

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of) DOCKET NO. 960786-TL
BellSouth Telecommunications,) ORDER NO. PSC-97-0792-PCO-TL
Inc.'s entry into interLATA) ISSUED: July 2, 1997
services pursuant to Section 271)
of the Federal)
Telecommunications Act of 1996.)

ORDER MODIFYING PROCEDURAL SCHEDULE AND ISSUES LIST

Pursuant to 47 U.S.C. § 271(d)(3), the Federal Communications Commission (FCC) has ninety (90) days to issue a written determination approving or denying a Bell Operating Company's (BOC) application for interLATA authority. Further, the FCC is directed to consult with the applicable State Commission before making a determination regarding the BOC's entry into the interLATA market. The Florida Public Service Commission (FPSC) opened this docket to begin to fulfill its consultative role.

On July 19, 1996, Order No. PSC-96-0945-PCO-TL, Initial Order Establishing Procedure, was issued which set forth the fundamental procedures to be followed in this docket. On June 12, 1997, Order No. PSC-97-0703-PCO-TL, Second Order Establishing Procedure was issued. These Orders established the dates governing the key activities in this docket and a preliminary list of issues. This Order shall serve to modify those Orders as follows:

Controlling Dates

Intervenor direct testimony shall be filed on July, 17, 1997. If Staff proffers direct testimony, it shall also be due on July 17, 1997. All other dates established by Order No. PSC-97-0703-PCO-TL, shall remain in effect.

Status Conference Call

The status conference call scheduled for Wednesday, July 9, 1997, will be held at 9:30 a.m. The Florida Competitive Carrier Association's Motion to Compel filed on June 20, 1997 will be considered at that time. The call-in number is 904/921-2591.

Tentative Issues

During the status conference call on Wednesday, June 25, 1997, the parties proposed several additions to the issues list attached to Order No. PSC-96-0945-PCO-TL as Appendix "A". My findings are set forth below.

DOCUMENT NO.
06696-97
7-2-97

Subissues

Upon consideration of the arguments of the parties, I find the following subissues are appropriate:

- 1.A. (a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?
- 1.A. (b) Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?
- 1.A. (c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?
- 1.B. (a) Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?
- 1.B. (b) Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?
- 3(a) Has BellSouth developed performance standards and measurements? If so, are they being met?
- 15(a) Has BellSouth developed performance standards and measurements? If so, are they being met?

With respect to subissues 3(a) and 15(a), the Florida Competitive Carriers Association (FCCA) argues that the word "appropriate" should be inserted before the word performance. In summary, the FCCA argues that the inclusion of the word "appropriate" does not prohibit BellSouth from contending that performance standards and measurements have no place in the evaluation of Issues 3 and 15. On the other hand, deletion of the word "appropriate" would alter the substance of the issue so as to remove its focus on the adequacy of any standards and measurements found to be relevant to provide meaningful comparisons.

BellSouth states that it does not concede that an evaluation of performance standards and measurements is necessarily required in the analysis of Issues 3 and 5. According to BellSouth, if it agreed to include the word "appropriate", it would appear BellSouth agreed that performance standards and measurements should be considered in Issues 3 and 15.

Upon consideration, I find that the word "appropriate" shall not be included in subissues 3(a) and 15(a). Including this word would give the appearance that the Commission has already determined that a certain level of performance standards and measurements is necessary to meet the requirements of Sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv). Excluding this word, on the other hand, does not prohibit the FCCA from arguing that BellSouth's performance standards and measurements are inappropriate.

Public Interest Issue

BellSouth proposes to include the following issue: Is it in the public interest for BellSouth to enter the interLATA market in Florida? I note that the intervenors proposed to include this issue early in the process, and that BellSouth objected to its inclusion at that time. I decided that since the Commission's primary statutory responsibility in this proceeding is to advise the FCC on the issues associated with Section 271(c), and given the short period of time we had to conduct the hearing, a public interest issue would not be considered. Accordingly, the list of issues set forth in Order No. PSC-96-0945-PCO-TL, issued on July 19, 1996, did not include a public interest issue.

Since Order No. PSC-96-0945-PCO-TL was issued, the time for conducting an evidentiary hearing has been extended. Nevertheless, I once again find that a public interest issue shall not be included in the list of issues to be decided in this docket. Since the Commission's primary statutory responsibility does not include a public interest determination, and given the potential magnitude of such an issue and the fact that the hearing in this docket is scheduled to begin in less than two months, I find that the intervenors would be prejudiced by the addition of this issue at this late date, particularly since I denied them the opportunity to include this issue earlier.

