

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of ) DOCKET NO. 960786-TL  
BellSouth Telecommunications, ) ORDER NO. PSC-96-1041-FOF-TL  
Inc. entry into InterLATA ) ISSUED: August 12, 1996  
services pursuant to Section 271 )  
of the Federal )  
Telecommunications Act of 1996. )  

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ORDER GRANTING IN PART AND DENYING IN PART  
THE FLORIDA INTEREXCHANGE ASSOCIATION'S MOTION TO COMPEL

On August 5, 1996, BellSouth Telecommunications, Inc. (BellSouth) filed its objections to the Florida Interexchange Association's (FIXCA) First, Second and Third Set of Interrogatories and First Request for Production of Documents. On August 7, 1996, FIXCA made an oral Motion to Compel during the weekly status conference call in this docket. Upon hearing the arguments of the parties and advice of counsel my findings are set forth below.

Before I address the specific objections, I note the following: BellSouth raised a number of general objections to the discovery requests. General objections make it difficult to determine what is specifically objectionable. Further, throughout the discovery process, parties should bear in mind that Order No. PSC-96-0945-PCO-TL, Initial Order Establishing Procedure, states that the scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission. The list of issues attached to that Order as Appendix A is tentative. Therefore, discovery may be permitted that appears to go beyond the list of issues at this stage of the proceeding. However, limitations may be imposed if discovery requests appear to go beyond what may lead to the discovery of admissible evidence.

I. FIRST SET OF INTERROGATORIES

A. Interrogatories 6, 7, and 8

Interrogatory 6 asks BellSouth to state the total number of loops provided by BellSouth within Florida, and also broken down on the LATA-By-LATA basis. Interrogatory 7 asks BellSouth to state the total number of business loops provided by BellSouth within Florida and on a LATA-by-LATA basis. Interrogatory 8 asks BellSouth to state the total number of residential loops provided

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by BellSouth within the state of Florida and on a LATA-by-LATA basis.

BellSouth objects stating that these interrogatories seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996 nor the issues identified for hearing in this docket. BellSouth also objects to the extent the information is on file with the Florida Public Service Commission as public record.

FIXCA argues that the objection that the question is objectionable because information is public record is an insufficient objection. FIXCA also argues that BellSouth has taken an unduly narrow view of the scope of discovery in this docket. Specifically, FIXCA argues that BellSouth is required to demonstrate that it is providing interconnection and access to network elements, including such matters as loops and switches.

B. Interrogatories 9, 10, 11, 12, and 13

Interrogatory 9 asks BellSouth to state the total number of unbundled loops that are connected to switches owned by unaffiliated competitors with Florida on a LATA-by-LATA basis within Florida. Interrogatory 10 asks BellSouth to state the total number of unbundled BellSouth business loops that are connected to switches by unaffiliated competitors within Florida and on a LATA-by-LATA basis. Number 11 asks BellSouth to state the total number of unbundled BellSouth residential loops that are connected to switches owned by unaffiliated competitors within Florida, and on a LATA-by-LATA basis within Florida.

Interrogatory 12 asks BellSouth to state the total number of BellSouth switches and lineside switch ports within Florida and on a LATA-by-LATA basis within Florida. Interrogatory 13 asks BellSouth to state the total number of BellSouth switches and lineside switch ports connected to loops provided by unaffiliated competitors within Florida and on a LATA-by-LATA basis within Florida.

BellSouth objects to these interrogatories on the grounds that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met the requirements of Section 271 of the Telecommunications Act of 1996. Specifically, BellSouth argues, the quantifiable amount of competition is

irrelevant under the Act, because, for example, Section 271(c) contemplates interLATA relief without a single competitor.

