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September 19, 1996

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, FL 32399-0850

RE: Docket 960786-TL
Section 271

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion For Reconsideration of Order Granting The Florida Interexchange Carriers Association's Motion To Compel and Request For Oral Argument, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver (JPC)
J. Phillip Carver

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

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CMU *Green*
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DOCUMENT NUMBER-DATE

10017 SEP 19 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of) Docket No. 960786-TL
BellSouth Telecommunications,)
Inc.'s entry into InterLATA)
services pursuant to Section 271)
of the Federal)
Telecommunications Act of 1996.) Filed: September 19, 1996
_____)

**BELLSOUTH'S MOTION FOR RECONSIDERATION OF ORDER
GRANTING THE FLORIDA INTEREXCHANGE CARRIERS ASSOCIATION'S
MOTION TO COMPEL AND REQUEST FOR ORAL ARGUMENT**

BellSouth Telecommunications, Inc.'s ("BellSouth" or "Company"), hereby files, pursuant to Rule 25-22.0376, Florida Administrative Code, its Motion For Reconsideration of the Order Granting the Florida Interexchange Carriers Association's ("FIXCA") Motion To Compel and Request for Oral Argument and states as grounds in support thereof the following:

1. On July 19, 1996, the Prehearing Officer in this matter issued the Initial Order Establishing Procedure (Order No. PSC-96-0945-PCO-TL), which set forth the purpose of this docket as follows:

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. The Florida Public Service Commission has opened this docket to begin to fulfill its consultative role.

(Order at p. 1)

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The Order also prescribed that "[d]iscovery shall begin before BellSouth files its petition for intraLATA authority with the [Federal Communications Commission] FCC." (Order, P. 1). Thus, the order establishing procedure set up a process whereby discovery concerning the issues in this docket began before the filing of the petition that will ultimately determine the substantive issues of the docket, the positions of the parties, and the information that is relevant.

2. FIXCA subsequently filed its First Set of Interrogatories, (which BellSouth received on July 26, 1996) and a First Request For Production of Documents (which BellSouth also received on July 26, 1996). BellSouth timely filed responses to this discovery. On August 23, 1996, FIXCA filed a Motion To Compel relating to the First and Second Set of Interrogatories and the First Request For Production of Documents¹. On August 30, 1996 BellSouth filed its Response in Opposition to FIXCA's Motion To Compel. A telephonic hearing was held on September 4, 1996, during the weekly status conference.

3. On September 9, 1996 the Prehearing Officer issued Order No. PSC-96-1135-PCO-TL, styled Order Granting The Florida Interexchange Carriers Association's Motion To Compel. The Commission's Order was divided into five sections which dealt, respectively, with the following categories of requests:

¹ Although the motion was styled as stated above, the items at issue that will be discussed below are included in the First Set of Interrogatories and the First Request For Production of Documents.

1. Interrogatory Nos. 1, 2, 3, 5, 14 and Request to Produce Item 4;
2. Interrogatory No. 4;
3. Interrogatory Nos. 6, 7, 8 and 34(b);
4. Interrogatory Nos. 15 and 16;
5. Interrogatory Nos. 17 and 18.

4. The Prehearing Officer granted each and every aspect of FIXCA's Motions to Compel. BellSouth now moves for reconsideration of the portions of the Order dealing with the discovery requests listed above in category numbers one, two and four.

5. The requirement of the Order that BellSouth provide information in response to the subject discovery can be divided into two categories (1) the provisions of the Order that can be responded to, albeit with difficulty; (2) the provisions with which, strictly speaking, it is impossible to comply. BellSouth has limited the motion for reconsideration to the second category.²

² As an example of the first category, BellSouth is not requesting reconsideration of the Prehearing Officer's Order to respond to Interrogatories 6, 7, 8. These interrogatories require BellSouth to undertake an analytical project on behalf of FIXCA. Specifically, FIXCA requested that certain information be provided, and that it be categorized by LATA. Since BellSouth does not keep the information in this form, it provided FIXCA with the requested information broken down by exchange (i.e. in a more detailed form than was requested). Nevertheless, FIXCA moved to compel BellSouth to undertake the task of compiling the data so that it would be in the format FIXCA requested. The Prehearing Officer granted this request.

6. One: Interrogatories 1, 2, 3, 5, 14 and Request To Produce Item 4. Interrogatory Number One and BellSouth's Response are as follow:

REQUEST: Does BellSouth intend to assert in this proceeding that it has met the requirements of Section 271(c)(1)(A)? If the answer is yes, identify each agreement between BellSouth and an unaffiliated competing provider of telephone exchange service on which BellSouth intends to rely in support of its contention.

