

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

September 7, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 960786-TL

Dear Ms. Bayo:

On behalf of ACCESS Integrated Networks, Inc., enclosed for filing and distribution are the original and 15 copies of the Response of ACCESS to Suggestion by Staff to Strike Testimony of Rodney Page.

Please acknowledge receipt of the above on the extra copy and return the stamped copy to me. Thank you for your assistance.

Sincerely,



Joseph A. McGlothlin

JAM/mls
Enclosure

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

DOCUMENT NUMBER - DATE
11155 SEP -76
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of)
BellSouth Telecommunications, Inc.'s) Docket No. 960786-TL
Entry into InterLATA Services Pursuant)
To Section 271 of the Federal) Filed: September 7, 2001
Telecommunications Act of 1996)
_____)

**RESPONSE OF ACCESS TO SUGGESTION BY STAFF TO
STRIKE TESTIMONY OF RODNEY PAGE**

ACCESS Integrated Networks, Inc. ("ACCESS") hereby responds to Staff's suggestion that the Prehearing Officer strike, on his own motion, certain of the testimony of Rodney Page (page 4, line 9 through page 7, line 16).¹

Mr. Page's testimony should not be stricken. It is relevant to issues identified by the Prehearing Officer and to items of the Section 271 checklist. It bears on whether BellSouth has opened its network to competition -- a statutory condition precedent to BellSouth's entry into the interLATA market.

The Testimony

In testimony that is not the subject of staff's suggestion, Mr. Page states:

"My understanding is that stated in overall terms, the test to be applied in this case is whether BellSouth has fully opened its network to competition. . . . ACCESS's experience is that BellSouth engages in conduct that impedes and stifles competition."

In the first statement "captured" by Staff's memorandum, Mr. Page states:

"We have found, to our profound disappointment that BellSouth frequently endeavors to create doubt or concern in the minds of ACCESS' customers or

¹BellSouth did not move to strike Mr. Page's testimony, and in fact submitted testimony in rebuttal of Mr. Page.

potential customers regarding the quality of service they will receive if they switch to or remain with ACCESS."

In the testimony that follows, all of which Staff wishes the Prehearing Officer to strike, Mr. Page provides examples of instances in which BellSouth has attempted - sometimes successfully - to undermine the relationship between ACCESS and customers that ACCESS had won from BellSouth and was serving with unbundled elements obtained from BellSouth. Mr. Page says he has personal knowledge that such practices are frequent and widespread. Mr. Page provides several affidavits of customers to reinforce his own testimony.

The Testimony is Relevant

Issue 2 addresses whether BellSouth has provided to the ALECs the type of interconnection and access required by the 1996 Act. Subissue 2(f) asks whether BellSouth has satisfied "other associated requirements" related to the item. Once such associated requirement is the obligation of an ILEC to provide interconnection of a quality at least equal to that which BellSouth provides to itself. Section 251(c)(2), 1996 Act. Issue 2 asks whether BellSouth is providing access to unbundled network elements on terms that are just, reasonable, and nondiscriminatory. Issues 2 and 3 are explicit components of the statutory checklist of Section 271.

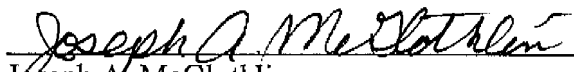
The point of Mr. Page's testimony is this: To gauge whether BellSouth has satisfied the checklist, it is necessary to look beyond the mere mechanical aspects of provisioning elements. To illustrate, assume hypothetically that an ILEC is ordered to issue, on a non-discriminatory basis to the ILECs' customers AND to customers of an ALEC that secures the UNE platform from the ILEC, a "smart" device that attaches to a customer's jack and enhances service. The ILEC arranges for all such customers to form a line and file through a single distribution center. As the customers of the

ILEC and of the ALEC enter the front door, the ILEC gives each a box containing one of the devices. As the customers leave the back door and head for the parking lot, an ILEC representative shakes hands with the ILEC's own customers. To each of the ALEC's customers the ILEC representative cautions, "If you are the ALEC's customer I advise you to wear safety goggles and protective clothing when installing that thing." In that scenario, each customer received a box - but would the Commission conclude that the ILEC carried out its obligation to "provide access" to the device in a non-discriminatory manner?