FIXCA argues that one of the criteria of the Act is whether BellSouth has fully implemented the checklist. According to FIXCA, one measure of whether BellSouth has met that obligation is to identify the extent to which BellSouth has connected loops and switches to these competitors. Further, FIXCA argues that it does not think it is possible to divorce the consideration of the public interest test that the FCC is going to ultimately apply to an application by BellSouth. FIXCA believes it is germane to that criterion to elicit the type of information that would quantify and demonstrate relative market shares held by BellSouth on one hand, and competitors of the other; it is also relevant and within the scope of discovery for that reason.

C. Interrogatories 17, 18, 19, 20 and 21

Interrogatory 17 asks BellSouth to describe in detail the procedures it currently has in place and/or will put in place for ordering and provisioning requests received from its long distance affiliate. Interrogatory 18 asks BellSouth to describe in detail the business office practices it will use when transacting business with its long distance affiliate. Interrogatory 19 asks whether BellSouth's long distance affiliate plans to offer local service? If so, describe in detail the ordering and processing procedures BellSouth has in place or will put in place to process requests from its affiliate.

Interrogatory 20 asks BellSouth to describe in detail the structural separation of BellSouth's long distance affiliate. In particular, describe in detail how the separate affiliate will comply with the requirements of section 272(b), (c) and e of the Act. Interrogatory 21 asks BellSouth to provide information on its long distance affiliate's officers and directors.

BellSouth objects to these interrogatories on the grounds that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996. BellSouth states that information regarding any long distance affiliate of BellSouth is irrelevant to this Commission's inquiry as to whether BellSouth has met or will be able to meet the requirements of Section 271 of the Act.

FIXCA argues that interrogatories 17, 18 and 19 relate to the requirement that BellSouth provide nondiscriminatory access.

Regarding Interrogatories, 20 and 21, FIXCA argues that Section 272 of the Act, structural separation, is a condition precedent to BellSouth's ability to enter the interLATA market. FIXCA asserts that this is similar to its questions regarding dialing parity which is another condition precedent. FIXCA points out that BellSouth did not object to the dialing parity questions.

D. Interrogatory Number 22

This interrogatory asks BellSouth to describe in detail the procedures it has in place and/or will put in place to ensure that a competitor's order (for local or long distance service elements) will be processed on a nondiscriminatory basis.

BellSouth objects to the long distance element of the interrogatory on the grounds that it seeks information that is neither relevant or reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996. BellSouth states that information regarding any long distance affiliate is irrelevant to the Commission's inquiry.

BellSouth and FIXCA together notified staff that BellSouth will answer this question based upon the understanding that the long distance element does not refer to BellSouth's long distance affiliate. Therefore, I will consider the objection to this interrogatory withdrawn.

E. Interrogatories 24, 25, 26, 27, and 28

Interrogatory 24 asks what is the percentage change for the past two years and BellSouth's retail prices for business local service and residential local service in the state of Florida.

Interrogatory 25 asks BellSouth to identify out-of-region local exchange services being offered by BellSouth in competition with the incumbent LEC, including where the offerings are being made, and in competition with whom, and to provide copies of all interconnection agreements.

Interrogatory 26 asks BellSouth to identify the average retail rate per minute for BellSouth's intraLATA toll offerings, and the average price per minute of the access underlying those offerings.

Interrogatory 27 asks BellSouth to identify and detail arrangements with other local exchange companies in connection with out-of-region long distance offerings.

Interrogatory 28 asks BellSouth to identify and detail any customer offerings that link out-of-region long distance offerings with in-region telecommunications offerings.

BellSouth objects to these interrogatories on the grounds that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996. In particular, BellSouth argues that its price changes for local services, rates for intraLATA toll service, the price of access, and out-of-region long distance is irrelevant to the Commission's inquiry in this docket.

FIXCA argues that it is important for the FCC, Department of Justice and the state commissions to obtain information that would describe the competitive environment in which these applications are going to be considered and that these interrogatories are germane for that purpose. FIXCA also argues that interrogatory 24 is pertinent to a consideration of whether BellSouth will provide nondiscriminatory access to network elements.

