

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of) DOCKET NO. 960786-TL
BellSouth Telecommunications,) ORDER NO. PSC-97-0081-FOF-TL
Inc.'s entry into interLATA) ISSUED: January 27, 1997
services pursuant to Section 271)
of the Federal)
Telecommunications Act of 1996.)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER ON MOTION FOR ADVANCE NOTICE OF FILING

BY THE COMMISSION:

Pursuant to Section 271(d)(3) of the Telecommunications Act of 1996, 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. On June 28, 1996, we opened this docket to begin to fulfill our consultative role. Since that time, the issues to be decided have been identified and extensive discovery has been undertaken.

On November 13, 1996, AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation, Worldcom, Inc. d/b/a LDDS WorldCom (LDDS) and the Florida Interexchange Carriers Association (FIXCA), collectively the Joint Movants, filed a Joint Motion Requiring Advance Notice of Filing. BellSouth Telecommunications, Inc. (BellSouth) filed its Memorandum in Opposition on November 21, 1996. Our decision on this matter is set forth below.

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FOCUS-RECORDS/REPORTING

A. Request for Advance Notice

In support of their Motion, the Joint Movants state that the tentative issues for this docket were established in Order No. PSC-96-0945-PCO-TL, issued on July 19, 1996. Since that time the parties have engaged in discovery in preparation for the future hearing.

The Joint Movants emphasize that our decision on the recommendation to be made to the FCC is of tremendous importance to Florida's competitive providers of telecommunications service, and hence, to Florida consumers. In addition, they state that we must make our determination as to BellSouth's competitive position within a very short time period. Thus, the Joint Movants argue that the magnitude of the task, combined with the brevity of the time period within which we must make our recommendation, make advance preparation essential.

Further, the Joint Movants assert that other state Commissions have required BellSouth to provide advance notice. The Joint Movants cite to the South Carolina Public Service Commission and the North Carolina Utilities Commission as examples.

Specifically, the Joint Movants ask that we order BellSouth to provide: 1) 120 days advance notice to the Commission and the parties in this docket of its intent to apply to the FCC for interLATA authority, and 2) all evidence, including prefiled testimony and exhibits, upon which BellSouth intends to rely in response to the issues identified in Order No. PSC-96-0945-PCO-TL and in any other procedural order issued before that date.

On November 21, 1996, BellSouth filed its Memorandum in Opposition to the Joint Motion. BellSouth argues that granting the Motion would force it to postpone the filing of its Section 271 application an additional four months beyond the date upon which it could have submitted a sufficient application. BellSouth also argues that granting the Joint Movants' Motion would contravene Section 271 and our own procedural order in this case. BellSouth asserts that, as a result, the process would be delayed needlessly, and we, as well as the FCC, would have to rely on outdated information in evaluating BellSouth's application to provide long distance service in Florida.

In support of its argument, BellSouth asserts that Section 271 places the decision as to when to file an application to obtain interLATA authority in the applicant's hands; it does not require a pre-filing notice or any other procedural prerequisite to the filing. BellSouth also asserts that the Joint Movants' argument

that the expedited application approval process compels the requested procedure is belied by the events that have transpired over the past several months. BellSouth notes that FIXCA alone has propounded over sixty interrogatories, as well as numerous requests for production of documents. BellSouth further indicates that the discovery has been voluminous and quite broad. In addition, even more discovery continues to be available to the interexchange carriers.

BellSouth notes that the Joint Movants will have the opportunity to examine prefiled testimony and detailed prehearing statements prior to the hearing. BellSouth adds that any claim by the carriers that the expedited nature of this proceeding puts them at a disadvantage is specious because the individual interexchange carriers have already participated in detailed arbitration hearings in which they were afforded full discovery rights concerning local interconnection. According to BellSouth, many of the issues covered in these arbitrations will be central to this 271 proceeding.

Furthermore, BellSouth asserts that the Joint Movants are clearly incorrect that since two states have sought to impose a prefiling requirement, the Florida Commission can do the same without detriment to BellSouth. BellSouth argues that Section 271 envisions state-specific applications and the granting of authority on a state-by-state basis. Thus, each state's rules must stand alone, as must each application for interLATA authority. BellSouth asserts that the approach we have taken, that of allowing full discovery prior to a filing combined with an expedited prehearing schedule after filing, is the better approach.

BellSouth states that the Joint Movants' Motion is contrary to the law and the facts presented. Thus, BellSouth concludes that the Motion is merely an attempt to obstruct and delay interLATA competition and the benefits it will bring to Florida consumers.

Section 271(2)(B), Consultation With State Commissions, provides:

Before making any determination under this subsection, the Commission shall consult with the State Commission of any State that is the subject of the application in order to verify compliance of the Bell operating company with the requirements of subsection (c).

Section 271(3), Determination, provides in pertinent part:

Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State...

The provisions cited above provide that the FCC will make a determination no later than ninety (90) days after receiving an application for interLATA authority. The Joint Movants have cited no authority that would permit us to add four months to the application process. Furthermore, we are concerned that evidence filed with us 120 days in advance could differ substantially from that which is eventually filed with the FCC. If we were to conduct a hearing during the 120 day pre-filing period and BellSouth were to rely upon evidence different from what BellSouth files with the FCC, we would not be able to rely on the record from the proceeding to fulfill our role in this process. Therefore, the Joint Movant's Motion for Advance Notice of Filing is denied.

B. BellSouth's Representation

Although we deny the Joint Movants' motion, we note that BellSouth states that it will: 1) provide us sixty (60) days advance notice of filing its application with the FCC; 2) concurrent with the sixty (60) days advance notice, identify all of the agreements it believes have met the competitive checklist, and, identify to the extent it knows, whether it will file pursuant to Section 271(C)(1)(A) and/or (B); and 3) twenty-five (25) days before it files its application with the FCC, provide all of the evidence it will file with the FCC to this Commission and identify whether it is requesting interLATA authority pursuant to Section 271(C)(1)(A) and/or (B).

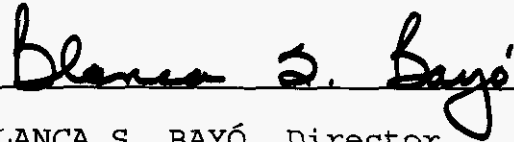
It is, therefore,

ORDERED by the Florida Public Service Commission that the Joint Movants' Motion for Advance Notice of Filing is denied. It is further

ORDERED that we hereby acknowledge BellSouth Telecommunications, Inc.'s representation as outlined in Part B. of this Order.

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By ORDER of the Florida Public Service Commission, this 27th
day of January, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(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, 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.