

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Florida) DOCKET NO. 960658-TP
Interexchange Carriers)
Association, MCI)
Telecommunications Corporation,)
and AT&T Communications of the)
Southern States, Inc. against)
BellSouth Telecommunications,)
Inc.)

In Re: Investigation into) DOCKET NO. 930330-TP
IntraLATA presubscription.) ORDER NO. PSC-96-1278-PHO-TP

ISSUED: October 14, 1996

Pursuant to Notice, a Prehearing Conference was held on October 7, 1996, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

APPEARANCES:

Joseph A. McGlothlin, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden Street, Tallahassee, Florida 32301
On behalf of Florida Interexchange Carriers Association.

Martha McMillin, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30346; Richard D. Melson, Esquire, Hopping Green Sams & Smith, P.A., 123 South Calhoun Street, Tallahassee, Florida 32301
On behalf of MCI Telecommunications Corporation.

Mark Logan, Esquire, Bryant, Miller & Olive, 201 South Monroe Street, #500, Tallahassee, Florida 32301; and Robin Dunson, Esquire 1200 Peachtree Street, N.E., Suite 4038 Atlanta, Georgia 30309
On behalf of AT&T Communications of the Southern States, Inc.

Nancy B. White, Esquire, 4300 Southern Bell Center 657 West Peachtree Street, N.E., Atlanta, Georgia 30375-0001; and Phil Carver, Esquire, c/o Nancy Sims, 150 South Monroe Street, Suite 400, Tallahassee, Florida, 32301
On behalf of BellSouth Telecommunications, Inc.

Monica M. Barone, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

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PSC-RECORDS/REPORTING

Charles J. Beck, Esquire, Office of the Public Counsel
c/o The Florida Legislature, 111 West Madison Street,
Room 812, Tallahassee, Florida 32399-1400.
On behalf of the Citizens of Florida.

PREHEARING ORDER

I. CASE BACKGROUND

On May 24, 1996, the Florida Interexchange Carriers Association (FIXCA), MCI Telecommunications Corporation (MCI) and AT&T Communications of the Southern States, Inc. (AT&T) filed a Joint Complaint against BellSouth Telecommunications, Inc. (BellSouth). The Complaint was assigned docket number 960658-TP. On June 13, 1996, BellSouth filed an Answer to the Joint Complaint.

On June 11, 1996, the Complainants filed a protest to Order No. PSC-96-0692-FOF-TP, in Docket No. 930330 and requested a hearing. They also filed a Motion to Consolidate Proceedings stating that the tariff items challenged in Docket No. 930330-TP are the same tariff items that are the subject of the Joint Complaint in Docket No. 960658-TP. The Commission granted the Motion to Consolidate by Order No. PSC-96-1162-FOF-TP, issued September 17, 1996.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section

364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the

Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUES</u>
<u>Direct / Rebuttal</u>		
Sandra Seay	FIXCA, MCI, AT&T	All
Hilda Geer	BellSouth	1,3, and 4
Ed L. Honeycutt	BellSouth	1,4,5, and 6

V. BASIC POSITIONS

FIXCA, MCI, AT&T:

In its decision to require 1+ intraLATA presubscription, the Commission intended that equal access by customers to the 1+ dialing convention serve as the basis for full and fair competition in the intraLATA market. BellSouth has devised anticompetitive business practices and unreasonable tariff provisions which, if allowed to remain in effect, would hinder the exercise of competitive choices and enable BellSouth to leverage its position as dominant incumbent provider of local exchange services to gain an unfair advantage over intraLATA competitors, thereby frustrating the intent of the Commission in Order No. PSC-95-0203-FOF-TP. The Commission should require BellSouth to adopt competitively neutral practices similar to those in effect in connection with the implementation of 1+ interLATA presubscription. BellSouth's customer service representatives are familiar with that approach, which has worked well for years as a carrier-neutral, customer-friendly environment.

