutrient Criteria* (EPA 822-R-98-002); and *EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641).

You can find these publications through EPA's National Service Center for Environmental Publications (NSCEP, previously NCEPI) or on the Office of Science and Technology's Home-page (<http://www.epa.gov/waterscience>).

Dated: December 19, 2002.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*

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#### FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02-306; FCC 02-330]

**Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization To Provide In-Region, InterLATA Services in California**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In the document, the Federal Communications Commission (Commission) grants the section 271

application of SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services, Inc., (Pacific Bell) for authority to enter the interLATA

telecommunications market in the state of California. The Commission grants Pacific Bell's application based on its conclusion that Pacific Bell has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective December 30, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Renee R. Crittendon, Senior Attorney Advisor, Wireline Competition Bureau, at (202) 418-2352 or via the Internet at [rcritten@fcc.gov](mailto:rcritten@fcc.gov). The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02-306, FCC 02-330, adopted December 19, 2002, and released December 19, 2002. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's Web site at [http://www.fcc.gov/Bureaus/Common\\_Carrier/in-region\\_applications/sbc\\_ca/welcome.html](http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/sbc_ca/welcome.html).

**Synopsis of the Order**

1. *History of the Application.* On September 20, 2002, Pacific filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the state of California.

2. *The California Public Utilities Commission Order.* The California Public Utilities Commission (California Commission) determined that Pacific Bell had successfully complied with 12 of the 14 checklist items. The California Commission also emphasized that Pacific Bell had successfully passed the independent third party test of its operations support systems (OSS) and noted the strong performance results Pacific Bell has achieved across many service categories. The California

Commission withheld approval of checklist item 11 (number portability) and checklist item 14 (resale). According to the California Commission, Pacific Bell did not demonstrate its compliance with the number portability requirements for failure to implement a mechanized Number Portability Administration Center (NPAC) check process in time to review its efficacy. With regard to the resale requirements of checklist item 14, the California Commission concluded that Pacific Bell did not comply with its resale obligation with respect to its advanced services. Finally, based on its analysis of section 709.2 of the California Public Utilities Code, the California Commission determined that, although Pacific Bell met most of the technical requirements under section 271, it could not support Pacific's entry into the long distance market as beneficial to the public interest. On December 12, 2002, the California Commission issued a draft Final Decision on the Public Utilities Code Section 709.2(c) inquiry, in which it granted Pacific Bell authority to operate and provide intrastate interexchange telecommunications services upon receipt of full authorization from the FCC pursuant to section 271.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Pacific Bell's application on October 29, 2002 in which it recommended approval of the application. The Department of Justice noted that the California Commission's decision regarding checklist items 11 and 14 did not appear to preclude approval of Pacific Bell's application. The Department also expressed concern regarding TELRIC pricing and the true-up mechanism that Pacific Bell proposed for use in California. While the Department of Justice supported approval of Pacific Bell's application, based on the current record, it noted its conclusions were subject to the Commission's review of certain concerns expressed in its evaluation.

**Primary Issues in Dispute**

4. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Pacific Bell has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

5. The Commission finds that Pacific Bell's UNE rates in California are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Pacific Bell's UNE rates in

California satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce." The California Commission concluded that Pacific Bell's UNE rates satisfy checklist item 2. While the Commission has not conducted a *de novo* review of the California Commission's pricing determinations, the Commission has followed the urging of the Department of Justice to examine commenters' complaints regarding UNE pricing.

6. The Commission reviewed commenters' criticism of issues including rates for switching, loops and non-loops, vertical features, dedicated transport, and DS1 and DS3 loops, as well as nonrecurring charges. The Commission also investigated issues regarding the interim nature of switching and loop rates, Pacific Bell's true-up commitment, and the comparison of Pacific Bell's UNE rates in California to SBC's rates in Texas as part of our benchmark analysis. After carefully reviewing these complaints, the Commission concludes that the California Commission followed basic TELRIC principles and the complaints do not support a finding that the California Commission committed clear error. Thus, the Commission concludes that Pacific Bell's UNE rates in California satisfy the requirements of checklist item 2.