RESPONSE: At the time BellSouth files its petition in this proceeding, it will have met the requirements of Section 271(c)(1)(A). As of today, however, the Commission has not approved an agreement which BellSouth believes meets all of the requirements of Section 271(c)(1)(A).

7. The other above-listed Interrogatories and the Request to Produce are derivative of the first Interrogatory. Because BellSouth cannot provide a better answer as required by the Order to interrogatory number one, it also cannot file an additional response to the others.

8. Request number one provides a striking example of the difficulty that inheres in attempting to respond to discovery concerning a proceeding that has not yet, at least in substance, even begun. BellSouth, as stated above, responded to this Interrogatory by saying that, when it files its petition pursuant to 271, it will have reached the conclusion that it meets the requirements of 271(c)(1)(A). This statement amounts to nothing more than saying that BellSouth will not request authority to provide interLATA services until it has met the requirements for

granting that authority as set forth in the above referenced section. BellSouth then stated that the Commission had not approved an agreement that, at that time, BellSouth believed met all the requirements.

9. FIXCA argued both in its motion and at the hearing that this was unresponsive and that it was entitled to have information concerning what BellSouth intended to assert in the proceeding. Further, at one point during the hearing, counsel for FIXCA stated that BellSouth should make an election and be bound by it. Counsel for BellSouth responded by stating that BellSouth simply did not know on what it would rely when, at some future point, it files its petition pursuant to Section 271.

10. Nevertheless, the Prehearing Officer ruled as follows:

Upon consideration, I find that BellSouth's answer to interrogatory 1 is unresponsive. BellSouth did not answer the question posed. BellSouth was asked whether it intends to assert in this proceeding that it has met the requirements of Section 271(c)(1)(A). BellSouth shall answer this question. If BellSouth's response is in the affirmative, it should identify the agreement or agreements that BellSouth intends to rely upon at this stage. However, should BellSouth desire to argue, at a later date in this proceeding, that another agreement or additional agreements satisfy Section 271(c)(1)(A), it will not be precluded from doing so.

11. BellSouth is at a total loss to know how to provide a better answer to the question based upon the information that it has at present. Again, at the time that BellSouth files a petition pursuant to 271, it will, unquestionably, take the

position that it "has met the requirements of that section". Since it has not filed a petition yet, it is difficult to know how to provide further information. The above quoted language from the Order appears to require BellSouth to provide an answer as to whether it has met the requirements of 271 today, and if so, upon what it relies for this opinion. The fact remains, as stated during the hearing, that BellSouth has not reached this conclusion at the present.

12. It is true that, in an attempt to provide as much information as possible, BellSouth's original answer to the interrogatory was somewhat more detailed than the, perhaps more accurate response that, "we don't know." There seems little point now, though, in reanswering the interrogatory in this fashion, since the Order expressly acknowledges that BellSouth stated this fact at the hearing, and concluded that it is inadequate for BellSouth to state "that it does not know what it is going to rely on when it files its petition for interLATA authority." (Order, P. 2).

13. Therefore, the Order would appear to require BellSouth to analyze the information that it has at its disposal at this time, make a determination that it has not yet otherwise made as to whether or not the requirements of 271 have been met to date, and convey this opinion to FIXCA -- all with the proviso that BellSouth will not be bound by this opinion in the future.

Assuming all parties act in accordance with this Order in the future, BellSouth would not be bound by any interpretation that it makes now. Consequently, making an interpretation at this point is simply a pointless exercise.

14. BellSouth is being instructed to analyze information to reach a conclusion that it has not otherwise made, even though it has not filed a petition to which this analysis would relate and even though the analysis might very well be quite different at the time the petition is filed in the future. For all of these reasons, BellSouth respectfully submits that the Prehearing Officer erred, and that BellSouth should not be required to answer this interrogatory.

15. Two: Interrogatory No. 4: The Original interrogatory required BellSouth, in part, to "describe in detail the technical and operational measures BellSouth has taken specifically to implement the competitive checklist of Section 271(c)(2)(B) prior to the filing of BellSouth's petition in this docket." As stated in the Order, "[d]uring the status conference BellSouth agreed to identify the technical and operational measures it has taken to implement agreements it has entered into with unaffiliated competitors. FIXCA agreed to this compromise: therefore, I will consider FIXCA's Motion To Compel with respect to Interrogatory 4 withdrawn." (Order, p. 2). In other words, the parties reached an agreement as to an answer that would be

appropriate and the formal request was withdrawn. Nevertheless, the Order continued, by stating that "BellSouth, as part of its response, should identify the specific checklist items that any of the technical and operational measures involve." (Id.) Thus, the Prehearing Officer has again (and in this instance, without a pending discovery request) required BellSouth not simply to provide information, but to analyze the information and provide its current interpretation of how this information relates to the requirements of Section 271. For the reasons set forth above regarding interrogatory number one, BellSouth submits that this portion of the Order is in error as well.