BELLSOUTH:

On February 13, 1995, the Florida Public Service Commission ("Commission") issued Order No. PSC-95-0203-FOF-TP ("Order") in Docket No. 930330-TP holding that 1+ intraLATA presubscription was in the public interest and should be implemented in Florida. The Order set forth the implementation timeframe and the method of cost recovery. Moreover, the Commission agreed with the parties that balloting would not be required; instead, each company

would obtain customers through marketing efforts. On July 31, 1995, reconsideration of the Order was denied (Order No. PSC-95-0918-FOF-TP). On May 23, 1996, the Commission approved BellSouth's tariff to recover the implementation costs of intraLATA presubscription in Order No. PSC-96-0692-FOF-TP ("Tariff Order"). On June 11, 1996, the Joint Complainants protested the Tariff Order. On May 24, 1996, the Joint Complainants filed a Joint Complaint concerning BellSouth's tariff and business office practices regarding intraLATA presubscription. These dockets were subsequently consolidated.

BellSouth believes that its business office practices and various tariff charges regarding intraLATA presubscription are reasonable, nondiscriminatory, and in compliance with the Orders of this Commission. BellSouth's business office practices offer a balanced presentation of the alternatives available to Florida Consumers. Moreover, BellSouth's cost recovery methodology is fair and reasonable.

OPC: No position at this time.

STAFF: No position at this time.

VI. ISSUES AND POSITIONS

ISSUE 1: Are BellSouth's present and planned business practices for communicating information to new customers regarding choices of intraLATA carriers available to the customer proper?

POSITIONS:

FIXCA, MCI, AT&T:

No. As the LEC which new customers must contact to arrange for service, BellSouth intends to unfairly favor its own service by marketing its own intraLATA service to all new customers, yet will merely read a list of the other carriers who provide intraLATA service only if specifically asked. BellSouth should be required to adopt a neutral practice, as it has done in connection with interLATA equal access presubscription. (Seay).

BELLSOUTH:

Yes. BellSouth is only one of a number of companies vying for the end user customer's 1+ dialed toll business. BellSouth must be allowed to advertise and promote its services as it deems necessary to compete in this new open marketplace. Customer contact opportunities, such as customers calling BellSouth's business offices and other customer contact centers, inquiries about new services and promotions, and responses to bill inserts or advertisements are examples of legitimate opportunities for BellSouth to market its toll services.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 2:

When an existing customer contacts BellSouth in its capacity as LEC for the purpose of changing to an intraLATA carrier other than BellSouth, should BellSouth be permitted to initiate marketing efforts designed to prevent the change?

POSITIONS:

FIXCA, MCI, AT&T:

No. At that point the Commission's intent that customer decisions be based on competing marketing efforts has been achieved, and BellSouth's only legitimate role is to execute the customer's instructions. Its plan to attempt to reverse the customer's decision is an abuse of its role as dominant LEC, and vividly demonstrates the need for the Commission to prohibit BellSouth from utilizing LEC-related contacts as marketing opportunities. (Seay).

BELLSOUTH:

This issue would be moot, if our competitors would accept the PIC Change requests from the end user. Although it is not a practice within our business office today, BellSouth should be allowed to offer a competitive

response to consumers. This does not necessarily mean employ practices designed to "prevent" the customer from making a change however. The change will be made, if the customer desires to make a change. By allowing BellSouth to make a competitive response, the Commission accomplishes two important objectives in developing a competitive environment:

1) The Commission stimulates innovation.

Competitors, including BellSouth, will be forced to develop new services and calling plans to attract new customers and retain existing customers.

2) To the extent competitors, including BellSouth, are allowed to make competitive counter offers, consumers will be better positioned to make informed decisions relative to their telecommunications services.

The ability to make an informed decision insures that consumers will receive maximum benefit from a competitive marketplace.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 3: Is it proper for BellSouth to initiate communications with existing customers about BellSouth's intraLATA services when those customers contact BellSouth for reasons other than selecting their intraLATA carrier?

POSITIONS:

FIXCA, MCI, AT&T:

As the dominant incumbent LEC, BellSouth receives a multitude of contacts from customers for reasons unrelated to intraLATA toll service. It would be improper and unfair for BellSouth to use such contacts as opportunities to market its intraLATA offerings. (Seay).