7. The Commission also concludes that Pacific Bell meets its obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Pacific Bell regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), Pacific Bell provides access that enables competing carriers to perform the functions in substantially the same time and manner as Pacific Bell or, if there is not an appropriate retail analogue in Pacific Bell's systems, in a manner that

permits an efficient competitor a meaningful opportunity to compete.

8. Pursuant to this checklist item, Pacific Bell must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements, and demonstrate that it does not separate already combined elements, except at the specific request of a competing carrier. Based on the evidence in the record, and upon Pacific Bell's legal obligations under interconnection agreements, Pacific Bell demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

9. *Checklist Item 11—Local Number Portability.* Based on the record, the Commission finds, notwithstanding the California Commission's determination that Pacific Bell failed to comply with checklist item 11 for failing to implement a mechanized Number Portability Administration Center check process, that Pacific Bell meets its requirement to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. Pacific Bell demonstrates that it makes local number portability available to competitive LECs through interconnection agreements and in conformance with the Commission's rules.

10. *Checklist Item 14—Resale.* Based on the evidence in the record, the Commission concludes that Pacific Bell demonstrates that it makes telecommunications services including DSL resale, available in California for resale, in accordance with sections 251(c)(4) and section 252(d)(3) and, thus, satisfies the requirements for checklist item 14. Although we note that the California Commission concluded that Pacific Bell had erected unreasonable barriers to entry in California's DSL market by not complying with its resale obligations with respect to advanced services and by offering certain restrictive conditions, based on a full review of the record, we conclude that Pacific Bell demonstrates compliance with checklist item 14.

#### Other Checklist Items

11. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission finds that PacBell demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2), and as

specified in section 271 and applied in the Commission's prior orders.

12. Pacific Bell also demonstrates that its collocation offerings in California satisfy the requirements of sections 251 and 271 of the Act. Pacific Bell demonstrates that it offers interconnection in California to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

13. *Checklist Item 4—Unbundled Local Loops.* The Commission concludes that Pacific Bell provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Pacific Bell's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, high-capacity loops, as well as our review of Pacific Bell's processes for hot cut provisioning, and line sharing and line splitting.

14. *Checklist Item 5—Unbundled Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." The Commission concludes, based upon the evidence in the record, that Pacific Bell demonstrates that it provides unbundled local transport, in compliance with the requirements of checklist item 5.

15. *Checklist Item 13—Reciprocal Compensation.* Section 271 (c)(2)(B)(iii) of the Act requires that a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)." In turn, section 252(d)(2)(A) specifies when a state commission may consider the terms and conditions for reciprocal compensation to be just and reasonable. Based on the record, we conclude that Pacific Bell demonstrates that it provides reciprocal compensation as required by the Act.

16. *Checklist Items 3, 6, 7, 8, 9, 10 and 12.* An applicant under section 271 must demonstrate that it complies with checklist item 3 (poles, ducts, and conduits), item 6 (unbundled local switching), item 7 (911/E911 access and directory assistance/operator services), item 8 (white pages), item 9 (numbering administration), item 10 (databases and signaling), and item 12 (dialing parity). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Pacific Bell demonstrates that it is in compliance

with checklist items 3, 6, 7, 8, 9, 10, and 12 in California. The California Commission also concluded that Pacific Bell complies with the requirements of each of these checklist items.

#### Other Statutory Requirements

17. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Pacific Bell demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in the state of California. The record demonstrates that competitive LECs serve some business and residential customers, either exclusively or predominantly over their own facilities.

