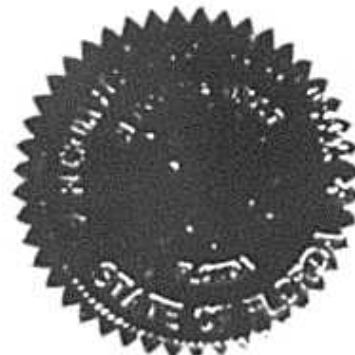


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

 In the Matter of : DOCKET NO. 971399-TP
 :
 Petition of BellSouth :
 Telecommunications, Inc. to :
 lift marketing restrictions :
 imposed by :
 Order PSC-98-1569-FOF-TP. :



PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 12**

BEFORE: CHAIRMAN JULIA L. JOHNSON
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER SUSAN F. CLARK
 COMMISSIONER JOE GARCIA
 (Teleconferencing from Miami)
 COMMISSIONER E. LEON JACOBS, JR.

DATE: Tuesday, February 3, 1998

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JOY KELLY, CSR, RPR
 Chief, Bureau of Reporting

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1 **PARTICIPATING:**

2 **WILL COX** and **MARTHA CARTER BROWN**, FPSC
3 Division of Legal Services.

4 **STAN GREER** and **JONATHAN AUDU**, FPSC Division
5 of Communications.

6 **NANCY SIMS**, BellSouth Telecommunications.

7 **TRACY HATCH**, AT&T of the Southern States.

8 **JOSEPH A. McGLOTHLIN**, Florida Competitive
9 Carriers Association.

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P R O C E E D I N G S

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2 **CHAIRMAN JOHNSON:** We're going to go back on
3 the record.

4 We're on Item 12.

5 **MR. AUDU:** Commissioners, Item 12 is
6 BellSouth's petition to lift marketing restrictions
7 imposed on business practices regarding the intraLATA
8 toll presubscription.

9 Issue 1 is FCCA's motion to dismiss. Staff
10 recommends denial. And Issue 2 is the petition to
11 lift the marketing restrictions. Staff recommends
12 approval.

13 I believe that we have company officials to
14 participate in this particular item with regard to
15 Issue 2. Staff is open to questions.

16 **CHAIRMAN JOHNSON:** Help me out here again.
17 I'm looking at the agenda. On both of these?

18 **COMMISSIONER DEASON:** Issue 2.

19 **CHAIRMAN JOHNSON:** Oh, Issue 2. Are they
20 here to --

21 **MR. AUDU:** To address on Issue 2.

22 **CHAIRMAN JOHNSON:** Address Issue 2.

23 **MR. AUDU:** My legal counsel just indicated
24 both 1 and 2.

25 **CHAIRMAN JOHNSON:** Both 1 and 2, because

1 parties may participate even though they didn't file
2 requests.

3 MR. COX: At the Commission's pleasure, they
4 may. They did not formally request it, but --

5 CHAIRMAN JOHNSON: But this is one of
6 those`--

7 MR. COX: We wouldn't object if you granted
8 them the opportunity to speak.

9 CHAIRMAN JOHNSON: Okay. Commissioners.

10 COMMISSIONER CLARK: I'm confused. It has a
11 double asterisk.

12 MR. COX: They did not formally request oral
13 argument on the motion to dismiss which is Issue 1, I
14 believe.

15 COMMISSIONER CLARK: Oh. Okay.

16 MR. COX: That's what we were talking about.
17 What I was saying is even though they didn't request
18 it, if they wish to speak on the issue, Staff has no
19 objections.

20 MR. McGLOTHLIN: If I could just speak for a
21 second. There was a bit of ambiguity on the agenda
22 and perhaps some confusion on my part as to whether we
23 would be permitted to address the motion to dismiss
24 without filing a motion. I was under the impression
25 that the motion was unnecessary in this situation.