BELLSOUTH:

Yes. Current practices do not encourage service representatives to discuss intraLATA toll services on all customer initiated contacts. The Company, however, should have the option to advise customers of its service offerings in the most efficient manner. Therefore, the Company should be allowed the opportunity to market its services during any customer initiated contact.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 4: Should BellSouth be required to process the orders of all existing customers who contact BellSouth to change intraLATA carriers without first attempting to require the customers to contact the carrier for that purpose?

POSITIONS:

FIXCA, MCI, AT&T:

Yes. BellSouth is compensated by IXC's for each order that it processes. BellSouth's proposed practice would impede the development of competition by adding an unnecessary step to the process for changing carriers. Further, BellSouth's practice of acting on some orders but not others, based on the particular customer's degree of perseverance, discriminates against some customers. (Seay).

BELLSOUTH:

No. BellSouth's costs for implementing intraLATA would increase. Moreover, the customer's account with the selected carrier would not be established in the most efficient manner.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 5: Should existing customers be given an opportunity to designate their preferred intraLATA carrier one time without incurring a PIC change charge?

POSITIONS:

FIXCA, MCI, AT&T:

Yes. Because existing customers had no prior ability to select a competing carrier to handle 1+ intraLATA traffic, such customers should be given an opportunity to do so once without charge when it is made available. However, the Commission may impose a reasonable time limit on the opportunity. The Joint Complainants recommend a time frame of six months. (Seay).

BELLSOUTH:

No. BellSouth incurs costs for every PIC change made. BellSouth should be allowed to recover those costs from the IXC or end user customer generating the cost.

OPC: No position at this time.

STAFF: No position at this time.

ISSUE 6: Should BellSouth impose a single PIC change charge on a customer who changes interLATA and intraLATA carriers at the same time?

POSITIONS:

FIXCA, MCI, AT&T:

Yes. To avoid unreasonable restraints on a customer's exercise of choice, BellSouth should impose only one PIC change charge on a customer who changes both interLATA and intraLATA carriers in a single transaction. (Seay).

BELLSOUTH:

No. BellSouth incurs costs for every PIC change made and should be allowed to recover those costs.

OPC: No position at this time.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY:</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Sandra Seay	FIXCA, MCI, AT&T	_____	Example of
		(SS-1)	BellSouth bill stuffer.
		_____	Excerpt from
		(SS-2)	BellSouth directory language.
		_____	Information on
(SS-3)	business practices provided by BellSouth to Kentucky Public Service Commission.		
_____	Excerpt, 6		
(SS-4)	pages from BellSouth document captioned "IntraLATA (1+ local toll) Presubscrip- tion (FL, GA, KY) "		
_____	Order of		
(SS-5)	Kentucky Public Service Commission in Case Nos. 95- 285 and 95- 396, dated August 13, 1996.		

<u>WITNESS</u>	<u>PROFFERED BY:</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Sandra Seay	FIXCA, MCI, AT&T	_____	Order of Minnesota Public Service Commission, Docket No. E-999/CI-95-135, dated December 19, 1995.
		(SS-6)	
		_____	BellSouth document captioned "1+ Local Toll (IntraLATA) Presubscription--Florida Operating Standards, 06/96."
		(SS-7)	
		_____	Letter, FCC's Martha Wallman to BellCore, dated September 26, 1995.
		(SS-8)	
		_____	Exhibit A to the Complaint
		(SS-9)	
Ed L. Honeycutt	BellSouth	_____	September 1996 Bill Insert
		(ELH-1)	
		_____	Call Guide Sample Language
		(ELH-2)	
		_____	BellCore Communications
		(ELH-3)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. STIPULATIONS

BellSouth will modify its practice in a way that is acceptable to Joint Complainants in that it does not use terminology that suggests ownership of the intraLATA toll calling area. As of August 1, 1996, BellSouth's bill inserts in Florida do not refer to that area as the "BellSouth Calling Zone." The reference has been changed to "local toll." Further, BAPCO (the BellSouth entity that actually publishes directories) has agreed that the Customer Guide Pages also will not refer to that area as the "BellSouth Calling Zone." Joint Complainants accept BellSouth's change.