The hypothetical is exaggerated, but the principle applies to the Prehearing Officer's evaluation of Mr. Page's testimony. Mr. Page testifies that BellSouth's ongoing, widespread practice is to undermine "outside the back door" the ability of ACCESS to compete for business with the network elements that BellSouth purports to make available on a non-discriminatory basis. What is the purpose of the obligation to provide interconnection and access, if not to enable ALECs such as ACCESS to compete? Is not the purpose of the checklist to gauge whether the RBOC has opened its network to the type of competition that will enable other providers to sustain themselves and compete if and when the RBOC is allowed in the interLATA market? If BellSouth is engaging in practices designed to poison the competition that is based on the use of its network, how can that not be relevant to a consideration of whether BellSouth should be allowed to enter the interLATA market? In his testimony, Mr. Page urged the Commission not to lose sight of the forest when taking inventory of the individual trees of the checklist. With all due respect, that would be the unfortunate result if the Prehearing Officer were to act on Staff's recommendation to strike Mr. Page's testimony. Mr. Page's testimony is not an "individual company complaint" of the type treated in Order No. PSC-97-1459-FOF-TL. Instead, Mr. Page is trying to alert the Commission

to the fact of "backdoor" practices through which BellSouth effectively is avoiding the fundamental obligations of the Act while simultaneously hoping to claim its benefits. To perform its consultative role in a meaningful way, the Commission must not apply tunnel vision to its evaluation of BellSouth's performance of these obligations.

Lastly, ACCESS wishes to point out that while in other instances Staff recommends that certain testimony be relocated from the hearing track to the separate OSS testing track, Staff asks the Prehearing Officer to eliminate Mr. Page's testimony from the case completely -- a far more injurious course, and one that should require a corresponding level of support. ACCESS submits that Mr. Page's testimony is relevant, and that Staff has not demonstrated otherwise.


Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 Telephone
(850) 222-5606 Telefax
jmclothlin@mac-law.com

D. Mark Baxter
Stone & Baxter, LLP
577 Mulberry Street, Suite 1111
Macon, Georgia 31201-8256
(478) 750-9898 Telephone
(478) 750-9899 Telefax

Attorneys for Access Integrated Networks, Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of ACCESS to Suggestion by Staff to Strike Testimony of Rodney Page has been furnished by (*) hand delivery or by U. S. Mail on this 7th day of September, 2001, to the following:

(*) Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Jeremy Marcus
Blumenfeld & Cohen
1625 Massachusetts Avenue, NW
Suite 300
Washington DC 20036

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, inc.
150 South Monroe Street, Suite 400
Miami Florida 32301

James Falvey
e.spire Communications
131 National Business Parkway, Suite 100
Annapolis Junction, MD 20701

Michael Gross
Florida Cable Telecommunications Assoc.
246 E. 6th Avenue
Tallahassee, Florida 32303

Kim Caswell
GTE
Post Office Box 110
FLTC0007
Tampa, Florida 33601

Richard Melson
Post Office Box 6526
Tallahassee, Florida 32314

Scott Sapperstein
Intermedia
One Intermedia Way
MC FLT-HQ3
Tampa, Florida 33619-1309

Donna McNulty
325 John Knox Road, Suite 105
Tallahassee, Florida 32303

Floyd Self/Norman Horton
Messer Law Firm
Post Office Box 1876
Tallahassee, Florida 32302

Pete Dunbar/Karen Camechis
Pennington Law Firm
Post Office Box 10095
Tallahassee, Florida 32301

Susan S. Masterton
Sprint
Post Office Box 2214
MC: FLTLH00107
Tallahassee, Florida 32316-2214

Ken Hoffman
Rutledge Law Firm
Post Office Box 551
Tallahassee, Florida 32302-0551

Andrew Isar
Ascent
3220 Uddenberg Lane, Suite 4
Gig Harbor, WA 98335

Matthew Feil
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, Florida 32801

Angela Green, General Counsel
Florida Public Telecommunications Assoc
125 S. Gadsden Street, Suite 200
Tallahassee, Florida 32301-1525

Patrick Wiggins
Katz, Kutter Law Firm, 12th Floor
106 East College Avenue
Tallahassee, Florida 32301

John Marks, III
Knowles Law Firm
215 S. Monroe Street, Suite 130
Tallahassee, Florida 32301

Scheffel Wright
Landers Law Firm
Post Office Box 271
Tallahassee, Florida 32302

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Suite 812
Tallahassee, Florida 32399-1400

Rodney L. Joyce
600 14th Street, N.W., Suite 800
Washington DC 20005-2004

Catherine F. Boone
Covad Communications Company
10 Glenlake Parkway, Suite 650
Atlanta, GA 30328-3495

John Kerkorian
MPower
5607 Glenridge Drive, Suite 300
Atlanta, GA 30342

CWA (Orl)
Kenneth Ruth
2180 West State Road 434
Longwood, FL 32779

ITC^ DeltaCom
Nanette S. Edwards
4092 South Memorial Parkway
Huntsville, AL 35802-4343

Network Access Solutions Corporation
100 Carpenter Drive, Suite 206
Sterling, VA 20164

Swidler & Berlin
Richard Rindler/Michael Sloan
3000 K. St. NW #300
Washington, DC 20007-5116

Suzanne F. Summerline
IDS Telcom L.L.C.
1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301

Jim Lamoureux
AT&T Communications, Inc.
1200 Peachtree Street, NE, Room 8068
Atlanta, GA 30309


Joseph A. McGlothlin