1 I, basically, have one presentation I would
2 say --

3 COMMISSIONER GARCIA: Let me stop you there,
4 Mr. McGlothlin. Staff, they can argue, though, Issue
5 2, correct?

6 MR. COX: Yes, Commissioner, that's correct.

7 COMMISSIONER GARCIA: So may I suggest,
8 Madam Chairman, that we just take them both up at the
9 same time and limit them to three or four minutes
10 apiece?

11 CHAIRMAN JOHNSON: So your motion is to
12 allow oral argument on both issues and --

13 COMMISSIONER GARCIA: Both issues at the
14 same time.

15 CHAIRMAN JOHNSON: -- limit them to three
16 minutes.

17 COMMISSIONER GARCIA: And since Mr. Hatch
18 seems worried about three or four minutes, we'll give
19 him five minutes, and that way we can get through
20 this.

21 CHAIRMAN JOHNSON: Five minutes. Is there a
22 second?

23 MR. MCGLOTHLIN: Commissioner, I have one
24 presentation that covers both issues. I think I may
25 need about eight minutes for all of it if you would

1 entertain that.

2 **CHAIRMAN JOHNSON:** Did you hear that,
3 Commissioner Garcia? Do you want to amend that to
4 eight minutes?

5 **COMMISSIONER GARCIA:** That's fine.

6 **CHAIRMAN JOHNSON:** There's a motion to allow
7 argument on both issues, limiting them to eight
8 minutes total.

9 **COMMISSIONER CLARK:** Second.

10 **CHAIRMAN JOHNSON:** And these a second. Any
11 discussion? Seeing none, all those in favor signify
12 by saying "aye." Aye.

13 **COMMISSIONER DEASON:** Aye.

14 **COMMISSIONER CLARK:** Aye.

15 **COMMISSIONER JACOBS:** Ayes.

16 **COMMISSIONER GARCIA:** Aye.

17 **CHAIRMAN JOHNSON:** Show it approved.

18 Okay. Who would like to -- Mr. McGlothlin.

19 **MR. MCGLOTHLIN:** I'll begin. My name is Joe
20 McGlothlin. I represent the Florida Competitive
21 Carriers Association.

22 The FCCA, AT&T and MCI filed jointly a
23 Motion to Dismiss the Petition for Lifting of the
24 Marketing Restrictions; the same carriers were the
25 joint complainants in the predecessor docket.

1 I want to begin with some background that I
2 ask you to have in mind as I make some points toward
3 the end of the presentation.

4 In 1995 this Commission determined that
5 intraLATA competition is in the public interest. And
6 ruled that interexchange carriers could begin to
7 participate in that market using 1-plus dialing, but
8 established a regime that gave the incumbent local
9 exchange companies virtually 100% of the existing
10 intraLATA market and required the new entrants to
11 essentially win all of their customers by marketing.

12 In May of 1996 --

13 COMMISSIONER CLARK: Joe, would you be
14 specific as to what that scheme was?

15 MR. McGLOTHLIN: Certainly. Instead of
16 balloting, Commissioner, whereby there was some
17 allocation of the existing customers to all of the
18 players, the regime was simply to allow the IXCs to
19 begin participating in the intraLATA market using
20 1-plus dialing but the customers they served were the
21 customers they want. It was that simple.

22 COMMISSIONER CLARK: No balloting.

23 MR. McGLOTHLIN: That's correct.

24 COMMISSIONER CLARK: Okay.

25 MR. McGLOTHLIN: In May of 1996, FCCA, AT&T

1 and MCI filed a joint complaint in which we alleged
2 that BellSouth was in the process of implementing some
3 business practices designed to interfere with the
4 objective of that order. We alleged that BellSouth
5 was intending to exploit its gateway function and its
6 advantage of being the local exchange company, having
7 access to both databases unavailable to others, and
8 having the advantage of numerous contacts with
9 customers approaching it about LEC-related service.

10 The Commission agreed with us at the
11 conclusion of that case and placed several
12 restrictions on the company, including certain
13 marketing restrictions.

