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September 21, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
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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 ACCESS Integrated Networks, Inc.'s Motion for Reconsideration by the Full Commission of Prehearing Officer's Order Dated September 11, 2001.

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

DOCUMENT NUMBER DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of BellSouth Telecommunications,)
Inc.'s entry into interLATA services pursuant to) Docket No. 960786-TL
Section 271 of the Federal Telecommunications)
Act of 1996) Filed: September 21, 2001

**MOTION OF ACCESS INTEGRATED NETWORKS, INC FOR
RECONSIDERATION BY THE FULL COMMISSION OF PREHEARING
OFFICER'S ORDER DATED SEPTEMBER 11, 2001**

Pursuant to Rule 25-22.0376, Florida Administrative codes. Access Integrated Networks, Inc. ("ACCESS") submits its Motion for Reconsideration of the Prehearing Officer's Order dated September 11, 2001. In support of the motion, ACCESS states:

1. Section 251(e)(2) of the Telecommunications Act of 1996 requires an ILEC to demonstrate that it is providing interconnection of a quality at least equal to that which it provides to itself. Section 251(c)(3) requires that an ILEC provide nondiscriminatory access to unbundled network elements. Both of these requirements are encompassed within the 14 point checklist of Section 271 that an ILEC must satisfy before the FCC will consider its application to enter the interLATA market.

2. On July 20, 2001, ACCESS timely submitted prefiled testimony of Rodney Page. In his testimony, Mr. Page reminds the Commission that the thrust of Section 271 is to require an ILEC to open its network to competition before it will be allowed into the interLATA market. Mr. Page states that the type of discrimination that can thwart competition and violate the mandate of equal and nondiscriminatory treatment is not limited to the mechanical aspects of provisioning elements. Mr. Page testifies that BellSouth is engaged in discriminatory and anticompetitive conduct designed to effectively avoid its obligations to ACCESS by undermining the competition that is based on the use of unbundled elements obtained from BellSouth. Mr. Page cites several examples of instances in which BellSouth negatively

interacted with ACCESS customers in a manner in which it does not with its own customers. ACCESS offered this testimony in response to Issue 2(f), which asks whether BellSouth is providing interconnection of a quality at least equal to that which it provides to itself, and Issue 3, which inquires whether BellSouth is providing nondiscriminatory access to network elements.

3. BellSouth did not move to strike Mr. Page's testimony; indeed, BellSouth submitted testimony in rebuttal of Mr. Page. However, Staff suggested that the Prehearing Officer strike the substantive portion of Mr. Page's testimony on his own initiative. Staff based its suggestion on the Commission's order in the first BellSouth Section 271 application. In Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission admonished ALECs not to submit for resolution in the Section 271 docket complaints that they may have against BellSouth.

4. On September 7, 2001, ACCESS responded to the Staff's suggestion. (Attachment A). In the response, ACCESS posed this question: How can evidence that BellSouth is engaged in widespread, ongoing efforts to thwart in the marketplace the competition that is based on unbundled elements obtained from BellSouth, *not* be relevant to the consideration, in a Section 271 hearing, of whether BellSouth has opened its network to competition?

5. The Prehearing Officer adopted the Staff's suggestion and ordered that the testimony be stricken.¹ Order No. PSC-01-1830-PCO-TL issued on September 11, 2001.

¹ In the Order that is the subject of this Motion, the Prehearing Officer struck certain testimony of other ALECs and directed that it be considered in the "non-hearing track." He struck Mr. Page's testimony from the proceeding entirely.

6. ACCESS respectfully submits that in striking ACCESS' testimony the Prehearing Officer misapprehended the purpose of the testimony and the proper import of the prior Commission order, on which the decision was based. The Commission should reconsider the decision to strike Mr. Page's testimony, both because it is germane to a consideration of BellSouth's claim that it has satisfied the requirements applicable to its desire to enter the interLATA market and because it is needed to provide a record adequate to enable the Commission to perform its consultative role fully.

7. The November 1997 order provides no legitimate basis for excluding ACCESS' testimony. In that order, the Commission indicated appropriately that it would not entertain, in a Section 271 case, a "complaint" by an ALEC seeking "resolution" of a grievance with BellSouth. The Staff (in its suggestion to strike ACCESS' testimony) and the Prehearing Officer evidently concluded that the testimony of Mr. Page falls within that category. It does not. Mr. Page submitted the testimony that was the subject of the September 11 order -- not to obtain an order directing BellSouth to cease and desist in its treatment of ACCESS -- but to apprise the Commission that BellSouth has not met the standards of Section 271 and should therefore not be permitted to enter the interLATA market. To draw an analogy, many times the same facts that are offered in a criminal trial could also be offered to support a separate and different claim in a civil case. Similarly, the facts that are relevant to a Section 271 application and the facts that could support a complaint proceeding in which a grievance is submitted for *resolution and relief* are not necessarily mutually exclusive. The fact that information conceivably could support a complaint and demand for relief does not affect either the relevancy or the probative value of the same information offered to demonstrate that BellSouth has not complied with a checklist requirement in a Section 271 application.


8. The error in the order that warrants reconsideration is the mistaken conclusion that the testimony was an effort to obtain ALEC-specific relief that was precluded by a prior ruling. However, to exclude the testimony would also unduly limit the scope of the Commission's evaluation and the adequacy of the record available to assist the Commission when it performs its consultative role. For instance in his testimony Mr. Page urges the Commission not to lose sight of the forest when inspecting the trees of the 14 point checklist. The testimony demonstrates that the means with which to avoid the obligation to provide nondiscriminatory access to elements is not limited to the mechanics of provisioning those elements. It is therefore relevant to the issues in this proceeding.

9. Surely, the Commission wants to have the input of the ALECs that must depend upon BellSouth's compliance with the obligations of the Act. To construe the directive in the November 1997 Order as broadly as the ruling of the Prehearing Officer would have the practical effect of eliminating virtually any testimony that is based on an ALEC's first-hand experience with BellSouth; if critical in nature, any such testimony could form the basis of a complaint. Yet, what source of information regarding BellSouth's compliance or non-compliance does an ALEC have other than its "real world" experience with BellSouth?² Mr. Page's testimony is designed -- not to obtain relief in this forum -- but to develop a record on which the Commission can evaluate the true extent to which BellSouth has embraced competition. To avoid a record

² The Staff has implicitly acknowledged the relevancy of direct experience. It did not dispute the relevancy of the "real world experience" testimony of witness Willis of NuVox Communications Inc. ("NuVox"). (Mr. Willis testifies that BellSouth has failed to appropriately provide interconnection and is ignoring its contractual obligation to charge NuVox the rates the parties agreed upon in their interconnection agreement.)

devoid of first-hand experience of such important matters, it is necessary to allow Mr. Page to describe ACCESS' experiences and then relate those experiences to the criteria of the Act.

WHEREFORE, ACCESS respectfully requests the Commission to reconsider Order No. PSC-01-1830-PCO-TL and reinstate the testimony of Rodney Page affected by that ruling.


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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.


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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:

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I HEREBY CERTIFY that a true and correct copy of the foregoing ACCESS Integrated Networks, Inc.'s Motion for Reconsideration by the Full Commission of Prehearing Officer's Order Dated September 11, 2001, has been furnished by (*) hand delivery or by U. S. Mail on this 21st day of September, 2001, to the following:

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