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March 26, 1998

BY HAND DELIVERY

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 971560-TL

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. ("MCI"), in the above referenced docket are the original and 15 copies of MCI's Protest of Proposed Agency Action.

Copies have been furnished to parties of record as indicated on the attached service list.

Very truly yours,

Richard D. Melson

Richard D. Melson

ACK _____

AFA _____

APP _____

CAF _____

CMU _____

CTR _____

EAG _____

LEG _____

LIN _____

OPC _____

RCH _____

SEC _____

WAS _____

OTH *Brad*

RDM/clp
Enclosure

cc: Parties of Record

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth)	
Telecommunications, Inc. for)	Docket No. 971560-TL
waiver of Rule 25-4.115, F.A.C.,)	
Directory Assistance, and for)	
authorization to provide National)	Filed: March 26, 1998
Directory Assistance (NDA) in)	
Florida)	

MCI'S PROTEST OF PROPOSED AGENCY ACTION

MCI Telecommunications Corporation (MCIT) and MCImetro Access Transmission Services, Inc. (MCIm) (collectively MCI) hereby protest Order No. PSC-98-0362-FOF-TL (Order) in which the Commission proposes to grant BellSouth Telecommunications, Inc. (BellSouth) a waiver of Rule 25-4.115, Florida Administrative Code, and to permit BellSouth to offer National Directory Assistance as a tariffed offering. In support of its protest, MCI states:

BACKGROUND

1. MCI's official address for its Southeast regulatory operations is:

MCI Telecommunications Corporation
MCImetro Access Transmission Services, Inc.
780 Johnson Ferry Road, Suite 700
Atlanta, GA 30342

2. The names of MCI's representatives in this proceeding are:

Richard D. Melson
Hopping Green Sams & Smith, P.A.
P.O. Box 6526
Tallahassee, FL 32314

Thomas K. Bond
MCI Telecommunications Corp.
780 Johnson Ferry Road, Ste. 700
Atlanta, GA 30342

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

3. MCIT is certificated by this Commission as an interexchange carrier (IXC), alternative local exchange company (ALEC), alternative access vendor (AAV), and pay telephone service provider (PATS). MCIT provides interexchange service throughout the state of Florida. MCI is certificated by this Commission as an ALEC and an AAV. MCI is currently providing local exchange telecommunications service to business customers in several Florida markets.

4. MCI protests the proposed grant of a waiver to BellSouth of Rule 25-4.115, Florida Administrative Code, and the proposal to permit BellSouth to offer National Directory Assistance as a tariffed offering on the grounds that such would violate Section 201(b), 251, 271, and 272 of the Telecommunications Act of 1996 (the Act), and would subject MCI to unfair competition.

GROUND FOR PROTEST

5. Section 271 of the Act prohibits BellSouth from providing in-region, interLATA long distance service until the Federal Communications Commission has approved an application for such authority under Section 271(d)(3). Thus BellSouth cannot offer in-region interLATA service until, among other things, BellSouth demonstrates that it is providing access and interconnection to its network for unaffiliated competing facilities-based providers of business and residential service,

that such access and interconnection is provided in accordance with the fourteen-point competitive checklist, and that its entry into the interLATA market is in the public interest. BellSouth has not yet filed its application for in-region authority in Florida with the FCC. This Commission, in its consultation docket, found that BellSouth had not met its obligations under Section 271.

6. While local directory assistance is clearly a local exchange service, interLATA directory assistance -- i.e., providing callers with telephone numbers of subscribers in other LATAs -- is an interLATA service to be provided by IXCs. By providing interLATA directory assistance to its in-region customers, BellSouth violates the Act's prohibitions against BOC provision of in-region interLATA services. 47 U.S.C. § 271.

7. Because the 1996 Act takes the place of the MFJ, the interpretation of the MFJ provides guidance in applying the 1996 Act. BellSouth would have required a waiver of the MFJ to provide interLATA directory assistance before the MFJ was vacated. See United States v. Western Elec. Co., Civil Action No. 82-0192 (D.D.C. Oct. 30, 1984), slip op. at 4. Thus, interLATA directory assistance is an interLATA service for purposes of applying Section 271.

8. Activities that comprise the business of providing long distance service -- e.g., interLATA 800 directory assistance -- are interLATA telecommunications services, whether or not they involve interLATA transmissions. U.S. v. Western Elec. Co., 627

F. Supp. at 1100, 1102. BellSouth's National Directory Assistance service is an integral part of long distance service; therefore, BellSouth is prohibited from providing the service to in-region customers prior to obtaining in-region authority under Section 271. See United States v. Western Elec. Co., 569 F. Supp. 1057, 1102 (D.D.C. 1983). See also United States v. Western Elec. Co., 627 F. Supp. at 1100, 1102.

9. In addition, BellSouth's provision of National Directory Assistance would involve interLATA transmissions. Order No. PSC-98-0362-FOF-TL, p. 5. The interLATA transmissions that were previously authorized under the MFJ were only for local directory assistance service. See U.S. v. Western Elec. Co., 569 F. Supp. at 1097. The centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered; only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance. See 569 F. Supp. at 1098, n. 179. Thus, interLATA transmissions involved in the provision of BellSouth's long distance directory assistance service have not been previously authorized and are not within the exceptions under Section 271(f) of the Act. 47 U.S.C. § 271(f).

10. The Act does permit BellSouth to provide specific "incidental interLATA services" as defined in Section 271(g) without awaiting approval of an application under Section 271(d). However, "the provisions of subsection (g) are to be narrowly construed," §272(h), and none of the provisions in Section 271(g)

permit BellSouth or its affiliates to provide National Directory Assistance.