14 With respect to the treatment of new
15 customers, the Commission ruled that the way BellSouth
16 presented information concerning their options was not
17 carrier neutral and prescribed a different routine.
18 With respect to existing customers making calls to
19 BellSouth for LEC-related service problems, the
20 Commission told BellSouth not to market its intraLATA
21 service for 18 months, and placed the same restriction
22 on BellSouth with respect to its ability to intercept
23 customers calling to change their service away from
24 BellSouth and required them to refrain from that
25 practice for 18 months.

1 On reconsideration, BellSouth challenged all
2 of those restrictions. It claimed that the marketing
3 time limits were inconsistent with the fact that the
4 Commission placed no time limit on the treatment of
5 new customers. It suggested a six-month limitation
6 instead of 18 months, and it introduced the subject of
7 ECS dialing for the first time, and the Commission
8 denied its reconsideration.

9 Now in its petition, BellSouth claims that
10 the marketing restrictions have served their
11 purpose --

12 **COMMISSIONER GARCIA:** I'm sorry. Joe, what
13 is it that you just said about ECS dialing? I missed
14 that, I'm sorry.

15 **MR. McGLATHLIN:** The company claimed for the
16 first time in the case in its motion for
17 reconsideration that these marketing restrictions
18 would require certain of its customers to dial
19 additional digits in order to get the value of that
20 service. It was not part of the main case. They
21 raised it for the first time on reconsideration and
22 the Commission appropriately did not take that as
23 basis for reconsideration.

24 In its petition the company argues that the
25 restrictions have served their purpose. And I'd like

1 to begin by pointing out -- making an observation
2 about the restriction pertaining to the treatment of
3 new customers.

4 At Page 6 of the final order in the
5 complaint docket, the Commission ruled that the
6 routine for informing new customers about their
7 options was not neutral and made this statement: "The
8 prompt set forth above will give customers an
9 opportunity to make an informed decision regarding
10 available intraLATA toll service providers. BellSouth
11 should not be allowed to market its intraLATA toll
12 service, unless the customer introduces the subject."

13 So, clearly, the Commission saw this aspect
14 of the restrictions as related to the requirement that
15 the presentation of new customers be carrier neutral,
16 and that's a permanent fixture of the routine and not
17 something the Commission thought should have a time
18 frame with it.

19 So I think BellSouth is somewhat
20 disingenuous when they suggest that this one has
21 outlived its usefulness.

22 Now, with respect to the data, they refer to
23 toll disconnects and say that they've lost some 26% of
24 toll disconnects, whatever that means. It isn't clear
25 to us that toll disconnects necessarily means an IXC

1 has won a customer. And they make reference to the
2 fact that new customers, some new customer are being
3 won by IXCs and some by BellSouth. But, again, that
4 refers to what happens to the increment of new
5 customers.

6 We maintain that when the Commission said
7 the restriction shall remain in effect for 18 months
8 so the new entrants would have an opportunity to
9 attain a meaningful market presence sufficient to
10 withstand the advantages associated with being the
11 gateway, that it meant that the new entrants would
12 have a sufficient market share that would give it that
13 meaningful presence. None of the data that BellSouth
14 has offered in its petition really speaks to market
15 share or market presence.

16 Now I'm going to take issue with a couple of
17 things that Staff said in their recommendation, so let
18 me say something nice about them first.

19 They appropriately disregarded the second
20 attempt to inject the ECS subject into this subject,
21 and they appropriately disregarded the very vague
22 indication that BellSouth thinks the carriers are
23 making misleading statements. As I said, that's
24 not -- if there's anything to that, it's the basis of
25 a complaint and not this petition.

1 But I take issue with their treatment of the
2 data as sufficient for the reasons I've stated. They
3 say that they view the data as indicating increased
4 intraLATA activity. Well, that's what one would
5 expect when new entrants are allowed into the market
6 but increased interLATA activity does not correspond
7 to the type of meaningful market presence that the
8 Commission had in mind when it said that the -- wanted
9 the restrictions to remain in place for 18 months.
10 Now, for that reason we suggest that the petition is
11 deficient and should be dismissed. If you choose not
12 to dismiss it, then the second error, I believe, that
13 Staff made is in the suggestion that this warrants a
14 PAA.