F. Interrogatories 29 and 30

Interrogatory 29 asks BellSouth to describe in detail how BellSouth will provide competitors with realtime or interactive access gateway to systems BellSouth uses to perform the following functions for its customers: pre-ordering, ordering and provisioning and maintenance and repair.

Interrogatory 30 asks BellSouth to describe in detail how BellSouth will provide competitors with electronic interfaces for customer usage data transfer and local account maintenance.

BellSouth objects to these interrogatories on the grounds that the information sought is not relevant or reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996. BellSouth also argues that there is no basis for the interrogatories premise that real time or interactive access to electronic gateways are required under the Act.

FIXCA argues that the features in these interrogatories are examples of network elements. According to FIXCA, these interrogatories relate to Section 271(c)(2)(B)(ii), which requires BellSouth to provide nondiscriminatory access to network elements and Section 271(c)(2)(B)(i), the requirement that it provide

interconnection in accordance with the requirements of Section 251(c)(2) and 252(d)(1). FIXCA contends that BellSouth can not meet the requirements of 251(c)(2) unless it provides competitors with the ability to serve their customers with quality that would enable to compete on fair and equal terms.

G. BellSouth's Arguments In Response to FIXCA

In addition to its objections, BellSouth made the following arguments in response to FIXCA's oral Motion to compel at the status conference.

Rather than arguing the propriety of interrogatories individually, BellSouth structures its arguments on categories of interrogatories. BellSouth argues that FIXCA has gone well beyond the duties and responsibilities of the Commission; well beyond any issue identified on the issues list, and in many ways is simply trying to get information through this discovery process that would benefit it in its own competitive endeavors.

Specifically, BellSouth argues that a number of the interrogatories go to a quantification of the numbers of customers being served by competitive new entrants. That is companies other than BellSouth. A market share test for whether or nor BellSouth should be allowed into the interLATA business. BellSouth states that this is not an issue on the issues list, and it specifically is not an issue in the federal law.

BellSouth states that there is a second set of questions that go to the nature, the structure, the affiliate, that would be providing interLATA services. BellSouth argues that this is not an item that is within Section 271 and the Commission's obligations and responsibilities are confined to Section 271. This, BellSouth asserts, is information might be interesting for FIXCA to know to plan their own operations, to plan their own marketing response.

Regarding gateways, BellSouth states that this issue has been raise in its recent arbitration proceedings with AT&T, but that there is a threshold legal question about whether federal law actually requires that. And that has to be resolved elsewhere. It is not an issue of whether the competitive checklist has been met.

Regarding a public interest test, BellSouth states that whether or not there is a public interest issue in this docket, it should not relate to market share. According to BellSouth, if the FCC or the DOJ are attempting to create as a part of their public interest inquiry a market share test, that would be inappropriate as well.

H. Decision on First Set of Interrogatories

Upon consideration, FIXCA's Motion to Compel answers to interrogatories 6,7,8, shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. In particular, this information appears relevant to Section 271(c) (1) (A).

FIXCA's Motion to Compel answers to interrogatories 9,10,11,12, and 13 shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. In particular, this information appears relevant to Section 271(c) (1) (A).

FIXCA's Motion to Compel answers to interrogatories 17,18 and 19 shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. In particular, this information is relevant to whether BellSouth is providing nondiscriminatory access.

FIXCA's Motion to Compel answers to interrogatories 20 and 21 shall be denied. The Commission is under no obligation to make a determination under Section 272 of the Act. Therefore, BellSouth's objections to these interrogatories is sustained.

FIXCA's Motion to Compel answers to interrogatories 24 - 27 shall be denied. The information these interrogatories seeks to obtain is irrelevant.

FIXCA's Motion to Compel an answer to interrogatory 28 shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. In particular, this information is relevant to whether BellSouth is providing nondiscriminatory access.

FIXCA's Motion to Compel answers to interrogatories 29 and 30 shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. In particular, this information is relevant to whether BellSouth is providing nondiscriminatory access.