18. *Section 272 Compliance.* Pacific Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in California as it does in Texas, Missouri, Arkansas, Kansas, and Oklahoma where SBC has already received section 271 authority. Based on the record before us, we conclude that Pacific Bell has demonstrated that it will comply with the requirements of section 272.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

20. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We note that the California Commission determined that it could not support Pacific Bell's entry in the long distance market as beneficial to the public interest under its state public interest inquiry, under section 709.2 of the California Public Utilities Code. However, we conclude that, while the state retains authority to enforce obligations and safeguards relating to a BOC's provision of intrastate interLATA services, the relevant standard applied is a federal one, as set forth in the Act. Nevertheless, having fully considered the facts and circumstances identified

by the California Commission (to the extent they could independently establish a public interest concern cognizable by this Commission), we conclude that Pacific Bell's entry into the long distance market will benefit consumers and competition.

21. We also note that commenters urge the Commission to perform a price squeeze analysis regarding rates for DS1 and DS3 loops, DSL transport, and payphone lines. The Commission has reviewed the commenters' evidence of a price squeeze, however, and determined that, even if the Commission accepted their assertions that a price squeeze analysis is mandated by section 271's public interest requirement, no price squeeze is present here. The commenters' price squeeze claims are insufficient to demonstrate the existence of a price squeeze that dooms them to failure under the standard articulated by the D.C. Circuit in *Sprint v. FCC*. Therefore, the Commission concludes that there is no evidence in the record that warrants disapproval of this application based on allegations of a price squeeze, whether couched as discrimination under checklist item 2 or a violation of the public interest standard.

22. The Commission also finds that the performance monitoring and enforcement mechanisms developed in California, in combination with other factors, provide meaningful assurance that Pacific Bell continue to satisfy the requirements of section 271 after entering the long distance market.

23. The Commission concludes that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in California's local exchange market have been removed, and that the local exchange market is open to competition.

24. *Section 271(d)(6) Enforcement Authority.* The Commission concludes that, working with the California Commission, we will closely monitor Pacific Bell's post-approval compliance to ensure that Pacific Bell does not "cease[] to meet the conditions required for [section 271] approval." We stand ready to exercise our various statutory enforcement powers quickly and decisively if there is evidence that market opening conditions have not been sustained.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02-307; FCC 02-331]

### Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In the document, the Federal Communications Commission (Commission) grants the section 271 application of BellSouth Corporation, *et al.* (BellSouth) for authority to enter the interLATA telecommunications market in the states of Florida and Tennessee. The Commission grants BellSouth's application based on its conclusion that BellSouth has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective December 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Christine Newcomb, Attorney-Advisor, Wireline Competition Bureau, at (202) 418-1573 or via the Internet at [cnewcomb@fcc.gov](mailto:cnewcomb@fcc.gov). The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 02-307, FCC 02-331, adopted December 18, 2002, and released December 19, 2002. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's Web site at [http://www.fcc.gov/Bureaus/Wireline\\_Competition/in-region\\_applications](http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications).

## Synopsis of the Order

1. *History of the Application.* On September 20, 2002, BellSouth filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of Florida and Tennessee.

2. *The State Commissions' Evaluations.* The Florida Public Service Commission (Florida Commission), and the Tennessee Regulatory Authority (Tennessee Authority) (collectively, state commissions), following an extensive review process over a number of years, advised the Commission that BellSouth had met the checklist requirements of section 271 and has taken the statutorily required steps to open its local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve BellSouth's in-region, interLATA entry in their evaluations and comments in this proceeding.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of BellSouth's application on October 10, 2002. It recommended approval of the application subject to the Commission's resolving certain concerns expressed by the Department of Justice, specifically, BellSouth's change management process for operations support systems (OSS), and its policy on restating erroneously reported performance data.

4. *Compliance with Section 271(c)(1)(A).* The Commission concludes that BellSouth demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Florida and Tennessee. The record demonstrates that competitive LECs serve some business and residential customers using predominantly their own facilities in each of the states.

## Primary Issues in Dispute

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that BellSouth has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

6. The Commission finds that BellSouth's UNE rates in Florida and Tennessee are just, reasonable, and nondiscriminatory, and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, BellSouth's UNE rates in Florida and Tennessee satisfy checklist item 2. The