

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of
BellSouth Telecommunications,
Inc.'s entry into interLATA
services pursuant to Section 271
of the Federal
Telecommunications Act of 1996.

DOCKET NO. 960786-TL
ORDER NO. PSC-01-1025-PCO-TL
ISSUED: April 25, 2001

ORDER REGARDING ISSUES TO BE ADDRESSED AT HEARING

I. Background

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions applicable to the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC must consult with the Attorney General and the appropriate state commission before making a determination regarding a BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B). With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

On June 28, 1996, we opened this docket to begin to fulfill our consultative role on the eventual application of BellSouth Telecommunications, Inc. for authority to provide in-region interLATA service.

On June 12, 1997, Order No. PSC-97-0703-PCO-TL, Second Order Establishing Procedure, was issued. That Order established the hearing schedule in the case and required BellSouth to submit specific documentation in support of its Petition, which was scheduled to be filed on July 7, 1997. On July 2, 1997, Order No. PSC-97-0792-PCO-TL, Order Modifying Procedural Schedule, was issued. That Order set out additional issues to be addressed.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REGISTRATION

After hearing, having considered the record, by Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, we rendered findings on whether BellSouth had met the requirements of Section 271(c). Specifically, we found that BellSouth was not eligible to proceed under Track B at that time, because it had received qualifying requests for interconnection that if implemented would meet the requirements of Section 271(c)(1)(A), also known as Track A.

Our evaluation of the record on whether BellSouth met the requirements of Section 271(c)(1)(A) indicated that while there was a competitive alternative in the business market, there was not sufficient evidence to determine whether there was a competitive alternative in the residential market. Thus, based on the evidence in the record, we found that BellSouth had not met all of the requirements of Section 271(c)(1)(A). This Commission found that BellSouth had met checklist items 3,4,8,9,10,11,12,13, and the majority of checklist item 7. BellSouth had not met the requirements of checklist items 1,2,5,6, and 14. BellSouth had met the requirements of several checklist items in this proceeding, and therefore, we indicated it may not be required to relitigate those issues before us in a future proceeding. We did find, however, that when BellSouth refiles its 271 case with us, it must provide us with all documentation that it intends to file with the FCC in support of its application. Finally, we found that we could not approve BellSouth's SGAT at that time.

On March 6, 2001, BellSouth filed a Motion to Request Scheduling Conference. On March 28, 2001, a status conference was conducted with all of the parties. Thereafter, by Order No. PSC-01-0832-PCO-TL, issued March 30, 2001, the schedule for this proceeding was established.

On April 24, 2001, I conducted an Issues Identification Conference to discuss which issues need to be identified for resolution in this proceeding and to hear argument on any disputed issues. Upon consideration of the arguments presented, the issues that are appropriately addressed in this proceeding are delineated herein.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any

orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

II. Excluded Issues

The following issues were proposed by the FCCA and AT&T in their preliminary issues list:

6. Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(b)(ii) and applicable rules promulgated by the FCC?

a. What performance measures should be used to evaluate whether BellSouth is providing nondiscriminatory access to network elements?

b. Does commercial experience show that BellSouth has provided access to network elements in a nondiscriminatory manner?

c. What time frame and what volume of commercial data are necessary to appropriately evaluate whether BellSouth has provided access to network elements in a nondiscriminatory manner?

d. Does BellSouth's OSS provide nondiscriminatory access to network elements?

and

18. Has BellSouth provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(b)(xiv) and applicable rules promulgated by the FCC?

a. What performance measures should be used to evaluate whether BellSouth is providing nondiscriminatory telecommunications services for resale?

b. Does commercial experience show that BellSouth has provided telecommunications services for resale in a nondiscriminatory manner?

c. What time frame and what volume of commercial data are necessary to appropriately evaluate whether BellSouth has provided telecommunications services for resale in a nondiscriminatory manner?

d. Does BellSouth's OSS provide nondiscriminatory access to telecommunications services for resale?

These issues need not be addressed in the hearing that is scheduled in this proceeding, because these issues are already being addressed in the third-party OSS testing being conducted in this same Docket. As set forth in Order No. PSC-99-1568-PAA-TP, issued August 9, 1999, and consummated as a final order on September 2, 1999, third-party testing of BellSouth's provisioning of its OSS systems should allow us to fulfill our consultative role under Section 271, and may, as noted in our Order, ". . . provide better, more accurate information about the status of BellSouth's systems than might be obtained through further administrative proceedings on this issue." Order at p. 10. Therefore, we determined that

. . . if BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall be considered to have remedied the OSS concerns that we identified in Order No. PSC-97-1459-FOF-TL for purposes of our recommendation to the FCC on any future application by BellSouth for interLATA authority in Florida. Likewise, if only portions of BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall not be required to make any further

demonstration to us with regard to those portions.