III. SECOND SET OF INTERROGATORIES

A. Interrogatories (34) (a) and (b), 37,38,39,40,41,42,43 and 44

Interrogatory 34(a) asks BellSouth, with respect to all entities that are unaffiliated competitive providers of telephone exchange service who are presently competing with BellSouth, to

state the number of unbundled loops provided by BellSouth and each of its competitors. Interrogatory 34(b) asks BellSouth to state the number of access lines resold by each such competitor.

FIXCA argues that interrogatories 34(a) and (b) elicit information that would first help determine whether BellSouth has completely implemented the checklist. Each of the items, FIXCA argues, is treated as an item in the checklist, and one measure of whether BellSouth has met the requirement that it completely implements the checklist is to determine to what extent those features and services are actually being provided.

Interrogatory 37 asks BellSouth if and when BellSouth is authorized to provide in-region interLATA service, at what point thereafter (in terms of time requirements) could BellSouth begin offering that service to its Florida local exchange customers?

Interrogatory 38 asks when does BellSouth expect to have the technical ability to offer interLATA intrastate Florida and interLATA in region service to its local exchange customers.

Interrogatory 39 states aside from the requirement to obtain FCC authorization to provide in-region interLATA service, describe in detail the actions that BellSouth must undertake before it will be able to offer interLATA service.

Interrogatory 40 asks if and when it obtains requisite authority, to what extent does BellSouth plan to use its own network to provide interLATA toll service? If this network is in place today, describe the components of the network. This interrogatory asks if the network is not in place, to describe actions BellSouth has taken to implement its interLATA network, what actions must still be undertaken to implement BellSouth's interLATA network, and when BellSouth expects to have its interLATA network in place and ready to provide service.

Interrogatory 41 asks to what extent does BellSouth plan to use its own billing system for the interLATA toll service. It also asks whether this billing system is in place today and if not when will it be in place and ready.

Interrogatory 42 asks to what extent does BellSouth plan to use its own support and ordering system to provide interLATA toll service. It also asks if this system is in place today and if not when will it be in place.

Interrogatory 43 asks if and when BellSouth is permitted to begin providing in-region interLATA toll service to its local



exchange customers, what percentage of the network will be owned by BellSouth and what percentage will be leased/resold from other carriers.

Interrogatory 44 asks BellSouth whether it plans to offer interLATA toll service to Florida local exchange customers that are not within the existing local exchange service area. If so, when?

BellSouth objects to these interrogatories on the grounds that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996.

FIXCA argues that the interrogatories that address the provision by BellSouth of interLATA service, goes to the public interest issue. FIXCA asserts that if as it expects the information gained through discovery indicates that BellSouth has an existing network that it can turn into an interLATA basis for service almost overnight, when by the same token those entities attempting to compete have a far more difficult and time-consuming road ahead of them; that would be one consideration bearing on whether the application for interLATA authority should be granted.

B. BellSouth's Arguments In Response to FIXCA

In addition to its objections, BellSouth made the following arguments in response to FIXCA's oral Motion to compel at the status conference.

BellSouth states that a number of the questions go to the number of loops being served by new competitors. BellSouth argues that this gets to a quantification, a market share test that simply present in the federal act. BellSouth further argues that the federal act clearly contemplates in the absence of any competition, in the absence of a single customer being served by a new entrant, BellSouth could seek and obtain interLATA authority. According to BellSouth, it is illogical then to assume if there is a competitor, that competitor has to be serving some particular market share. This inquiry, BellSouth argues, goes beyond the Commission's consultation responsibilities.

Regarding the questions relating to the interLATA affiliate, BellSouth argues that focusing on how quickly the interLATA business could be entered, what technical issues have to be addressed and the other related questions might be very interesting for FIXCA members to know, but it is inappropriate to use discovery

in this proceeding to give FIXCA members access to that kind of information. According to BellSouth, it is not relevant, competitively sensitive and inappropriate.