15 FCCA intervened and disputed all of the
16 factual representations in the petition. AT&T has
17 intervened. We asked specifically for a hearing on
18 the petition if the motion to dismiss is denied. It's
19 -- I suggest it's folly to think that a PAA, at this
20 point in the process, is likely to end the proceeding
21 where the matter is as controversial as we've
22 indicated.

23 Further, Staff seems to regard the data
24 that's been submitted as satisfying its concerns or
25 the needs of the case when this is the outset of the

1 case and these are only allegations. The Staff
2 commented that FCCA did not take issue with or comment
3 on the validity of the data. Well, we're not there
4 yet, and for that reason I suggest that, first, you
5 should dismiss the case because there's been no
6 representation of the kind of market share that would
7 constitute the meaningful competitive presence the
8 Commission had in mind. But if you do not dismiss the
9 case, then, clearly, you should simply set it for
10 hearing and not issue it for PAA.

11 CHAIRMAN JOHNSON: Thank you.

12 MR. HATCH: I have nothing further to add.

13 COMMISSIONER GARCIA: Madam Chairman.

14 CHAIRMAN JOHNSON: Uh-huh.

15 COMMISSIONER GARCIA: I'd like to make a
16 motion. I'd like to move Staff and just set it for
17 hearing if we can do that. And that way we can --
18 because Mr. McGlothlin is saying that he's going to
19 ask for a hearing, anyway, so we might as well set it
20 now.

21 MR. AUDU: Commissioners, I understand the
22 motion that Commissioner Garcia has moved. I just
23 want to make sure that you understand the 18 months
24 restrictions are supposed to expire in June of '98.
25 And I know that's four months or five months the

1 restrictions are supposed to expire.

2 **COMMISSIONER CLARK:** A PAA don't help us,
3 though. If we issue a PAA, what they are saying is,
4 "Issue it, we're going to ask for a hearing." So why
5 not skip that step and set it for hearing.

6 **MR. AUDU:** I understand.

7 **COMMISSIONER CLARK:** I would only point out
8 that Joe might not know Ms. Sims is here and maybe she
9 wants to make a presentation.

10 **MS. SIMS:** It's Nancy Sims with BellSouth.
11 My attorney is not here today because she is also
12 stranded in Miami.

13 I'm here to support Staff, basically, and we
14 do have a dilemma in that the restrictions are set to
15 expire in June. And if we go to hearing, I don't know
16 if the hearing process will be finalized by that time
17 frame. It kind of puts us in a spot. Because we feel
18 like that --

19 **COMMISSIONER GARCIA:** Correct me if I'm
20 wrong, Ms. Sims, if we vote out what we have here for
21 Staff, we end up in the same place.

22 **MS. SIMS:** Yeah. You're right. You're
23 absolutely right. But we did want to bring it in
24 front of the Commission that the intraLATA competition
25 is alive and well in the state of Florida. At

1 divestiture it took the interexchange carriers ten
2 years to get where they are today in the intraLATA
3 arena in Florida in a year. And the question about
4 market share, that 26% that we quote in our pleading
5 is the lost toll of total PIC-able access lines. Now,
6 if that's not market share I don't know what is. In
7 other words, if you have X number of lines that can be
8 PIC'd to a carrier and you've lost 26% of it, then
9 that's market share as far as we're concerned.

10 And on new customers, contacts overall from
11 the period January '97 through August of '97, 34%
12 chose a carrier other than BellSouth. And in August
13 of '97 it was 49% chose a carrier other than
14 BellSouth.

15 And our biggest concern is we cannot tell
16 the customer that they are losing ECS. We cannot tell
17 the customer we're having a problem with a purchase --
18 they have WATS saver, which is a flat monthly fee each
19 month telling them they no longer should -- you know,
20 if they are going to go to another carrier then they
21 shouldn't pay for WATS saver any longer. Now, what we
22 have been doing with those is contacting them after
23 the fact, so that they won't continue to pay for
24 something they no longer receive. But we are shackled
25 in that we cannot inform the customer of what he is

1 losing. Or that he could continue to get the benefits
2 of ECS if he dials around using our access code.