BellSouth asserts that my finding on the public interest issue is inconsistent with the procedural orders in this docket. Specifically, BellSouth states that both the initial and second order establishing procedure require BellSouth to file all documentation upon which BellSouth intends to rely in order to

enter the interLATA market. I have reviewed those orders, and find that they explicitly state that BellSouth shall file all of the evidence it intends to rely on demonstrating that it has met the requirements of Section 271(c)(1)(A) and/or (B) and Section 271(c)(2)(B). There is no requirement that BellSouth file evidence on the public interest analysis the FCC is to undergo pursuant to Section 271(d)(3)(C). Notwithstanding, I note that in Order No. No. PSC-97-0081-FOF-TL, the Commission acknowledged BellSouth's representation that it will provide all of the evidence it will file with the FCC to this Commission. I recognize that BellSouth may submit evidence that it believes supports both the requirements of Section 271(c), and a public interest analysis. BellSouth shall not be precluded from filing such evidence. BellSouth shall, however, designate the portions of the evidence that it considers to be exclusively directed at a public interest determination. Further, since there will be no public interest issue, BellSouth shall not file testimony addressing a public interest determination.

Additional Issue

The parties have agreed to include the following as a tentative issue:

Can BellSouth meet the requirements of Section 271(C)(1) through combining both "track A" (Section 271(C)(1)(A)) and "track B" (Section 271(C)(1)(B))? If so, has BellSouth met all of the requirements?

The additional issues approved herein are reflected in the revised Tentative Issues List attached to this Order as Appendix "A".

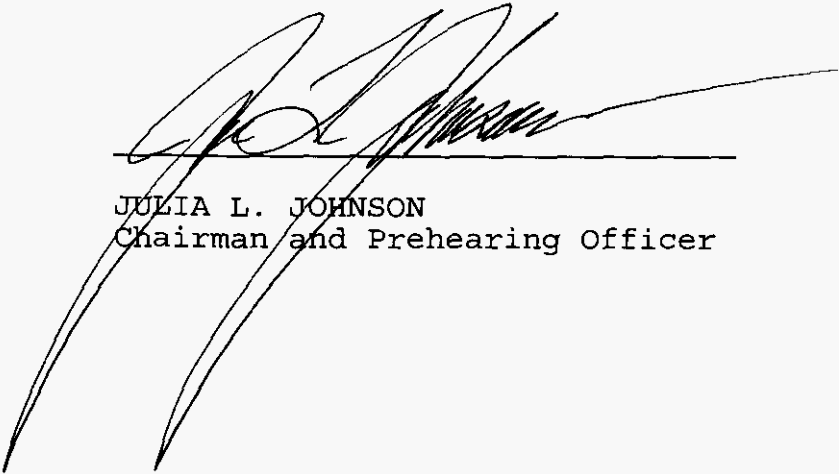
Based upon the foregoing, it is

ORDERED by Julia L. Johnson, as Prehearing Officer, that Order No. PSC-96-0945-PCO-TL is modified as outlined in the body of this Order. It is further

ORDERED that Orders Nos. PSC-96-0945-PCO-TL and PSC-97-0703-PCO-TL are reaffirmed in all other respects.

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By ORDER of Chairman Julia L. Johnson, as Prehearing Officer,
this 2nd day of July, 1997.



JULIA L. JOHNSON
Chairman and Prehearing Officer

(S E A L)

MMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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,

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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.

Appendix "A"

Tentative Issues List (Revised)

- 1.A. Has BellSouth met the requirements of section 271(c)(1)(A) of the Telecommunications Act of 1996?
 - (a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?
 - (b) Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?
 - (c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?
- 1.B. Has BellSouth met the requirements of section 271(c)(1)(B) of the Telecommunications Act of 1996?
 - (a) Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?
 - (b) Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?
- 1.C. Can BellSouth meet the requirements of section 271(c)(1) through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B))? If so, has BellSouth met all of the requirements of those sections?
2. Has BellSouth provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

3. Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?
 - (a) Has BellSouth developed performance standards and measurements? If so, are they being met?
4. Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?
5. Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?
6. Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?
7. Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?
8. Has BellSouth provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:
 - (a) 911 and E911 services;
 - (b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and,
 - (c) operator call completion services?
9. Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

10. Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?
11. Has BellSouth provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?
12. Has BellSouth provided number portability, pursuant to section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?
13. Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?
14. Has BellSouth provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?
15. Has BellSouth provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?
 - (a) Has BellSouth developed performance standards and measurements? If so, are they being met?
16. By what date does BellSouth propose to provide interLATA toll dialing parity throughout Florida pursuant to section 271(e)(2)(A) of the Telecommunications Act of 1996.
17. If the answer to issues 2-15 is "yes", have those requirements been met in a single agreement or through a combination of agreements?
18. Should this docket be closed?