C. Decision on Second Set of Interrogatories

FIXCA's Motion to Compel answers to interrogatories 34(a) and (b) shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. In particular, the information relates to Sections 271(2)(B)(i) and (ii).

FIXCA's Motion to Compel answers to interrogatories 37 through 39 shall be denied. These questions do not appear to be reasonably calculated to lead to the discovery of admissible evidence.

FIXCA's Motion to Compel answers to interrogatories 40 through 43 shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. These questions could elicit information relating to BellSouth providing nondiscriminatory access to unbundled elements and interconnection arrangements. See Sections 271(2)(B)(i) and (ii).

FIXCA's Motion to Compel answer to interrogatory 44 shall be denied. This question does not appear to be reasonably calculated to lead to the discovery of admissible evidence.

IV. THIRD SET OF INTERROGATORIES

A. Interrogatories 46, 47, 48, 50, 51 and 52

Interrogatory 46 asks BellSouth how many offices it has in Florida? BellSouth is asked to provide the total number and show how many are located within each LATA.

Interrogatory 47 asks what are the total number of BellSouth offices in which a competitor's equipment is collocated within Florida and also on a LATA-By-LATA basis.

BellSouth objects to 46 and 47 on the grounds that the information is not relevant, and specifically BellSouth states that the quantifiable amount of competition is irrelevant under the Act, because, for example, Section 271(c) contemplates relief with a single competitor.

FIXCA argues that the number of offices BellSouth has in Florida provides one measure of market share, market dominance by

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BellSouth vis-a-vis the extent of competition measured by other questions. Thus, according to FIXCA, they go to the public interest considerations.

In addition, FIXCA argues that interrogatory 47 is indirectly related to the checklist in that interconnection in accordance with the requirements of Section 251(c)(2) and under (e)(1) is one of the standards of the checklist.

Interrogatory 48 asks BellSouth to make the average provisioning intervals between the request and implementation for each of the following: unbundled interoffice transportation unbundled switching; collocation and access to poles conduits; rights of way and other pathways.

BellSouth and FIXCA together notified staff that BellSouth will answer this question based upon the understanding that it involves alternative local exchange companies (ALECs). Therefore, I will consider the objection to this interrogatory withdrawn.

Interrogatory 50 asks BellSouth to identify and provide copies of all existing interconnection agreements, the state-approved statements of terms and conditions of access interconnection, including those with incumbent local exchange carriers.

BellSouth objects to this request on the grounds that the Commission has issued Order No. PSC-96-0959-FOF-TP, which deals with the subject of the request. BellSouth further objects to this request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271(c) of the Telecommunications Act of 1996. Finally, BellSouth asserts the Commission approved agreements are a matter of public record.

FIXCA argues that BellSouth's objection is misplaced because the Order BellSouth refers to dealt with an issue arising under Section 252 of the Act. FIXCA states the fact that the Commission might issue a PAA in which it proposes to rule that not all agreements have to be submitted to the Commission, fulfill the requirements of 252, it says nothing with respect to whether the same information is subject to discovery in conjunction with the Commission's exercise under Section 271. FIXCA believes the information is germane, and that it should be provided for that reason.

Interrogatory 51 asks BellSouth to identify any challenges pending before courts and regulatory bodies concerning BellSouth's

provision of access and interconnection, claims of antitrust violation, business torts or bad faith, and describe any findings adverse to BellSouth.

BellSouth objects to this interrogatory on the basis that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to issues in this docket. BellSouth further states that the request is overly broad, and, therefore, burdensome and oppressive. Finally, BellSouth asserts the information is a matter of public record.

FIXCA argues that this is another question that is geared to the public interest test. Specifically, FIXCA asserts that this information is relevant to the determination of whether BellSouth should be permitted to enter into the interLATA market.

Interrogatory 52 asks BellSouth to identify the number and location of out-of-region LATAs which BellSouth has entered as a local exchange competitor to the incumbent LEC. The interrogatory further asks for the number of competitive loops provided by BellSouth and the number of local switches deployed by BellSouth in each such LATA.