3 **COMMISSIONER CLARK:** Madam Chair, there's
4 been a motion and a second I would -- I mean, there's
5 mean a motion. I second it.

6 **COMMISSIONER DEASON:** At some point I need
7 to make some comments, so whenever it is appropriate.

8 **MR. McGLOTHLIN:** I'd ask Mr. Garcia to
9 clarify the motion because on the one hand he said
10 move Staff, and the Staff said PAA, but I think it's
11 clear that he sees the futility in that and wanted to
12 move it to hearing.

13 **COMMISSIONER GARCIA:** Correct, Joe. What I
14 want to do is set it for hearing as soon as possible.
15 But, again, that's up to the discretion of the Chair
16 and the limitations that we have on our calendar.

17 **COMMISSIONER DEASON:** That kind of goes
18 along with my question. If we're just going to set
19 this for hearing, I don't have a problem with that.
20 If we're going to issue a PAA, I have some problems
21 with some of the things that Staff has in their rec.
22 And, granted, they say Staff disagrees and Staff
23 disagrees, and I certainly respect their opinion, but
24 I'd hate for that to be in an order saying, "The
25 Commission finds so and so and so and so." I want to

1 be real careful about that. But if we're going to
2 issue an order saying we're taking it to hearing,
3 that's fine. But if there's going to be any
4 explanation on that, I want to make sure that some of
5 these things, some of Staff's opinions don't get
6 themselves in an order as being a Commission position,
7 even though it's a PAA order, because some of them I'm
8 uncomfortable with.

9 MR. COX: We can word the order as you would
10 like.

11 The concern that we have is that even if you
12 set this for a hearing, these restrictions, for the
13 most part, will dissolve on their own right in June.
14 Okay. By the time we have a hearing, issue a Staff
15 recommendation and order, I'm not sure how that's
16 going to happen before June.

17 COMMISSIONER CLARK: But, Will, you don't
18 have any choice. If you use PAA, they've indicated
19 they are going to protest it and our only hope of
20 shortening it is to go ahead and set it for hearing.

21 MS. SIMS: Commissioners, BellSouth would
22 not object to going forward with a hearing on this.

23 CHAIRMAN JOHNSON: Now, do we need to -- the
24 order doesn't have to be very detailed, does it,
25 Ms. Brown?

1 **MS. BROWN:** No, Chairman Johnson. I would
2 suggest that you do vote on Issue 1, on the motion to
3 dismiss. And then the order would simply say that the
4 substantive issues will be set for hearing, and there
5 would be no preliminary decision made one way or the
6 other in the order.

7 **COMMISSIONER DEASON:** I don't have any
8 problem with that whatsoever. I guess the other
9 question is one of procedure. What do we really gain
10 if we are going to go to hearing? We know we can't
11 have an hearing before June, or else have a final
12 decision before June, and we're going through an
13 exercise utilizing valuable Staff resources for really
14 an outcome that's not going to be meaningful.

15 **MS. SIMS:** Commissioners, some of the
16 restrictions that we have do not have a time limit on
17 them. Not all of them have a time limit. Some of
18 them do, and some of them don't.

19 **MS. BROWN:** And, Commissioner Deason --

20 **COMMISSIONER DEASON:** Perhaps we can focus
21 the hearing on those things and not be doing exercises
22 just for the -- or doing work that is really going to
23 be resolved by action of time as opposed to action of
24 the Commission.

25 **MS. BROWN:** Well, we will hold an issue

1 identification meeting, and we can discuss all of that
2 with the parties perhaps when we identify the issues.
3 I think procedurally-speaking, Commissioner Clark is
4 right. We really don't have a choice one way or the
5 other.

6 **COMMISSIONER CLARK:** Okay.