16. Three: Interrogatories 15 and 16. The original "interrogatories ask BellSouth whether it has refused to provide for or whether it has limited network functions, features, services, or arrangements requested by a competitive provider of telephone exchange service". (Order at p. 3). BellSouth responded that it has never refused or constrained requests that are technically feasible. BellSouth's answer goes on to state that this is not to say that it has granted every request, but only that it has granted technically feasible requests. FIXCA moved to compel and stated that "BellSouth should be required to provide the details of each instance of denial or limitation." (Order, P. 4). In other words, FIXCA attempted to compel BellSouth to provide specific information as to every request

made by any potential interconnector at anytime that has not been met.

17. BellSouth responded both in its written response and at the time of hearing by stating the difficulty of this request as follows: essentially all negotiations fall into two categories, (1) those in which agreements are reached; (2) those in which agreements are not reached. The second category has resulted in a number of arbitration proceedings. Therefore, if FIXCA wishes to know what has been requested by parties, but that BellSouth has been unable to provide (in other words, instances in which the dispute involves the issue of technical feasibility), it need do nothing more than read the public record of the four arbitration proceedings now pending before this Commission. Moreover, two of these four proceedings have been filed by FIXCA's members (AT&T and MCI).³ Obviously, FIXCA has access to the publicly filed positions of the parties in the arbitration proceedings.

18. The second category of negotiations, those that do not work out, are more problematic. Obviously, by definition, a negotiation is a process whereby two parties come to the table with their respective view points, which frequently differ, and

³ The fact that the content of these proceedings is well known to FIXCA was evident at the hearing since, at one point, its counsel began to argue the substance of AT&T's petition in ostensible support for the notion that BellSouth had denied some technically feasible request.

attempt to reach an agreement. BellSouth has done this successfully with many parties in Florida. Nevertheless, there undoubtedly were points in all or most of these negotiations in which a party requested something from BellSouth that BellSouth could not provide. Thus, BellSouth took the position in its written response and at the hearing that FIXCA was attempting to place upon it the obligation to detail everything that any party had requested at any point in negotiations.

19. Thus, the Order interprets FIXCA's position somewhat differently by stating that "[d]uring the status conference, FIXCA stated that it is not asking for incremental negotiations, rather it is asking for those situations where a competitor asks for and receives less than or nothing in response to its request". (Order, p. 4). Nevertheless, the Order required BellSouth to respond to FIXCA's request with the following language:

Therefore, BellSouth shall identify those instances where it has not ultimately provided a competitor with what it has requested. BellSouth's response should not be limited to negotiations that have resulted in arbitration proceedings. It is possible that BellSouth has provided a competitor with something other than what it requested or has not provided an item without proceeding to arbitration.

(Order, P. 4).

This Order would appear not to require BellSouth to provide information regarding every incremental step of the various

negotiations, but provides little guidance as to how BellSouth can adequately answer this question in any other way.

20. In many situations, a potential competitor negotiating an interconnection agreement has been provided "with something other than what it requested" initially, but it has been provided with something that it has ultimately agreed to accept. In other words, there is ultimately an agreement between the parties. The Order would appear to require BellSouth to provide information about each of these situations. Thus, it is not possible to comply with the Order without detailing all of the various requests that have occurred in all the negotiations. As BellSouth has stated repeatedly, it is simply impossible to do this because it does not have records adequate to determine every position that every party took (either orally or in writing) during every negotiation.

21. Again, although the Order states that FIXCA does not seek the level of detail described above, BellSouth cannot discern from the language of the Order a way to answer this Interrogatory as ordered by the Prehearing Officer without giving this level of detail. Moreover, there would seem to be little or no relevance to the requests that parties have made that were subsequently modified into the object of a later agreement. Thus, the request as BellSouth has been ordered to respond to it,

continues to require detailed information that simply cannot be provided. For this reason, the Order is in error.

22. BellSouth requests oral argument before the full Commission on this motion.

WHEREFORE, BellSouth respectfully requests the entry of an Order granting its Motion For Reconsideration and setting aside the above-described portions of Order No. PSC-96-1135-PCO-TL for the reasons set forth above.

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CERTIFICATE OF SERVICE
DOCKET NO. 960786-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 19th day of Sept., 1996 to the following:

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