BellSouth objects to this interrogatory on the basis that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996.

FIXCA argues that this information is within the scope of discovery because it helps describe the competitive environment in which the application is being considered.

B. BellSouth's Arguments in response to FIXCA

In addition to its objections, BellSouth made the following arguments in response to FIXCA's oral Motion to compel at the status conference.

BellSouth once again states that there is not a market share test for some quantification of competition as a prerequisite to interLATA authority to BellSouth and one should not be read into the law.

Specifically on the collocation issue, BellSouth argues that the standard under the law and the standard under the generally

available terms and conditions would be whether or not providing collocation; not whether anybody has actually requested collocation, and, therefore, collocated. Therefore, according to BellSouth, the number of collocators and where they might be located is irrelevant to the inquiry in this docket.

BellSouth asserts that with respect to the existing agreements between BellSouth and other local exchange carriers, that issue has been dealt with by the Commission. BellSouth argues that there is no relevance to the relationship BellSouth has with companies in the contiguous areas who are not in competition with BellSouth, to the inquiry in this docket.

With respect to interrogatory 52, BellSouth argues that what it is doing outside its region has nothing to do with the competitive situation in the state of Florida.

Finally, BellSouth asserts that with respect to the public interest standard, it believes that there is an issue separate and apart from this docket, concerning what the Commission's responsibilities and duties are under the federal law and what the Commission could do independently. BellSouth does not assert that the Commission can not make a public interest determination, but it does assert that the Commission should not. According to BellSouth, the Commission's role is clearly defined in the statute.

C. Decision on Third Set of Interrogatories

FIXCA's Motion to Compel answers to interrogatories 46 and 47 shall be granted. The information which FIXCA seeks is reasonably calculated to lead to the discovery of admissible evidence. These questions appear to relate to interconnection arrangements.

FIXCA's Motion to Compel an answer to interrogatory 48 is considered withdrawn as discussed above.

FIXCA's Motion to Compel an answer to interrogatory 50 shall be granted in that BellSouth shall identify and produce all such agreements. The information sought in this request could lead to the discovery of evidence relating to nondiscriminatory access.

FIXCA's Motion to Compel an answer to interrogatory 51 shall be granted with the following limitation: BellSouth shall answer this question as it relates to challenges within the State of Florida.

FIXCA's Motion to Compel an answer to interrogatory 52 shall be denied. This question does not appear to be reasonably calculated to lead to the discovery of admissible evidence.

V. FIXCA's FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

A. FIXCA's First Request to Produce, Items 1,2,3 and 5

Item 1 asks BellSouth to produce all documents, notes, and memoranda describing or discussing and/or documenting the structural separation of BellSouth's long distance affiliate.

Item 2 asks BellSouth to produce all documents, notes, and memoranda evidencing the financial wherewithal of the BellSouth long distance affiliate to provide service.

BellSouth objects to these requests on the basis that they seek information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271 of the Telecommunications Act of 1996. According to BellSouth, documents concerning any long distance affiliate are irrelevant to this Commission's inquiry as to whether BellSouth has met or will be able to meet those requirements.

FIXCA argues the documents requested are pertinent because of the requirement that a separate subsidiary be established as a condition precedent to the entry of the interLATA market. FIXCA also argues that the documents are relevant to the public interest test to the extent that the information describes BellSouth's ability to move immediately into the interLATA market.

Item 3 asks BellSouth to produce all cost studies performed by BellSouth or performed on its behalf, together with underlying workpapers and analyses, performed in the last five years that relate to the features, functions, elements or services associated with each of the duties imposed by Section 251 which BellSouth contends it has satisfied.

BellSouth objects to this request on the grounds that the request is vague, ambiguous and has an inappropriate time limit. BellSouth asserts that since Section 251 of the Act was not law until February 8, 1996, BellSouth has no such cost studies going back five years. BellSouth further states that Section 251 of the Act speaks of "network features, functions or capabilities," not services.