Id.

Subsequent to that decision, we approved the test plan for the OSS testing by Order No. PSC-00-0104-PAA-TP, issued January 11, 2000, and consummated as a final order on February 2, 2000. Therein, we again emphasized that the third-party OSS testing was being conducted in lieu of addressing our OSS concerns through the hearing process. See Order at p. 5. In addition to outlining the testing process itself, we also required the test manager, KPMG, to provide a report on the test results. In our Order, we required KPMG to address, in addition to the specific test results, a description of ". . . any differences between the access to OSS functions BellSouth provides itself and that which it provides to ALECs," with an analysis of the operational effect of the differences. We also asked for recommendations on these items. See Order at p. 6. This type of analysis, by its very nature, requires an analysis of commercial data. That analysis is being conducted within the third-party OSS testing portion of this proceeding. Therefore, sub-issues (b) and (c) of FCCA's proposed Issues 6 and 18, are currently being addressed to the extent contemplated in our prior decisions.

As for sub-issue (a), the appropriate performance measures for rendering our determination on BellSouth's compliance with checklist item 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv) have also already been determined within the third-party OSS testing phase of this proceeding. By Order No. PSC-00-0260-PAA-TL, issued February 8, 2000, and consummated as a final order on March 1, 2000, we approved a set of interim measures, also referred to as metrics, for use in the third-party testing process. Therein, we clearly stated that these interim performance measures would be the measures used for the OSS-testing process. Order at p. 3. We stated that

Performance metrics are the yardstick by which the existence of nondiscrimination or parity will be determined during the OSS third-party testing.

We did not, however, indicate that permanent metrics would ultimately be incorporated in the third-party OSS test, nor did we determine that permanent metrics would be a part of our Section 271 consideration. It is also noteworthy that our Order reflects that all parties and Commission staff participated in the development of the interim metrics.

Performance measures are only necessary to determine whether BellSouth is provisioning its OSS systems in compliance with Section 271 of the Act; it is not a discreet checklist item. Since we have determined in our prior Orders that our concerns regarding OSS will be addressed through the testing process, which already has interim performance measures in place, there is no need to include sub-issue (a) as proposed by FCCA.

In addition, BellSouth proposed the following sub-issues (a-c), and FCCA proposed the following sub-issue (d) that I find are currently being addressed in the third-party OSS testing process:

- (a) Does BellSouth provide ALECs with mechanically generated bills in the national standard CABS format?
- (b) Does BellSouth make usage data for billing purposes available to ALECs?
- (c) Does BellSouth render accurate bills for resold services at the appropriate discount rates?
- (d) Does BellSouth provide nondiscriminatory access to billing functions?

These items are also currently being tested as set forth in the approved Master Test Plan for the third-party OSS testing. Therefore, these issues have also been excluded.

The remainder of issues 6 and 18 proposed by FCCA and issues 3 and 15 proposed by BellSouth are incorporated in approved issues 3 and 15 set forth in the following section.

FCCA also proposed the following issue:

4. Has BellSouth complied with its obligations under Chapter 364, Florida Statutes, to offer network elements?

This issue has also been excluded. The Act does not require state commissions to render recommendations to the FCC on whether BellSouth has met the requirements of state law. Section 271 (d) (2) (B) specifically states that the FCC will consult with state commissions to verify compliance of the Bell Operating Companies with the requirements of subsection (c) of Section 271. There is no reference to any state law considerations.

Likewise, the following issue proposed by FCCA has been excluded:

22. Has BellSouth complied with the separate affiliate requirements of Section 272?

State commissions are required only to make recommendations to the FCC on those requirements identified in subsection (c) of Section 271 of the Act, as clearly stated in Section 271(d)(2)(B). Furthermore, it appears that whether BellSouth has established a separate affiliate pursuant to Section 272 is not an issue that must be determined prior to authorization under Section 271.

I note that issues 2 and 3 proposed by FCCA were withdrawn at the issues identification conference.

Sprint proposed the following issue:

Is BellSouth providing collocation at remote terminals consistent with the requirements of the Federal Telecommunications Act and orders of the Federal Communications Commission implementing the Act? -

This issue has not been included as a separate issue, but may be addressed under approved issue 2 set forth below.

Florida Digital Network (FDN) proposed the following issue:

1. Is it consistent with the public interest, convenience and necessity for BellSouth to receive the authorization requested?