11. BellSouth's proposed unseparated provision of National Directory Assistance service to customers in Florida thus constitutes the provision of in-region in-erLATA services directly by a BOC in violation of both Sections 271 and 272 of the Act.

12. BellSouth's proposed provision of National Directory Assistance would also violate the FCC's N11 Order and constitutes an unreasonable practice in violation of Sections 201(b) and 251(b) of the Act. BellSouth's proposal to provide NDA would allow customers to obtain numbers by dialing 411. Order No. PSC-98-0362-FOF-TL, p. 5. In the First Report and Order in its docket captioned Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, (rel. Feb. 19, 1997) (N11 Order), at para. 47, the FCC concluded that 411 should only be used for local directory assistance. In offering National Directory Assistance using 411, BellSouth violates that Order.

13. BellSouth's violation of the FCC's N11 Order would constitute an unreasonable practice under Section 201(b), since other IXCs cannot offer National Directory Assistance using a 411 access code.

14. BellSouth retains its market dominance in the local and intraLATA toll service markets and the 411 local directory assistance market in its region. By offering long distance

directory assistance, which is competitive, using an access number that is reserved for local directory assistance, BellSouth's offering of National Directory Assistance service would exploit its dominance in the local and intraLATA toll service market to secure a competitive advantage in the interLATA market.

15. BellSouth's leveraging of market power and misuse of the 411 access number in an effort to secure a competitive advantage in the interLATA market is an unreasonable practice in violation of Section 201(b) of the Act. See AT&T Communications, Transmittal Nos. 2071 and 2212, 5 FCC Rcd. 3833 (1990), appeal dismissed, No. 90-1415 (D.C. Cir. March 21, 1990), review denied, 7 FCC Rcd. 5656 (1992). See also, AT&T's Private Payphone Commission Plan, 3 FCC Rcd. 5834 (1988), reconsideration denied, 7 FCC Rcd. 7135 (1992).

16. BellSouth requested that the Commission waive Rule 25-4.115 because it claims that the Rule imposes a substantial hardship on BellSouth by denying BellSouth the ability to provide NDA. Order No. PSC-98-0362-FOF-TL, p. 4. Since BellSouth is prohibited from providing NDA under federal law, the rule's restriction should hardly be considered a hardship which would justify waiving the rule. BellSouth also argues that allowing it to provide NDA would promote competition and benefit Florida telecommunications customers. Order No. PSC-98-0362-FOF-TL, p. 4. On the contrary, allowing BellSouth to circumvent Section 271 reduces BellSouth's incentive to open its local markets to

competition.

SUBSTANTIAL INTERESTS OF MCI

17. The substantial interests of MCIT and MCI_m are both affected by any Commission action granting BellSouth interexchange authority that is inconsistent with the Act. The Act represents Congress' attempt to carefully balance a number of competing interests. One of the major thrusts of the Act is that BellSouth should not be permitted to enter the interLATA long distance market until it has opened its local markets to competition and the FCC has determined that such entry is in the public interest. If the Commission grants BellSouth any unauthorized interLATA authority prior to the FCC's order authorizing such entry, then the balance envisioned by Congress has been disturbed. MCIT is harmed by being subjected to competition which is prohibited by the Act. MCI_m is harmed by partial removal of the incentive for BellSouth to fully open its local markets to competition. Both of these are interests protected by the Act, as recognized by the Commission having allowed MCI to intervene in the 271 proceeding involving BellSouth. Finally, since NDA is a competitive service, MCI is harmed if BellSouth is allowed to use a 411 access code to provide this service when MCI is not.

KNOWN ISSUES OF MATERIAL FACT

18. MCI assumes that BellSouth will dispute MCI's assertion that allowing BellSouth to provide NDA would violate the federal

Act. MCI assumes that BellSouth will dispute MCI's assertion that allowing BellSouth to provide NDA would allow it to circumvent its obligation to open its local market to competition. MCI assumes that BellSouth will dispute MCI's assertion that allowing BellSouth to provide NDA would subject MCI to unfair competition. MCI assumes that BellSouth will dispute MCI's assertion that allowing BellSouth to provide NDA using 411 would subject MCI to unfair competition.

STATUTES AUTHORIZING RELIEF

19. MCI is entitled to relief under Chapter 120 and Chapter 364, Florida Statutes, Chapter 25-22, Florida Administrative Code, and the Telecommunications Act of 1996.

WHEREFORE, MCI protests the Order proposing to grant BellSouth Telecommunications, Inc. (BellSouth) a waiver of Rule 25-4.115, Florida Administrative Code, and to permit BellSouth to offer National Directory Assistance as a tariffed offering. MCI requests that the Commission:

(a) hold a hearing pursuant to Section 120.57 on the issue of whether BellSouth should be granted a waiver of Rule 25-4.115, Florida Administrative Code, whether BellSouth should be permitted to offer National Directory Assistance as a tariffed offering, and whether BellSouth should be permitted to offer National Directory Assistance using 411; and

(b) grant such other relief as is necessary and proper under the circumstances.

RESPECTFULLY SUBMITTED this 26th day of March, 1998.

HOPPING GREEN SAMS & SMITH, P.A.

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and

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780 Johnson Ferry Road, Ste. 700
Atlanta, GA 30342
(404) 267-6315

Attorneys for MCI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 26th day of March 1998.

Charles J. Pellegrini
Division of Legal Services
FL Public Service Commission
2540 Shumard Oak Boulevard
Suite 370
Tallahassee, FL 32399

BellSouth Telecommunications,
Inc.
Nancy B. White
c/o Ms. Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Paul D. [Signature]

ATTORNEY