



Public Service Commission
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-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 28, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYO)

FROM: DIVISION OF LEGAL SERVICES (B. KEATING, BANKS, HELTON) *JK RMB*
DIVISION OF COMPETITIVE SERVICES (LOGUE, FULWOOD, MARSH, *AKH*
SO DOWDS, KING, *JK*) *AKH*
DIVISION OF REGULATORY OVERSIGHT (HARVEY, VINSON) *BMA*

RE: DOCKET NO. 960786A-TL - CONSIDERATION OF BELLSOUTH
TELECOMMUNICATIONS, INC.'S ENTRY INTO INTERLATA SERVICES
PURSUANT TO SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS
ACT OF 1996.

AGENDA: OCTOBER 2, 2001 - REGULAR AGENDA - MOTIONS FOR
RECONSIDERATION - PARTICIPATION BY PARTIES AT THE
COMMISSIONERS' DISCRETION - ORAL ARGUMENT NOT REQUESTED

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\960786A.RCM

CASE 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

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verify that the BOC has complied with the requirements of Section 271(c) of the Act.

On June 28, 1996, the Commission opened this docket to begin to fulfill its 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.

After hearing, having considered the record, by Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, the Commission rendered findings on whether BellSouth had met the requirements of Section 271(c). Specifically, the Commission 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.

The Commission's 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, the Commission 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, the Commission indicated it may not be required to relitigate those issues before the Commission in a future proceeding. The Commission did find, however, that when BellSouth refiles its 271 case with this Commission, it must provide the Commission with all documentation that it intends to file with the FCC in support of its application. Finally, the Commission found that it could not approve BellSouth's

Statement of Generally Available Terms and Conditions (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, the Prehearing Officer conducted an Issues Identification Conference to discuss which issues needed to be identified for resolution in this proceeding and to hear argument on any disputed issues. Thereafter, the Prehearing Officer issued Order No. PSC-01-1025-PCO-TL on April 25, 2001. In that Order, the Prehearing Officer defined the issues to be addressed in this proceeding and specifically excluded certain issues proposed by the parties.

On May 2, 2001, the Florida Competitive Carriers Association (FCCA) and AT&T Communications of the Southern States, Inc., (AT&T) (herein jointly referred to as FCCA/AT&T) filed a Motion for Reconsideration of the Prehearing Officer's Order. That same day, MCI WorldCom, Inc., (WorldCom) also filed a Motion for Reconsideration. On May 9, 2001, BellSouth filed its Responses to the Motions for Reconsideration. By Order No. PSC-01-1252-FOF-TP, issued June 5, 2001, the Motions for Reconsideration were denied.

In accordance with the schedule set forth in the Order on Status Conference and Updating Procedure, Order No. PSC-01-0832-PCO-TL, issued March 30, 2001, testimony has now been filed in this Docket. However, on August 17, 2001, BellSouth filed a Motion to Strike Portions of Intervenors' Direct Testimony. Thereafter, on August 21, 2001, BellSouth filed a page/line summary of the testimony it believed should be stricken.

In its Motion, BellSouth argued that the testimony it identified is testimony the Commission has determined is not appropriate to be addressed in the hearing phase of this proceeding; thus, BellSouth asked that it be stricken from the hearing track.

AT&T Communications, AT&T Broadband, TCG South Florida, Covad, KMC Telecom, Nuvox, and XO Florida timely filed their joint Response in Opposition on August 27, 2001. Sprint timely filed its

Response on August 28, 2001. The ALECs contended that it would be impossible to address several of the checklist items, particularly Items 2 and 4, without the testimony identified by BellSouth. Furthermore, they argued that other testimony identified by BellSouth has nothing to do with OSS, but instead addresses the functioning of certain loops, as well as marketplace data they believe the Commission must consider in rendering its decision on the issues in the proceeding. Sprint argued that BellSouth's Motion should be denied because the Sprint testimony BellSouth sought to strike is directly responsive to BellSouth testimony.