7 **MR. AUDU:** Commissioners, I just wanted to
8 make sure that we understand that BellSouth's
9 petition, specifically the marketing restrictions, is
10 not every restriction that was a result of a complaint
11 procedure. I mean, in the marketing restrictions
12 there were three classes of marketing restrictions.
13 One on new customers that was -- that didn't have a
14 time frame; and then the other two on existing
15 customers that had time frames. So the two that would
16 expire in June, I mean, quite all right, have time
17 frames. So if I understood you correctly, we probably
18 would just be looking at the one, that restriction
19 that pertains to the new customers.

20 **COMMISSIONER DEASON:** Well, there's going to
21 be an issue ID, and all of that can be worked out. I
22 guess I just expressed a hope that we can try to focus
23 on those things which are really relevant. And I
24 don't know who the Prehearing Officer is. It's
25 probably me.

1 **COMMISSIONER CLARK:** Nobody yet.

2 **COMMISSIONER DEASON:** Not yet. I'm not
3 volunteering, though.

4 **COMMISSIONER GARCIA:** I was going to
5 recommend that as part of the motion.

6 **CHAIRMAN JOHNSON:** There's a motion and a
7 second. Any further discussion? Seeing none, show it
8 approved.

9 **COMMISSIONER GARCIA:** Let me ask Staff a
10 quick question, and I think I know the answer but I
11 want to make sure. The IXCs cannot purchase EAS or
12 ECS from the local carrier, correct?

13 **MR. AUDU:** I'm not sure I understood your
14 question. Could you ask that again?

15 **COMMISSIONER GARCIA:** Could AT&T purchase at
16 a resale rate EAS service?

17 **MR. GREER:** Commissioner, it's my belief
18 that that would be a retail service that is available
19 for wholesale discount.

20 **COMMISSIONER GARCIA:** Okay. So I just
21 wanted -- because I thought that it could be
22 repurchased, right? Did the IXCs understand it the
23 same way?

24 **MR. HATCH:** Yes, Commissioner Garcia. This
25 is Tracy Hatch for AT&T.

1 As a retail service that BellSouth provides,
2 if AT&T went into BellSouth's territory on a resale
3 basis, that would be one of the services that would be
4 susceptible to resale pursuant to our interconnection
5 agreement --

6 **COMMISSIONER GARCIA:** Okay. And I also
7 wanted to ask Staff that when we -- I'm sorry,
8 Tracy --

9 **MR. HATCH:** As an ALEC would be, the caveat,
10 but yes.

11 **COMMISSIONER GARCIA:** All right. Staff, I
12 also wanted to ask you to explore the complaints that
13 we've gotten along these lines from customers. It's
14 not necessarily Southern Bell's problem, but the
15 problem that we have had from consumer complaints that
16 don't know -- in other words, our restrictions cause,
17 to some degree, a consumer confusion in what exactly
18 they are purchasing and what exactly they are losing.

19 **COMMISSIONER CLARK:** I think that's the
20 Steinhatchee issue where it came up as they were --
21 they didn't know if they had the \$.25, and when
22 BellSouth checked, it was because they were not PIC'd
23 to BellSouth. The issue is somehow the customers have
24 to get that information.

25 **COMMISSIONER GARCIA:** Right. Commissioner

1 Clark, Steinhatchee was only the latest of a series of
2 complaints that we have had along those lines when we
3 traveled around the state.

4 MS. BROWN: And, Commissioners, I think that
5 in our arbitrations so far no competitors have asked
6 to purchase ECS or EAS for resale.

7 CHAIRMAN JOHNSON: Joe or Susan, what's the
8 issue that we're running into with the people not
9 knowing?

10 COMMISSIONER CLARK: When they choose an
11 intraLATA carrier other than BellSouth, they don't get
12 the 25-cent calling in some places. If it's a new
13 customer, they are not being told that. They need to
14 be told that if they do choose a different intraLATA
15 carrier they can still get the 25-cent if they dial
16 around.

17 CHAIRMAN JOHNSON: Okay. Any other
18 questions on 12? Seeing none. Thank you.

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