BellSouth has agreed to use a CIC code to place undecided customers in a "no-PIC" status pending selection by the customer of a carrier to handle intraLATA cases. The "no-PIC" option will be implemented in BellSouth's switches during the regular work schedule; however, implementation of the no-PIC option will be completed no later than April 1, 1997. Under the "no-PIC" option, rather than being defaulted to BellSouth, an undecided customer will dial a special access code to place intraLATA calls until the customer affirmatively selects an intraLATA carrier to handle intraLATA calls on a presubscribed basis. BellSouth's agreement is contingent on recovery of the one-time cost of approximately \$46,000 associated with implementation of the no-PIC option through the cost recovery mechanism established in conjunction with the implementation of 1+ intraLATA competition. Joint Complainants agree to BellSouth's proposal, including the cost recovery aspect.

IX. PENDING MOTIONS

None.

X. RULINGS

MOTION TO QUASH NOTICE OF DEPOSITION

On September 25, 1996, BellSouth filed a Notice of Deposition of Corporate Representative of AT&T of the Southern States, Inc. BellSouth attached a list of 6 areas of inquiry to the Notice to be explored. AT&T filed a Motion to Quash the Notice on October 1, 1996.

The Motion to Quash is hereby denied. However, the Areas of Inquiry set forth in Attachment A of the Notice of Deposition

shall be narrowed. Item No. 4, which addresses slamming complaints, shall be deleted from the Areas of Inquiry. Item No. 3 of the Areas of Inquiry shall be clarified such that BellSouth's inquiry is restricted to whether the subject documents have been sent throughout the State of Florida to telephone service subscribers that are not AT&T customers.

MOTION TO STRIKE

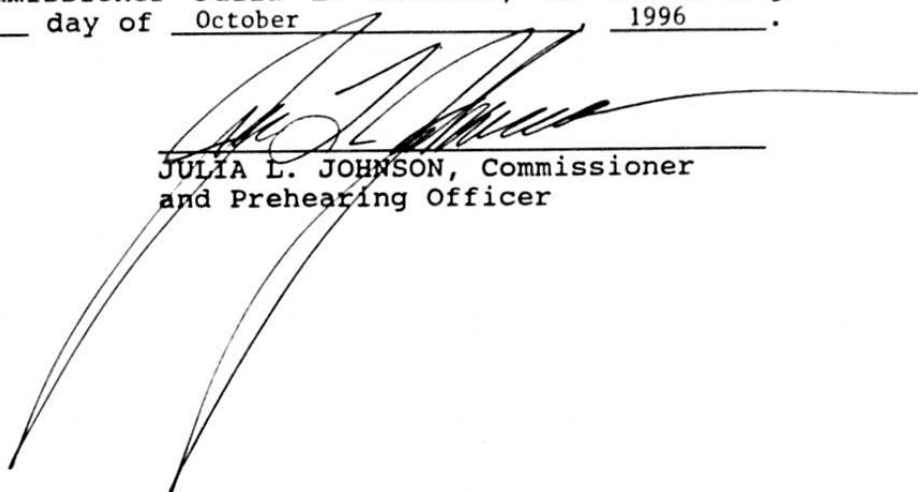
BellSouth filed a Motion to Strike proposed additional issues 8, 9, 10 on September 30, 1996.

At the Prehearing Conference held October 7, 1996, FIXCA withdrew its proposed additional Issue 9. Also, BellSouth withdrew its Objection to Issue 8 (now Issue 2), and, thereafter, submitted its position on that issue. Issue 10 is stricken as the result of the stipulation reached in Issue 5.

It is, therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 14th day of October 1996.



JULIA L. JOHNSON, Commissioner
and Prehearing Officer

(S E A L)

MMB/BC

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 25-22.038(2), 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.