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FIXCA argues that its request is neither vague nor ambiguous because it is geared to those studies related to the duties imposed by Section 251 and that the duties and obligations of Section 251 are the source of many of the items of the 271 checklist. FIXCA provides several examples. FIXCA argues that the duty to provide interconnection appears in Item 1 of the checklist and the duty to provide access to unbundled network elements for which it seeks cost studies appears in Item 2 of the checklist. FIXCA asserts that the cost studies constitute the fundamental discovery needs underlying the subject matter contained in section 271, and specifically the checklist.

On August 9, 1996, FIXCA and BellSouth notified staff that they could not resolve their differences on this request and raised further arguments. The parties are submitting further argument for consideration.

Item 5 asks BellSouth to produce all currently effective interconnection agreements between BellSouth and other telecommunications providers in Florida, including, but not limited to, other local exchange telecommunications companies which were entered into prior to 1996 and have not previously been submitted to the Commission for approval under the Telecommunications Act of 1996.

BellSouth objects to this request on the grounds that the Commission has issued Order No. PSC-96-0959-FOF-TP which deals with the subject matter of this request. BellSouth also objects to this request on the basis that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence related to the issue of whether BellSouth has met or will be able to meet the requirements of Section 271(c) of the Telecommunications Act of 1996.

FIXCA argues again that the referenced Order was issued in another docket, and that the docket involved an issue other than 271 advocacy. FIXCA believes the Commission's Order is inapplicable to this discovery request.

BellSouth argues that items 1 and 2 relate to Section 272 of the Act and that the Commission's inquiry should be confined to inquiry under 271.

BellSouth argues again that its contracts with independent telephone companies or other local exchange companies in Florida are not relevant to the 271 inquiry.

B. Decision on FIXCA's First Request to Produce, Items 1,2,3  
and 5

Upon consideration, I find that the information which FIXCA seeks in items 1 and 2 will not lead to the discovery of admissible evidence in this proceeding. Therefore, FIXCA's Motion to Compel, with respect to these requests, shall be denied.

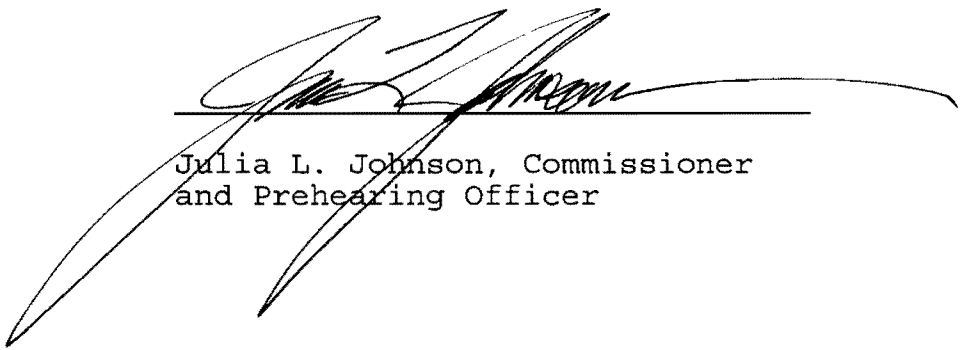
With respect to BellSouth's objection to item 3, the parties have endeavored to clarify this request and have been unable to come to resolution; therefore, I will postpone ruling on BellSouth's objection until parties have presented further argument on this request.

Finally, with respect to item 5, FIXCA's Motion to Compel shall be granted in that BellSouth shall identify and produce all such agreements. The information sought in this request could lead to the discovery of evidence relating to nondiscriminatory access.

Based on the foregoing, it is

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that the Florida Interexchange Association's Motion To Compel is granted in part and denied in part as outlined in the body of this Order.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 12th day of August, 1996.



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Julia L. Johnson, Commissioner  
and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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