This issue has been excluded. While FDN argues that other state commissions have found this to be an issue appropriate for consideration in a Section 271 proceeding, I find that state commissions are required only to make recommendations to the FCC on those requirements identified in subsection (c) of Section 271 of the Act, as clearly stated in Section 271(d)(2)(B). A public interest determination is not an item delineated under subsection (c) of Section 271 for state commissions to address. I note that in our prior proceeding in this Docket, this same issue was excluded by Orders Nos. PSC-97-0792-PCO-TL and PSC-96-0945-PCO-TL due to the potential magnitude of the issue and the specific language outlining our responsibilities set forth in Section 271(d)(2)(B). The remainder of FDN's proposed issues are subsumed in the following approved issues.

III. Approved Issues

Upon consideration of the arguments presented, I find that the following issues are appropriate for consideration in this proceeding:

1. Has BellSouth met the requirements of Section 271(c)(1)(A) of the Telecommunications Act of 1996?
 - (a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?
 - (b) Does BellSouth currently provide access and interconnection to its network facilities for the network facilities of competing providers? -
 - (c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

2. Does BellSouth currently provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?
 - (a) Has BellSouth implemented physical collocation requests in Florida consistent with FCC rules and orders?
 - (b) Does BellSouth have legally binding provisioning intervals for physical collocation?
 - (c) Does BellSouth currently provide local tandem interconnection to ALECs?
 - (d) Does BellSouth currently permit the use of a Percent Local Usage (PLU) factor in conjunction with trunking?
 - (e) Does BellSouth currently provide ALECs with meet point billing data?
 - (f) Has BellSouth satisfied other associated requirements, if any, for this item?

3. Does BellSouth currently provide nondiscriminatory access to all required network elements, with the exception of OSS which will be handled in the third party OSS test, in accordance with Sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?
 - (a) Does BellSouth currently provide all required unbundled network elements at TELRIC-based prices?
 - (b) Has BellSouth satisfied other associated requirements, if any, for this item?

4. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 224 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iii). Does BellSouth currently provide nondiscriminatory access to the poles, ducts, and conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?

5. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(iv) of the Telecommunications Act of 1996. Does BellSouth currently provide unbundled local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to Section 271(c)(2)(B)(iv) and applicable rules and orders promulgated by the FCC?
 - (a) Does BellSouth currently provide all currently required forms of unbundled loops?
 - (b) Has BellSouth satisfied other associated requirements, if any, for this item?

6. Does BellSouth currently provide unbundled local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to Section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?
 - (a) Does BellSouth currently provide billing for usage-sensitive UNEs?
 - (b) Has BellSouth satisfied all other associated requirements, if any, for this item?

7. Does BellSouth currently provide unbundled local switching from transport, local loop transmission, or other services, pursuant to Section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?
 - (a) Does BellSouth bill for unbundled local switching on a usage-sensitive basis?
 - (b) Does BellSouth currently provide unbundled local switching on both the line-side and the trunk-side of the switch?
 - (c) Has BellSouth satisfied other associated requirements, if any, for this item?

8. Does BellSouth currently provide nondiscriminatory access to the following, pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:
 - (i) 911 and E911 services;
 - (ii) directory assistance services to allow other telecommunications carrier's customers to obtain telephone numbers; and
 - (iii) operator call completion services?
 - (a) Does BellSouth currently provide ALECs access to all information contained in BellSouth's directory listing database?
 - (b) Does BellSouth currently provide selective routing in Florida?
 - (c) Has BellSouth satisfied other associated requirements, if any, for this item?

9. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the

requirements of Section 271(c)(2)(B)(viii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to Section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

10. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(ix) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to Section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?
11. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(x) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to Section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?
12. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xi) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide number portability, pursuant to Section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?

13. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?
14. In Order PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission found that BellSouth met the requirements of Section 271(c)(2)(B)(xiii) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Does BellSouth currently provide reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?
15. Does BellSouth currently provide telecommunications services available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to Section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?
16. By what date does BellSouth propose to provide intraLATA toll dialing parity throughout Florida pursuant to Section 271(e)(2)(A) of the Telecommunications Act of 1996?
17. If the answers to issues 2 through 15 are "yes," have those requirements been met in a single agreement or through a combination of agreements?
18. Should this docket be closed?

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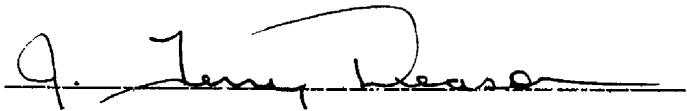
Testimony and exhibits filed in this proceeding shall address these issues.

It is therefore

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the issues as set forth in Section III of this Order are approved for consideration in this proceeding. The testimony and exhibits filed in this Docket shall address the approved issues. It is further

ORDERED that the issues as described in Section II of this Order shall be excluded from consideration in this proceeding for the reasons set forth in the body of this Order.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 25th Day of April, 2001.

A handwritten signature in black ink, appearing to read "J. Terry Deason", is written over a horizontal line.

J. TERRY DEASON
Commissioner and Prehearing Officer

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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.

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