Subsequent to BellSouth's Motion to Strike and the responses, Commission staff identified some concerns of their own regarding specific testimony that has been filed. They brought to the Prehearing Officer's attention that certain testimony did not conform to the prior order on the issues. Commission staff discussed these concerns with the parties on August 30, 2001. Thereafter, AT&T, BellSouth, KMC, NuVox, Covad, and Access Integrated submitted responses to staff's concerns on September 7, 2001.

By Order No. PSC-01-1830-PCO-TL, September 11, 2001, the Prehearing Officer granted BellSouth's Motion. Therein, the Prehearing Officer also accepted, in part, and rejected, in part, staff's recommendation regarding additional testimony to be stricken. An amendatory order was issued on September 13, 2001, to correct minor scrivener's errors that resulted in inconsistencies between the Order and the Attachments to that Order.

On September 21, 2001, AT&T Communications of the Southern States, AT&T Broadband, TCG South Florida, Covad, KMC Telecom, NuVox Communications, and XO Florida (hereafter "Joint ALECs") filed a Motion for Reconsideration of Order No. PSC-01-1830-PCO-TL. Therein, they contend that the Prehearing Officer's decision "overlooks the need for this Commission to resolve critical factual disputes regarding [BellSouth's] compliance with Section 271 of the federal Telecommunications Act of 1996's fourteen point checklist." Petition at p. 1.

Also on September 21, 2001, ACCESS Integrated Networks, Inc. (ACCESS) filed a Motion for Reconsideration of Order No. PSC-01-1830-PCO-TL. Therein, ACCESS contends that the Prehearing Officer erred by striking witness Page's testimony in its entirety because it is needed in order to provide an adequate record for the

Commission to properly perform its consultative function in this proceeding.

On September 27, 2001, BellSouth filed its response to the Joint ALECs' Motion. No response to ACCESS's Motion was filed.

JURISDICTION

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.

DISCUSSION OF ISSUES

ISSUE 1: Should the Joint ALECs' Motion for Reconsideration of Order No. PSC-01-1830-PCO-TL be granted?

RECOMMENDATION: No. The Joint ALECs have not identified a mistake of fact or law in the Prehearing Officer's decision, nor have they identified anything overlooked by the Prehearing Officer in rendering his decision. **(KEATING, LOGUE)**

STAFF ANALYSIS: Pursuant to Rule 25-22.0376, Florida Administrative Code, any party who is adversely affected by an order of a Prehearing Officer may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after the issuance of the order. The purpose of a motion for reconsideration is to bring to the Commission's attention some material and relevant point of fact that it overlooked or failed to consider when the order was issued, a mistake of law or fact, or abuse of discretion. Diamond Cab Co. v. King, 146 So.2d 889, 891 (Fla. 1962). Reconsideration is not intended as a procedure for re-arguing a case merely because the losing party disagrees with the judgment or the order. Id. This standard also applies to reconsideration by the Commission of a Prehearing Officer's order. See Order No. PSC-96-0133-FOF-EI, issued in Docket No. 950110-EI, on January 29, 1996 (denying motion for Reconsideration of Prehearing Officer's order denying motion to continue).

ARGUMENTS

Joint ALECs

The Joint ALECs argue that the Prehearing Officer erred by striking testimony on the basis that the testimony pertains to ALEC-specific complaints. The Joint ALECs contend that this belief does not render the testimony inappropriate for consideration in this proceeding. The Joint ALECs explain that while this proceeding is not a proper forum for resolving complaints, this should not preclude the Commission from hearing the concerns raised, because the testimony identifies "real world" failures by BellSouth to comply with specific checklist items.

The Joint ALECs also argue that the Prehearing Officer erred by excluding "OSS related" testimony and directing that it should be addressed only in the OSS Testing phase of this Docket. They argue that if this decision is not modified, it will prevent the full Commission from obtaining a full evidentiary record and resolving the factual disputes that the FCC relies upon the state commissions to resolve. The Joint ALECs note that the FCC will consider performance measures data and anecdotal evidence from ALECs, as well as evidence from the OSS third-party test. They also contend that the FCC has stated that commercial usage information is "the most probative of whether a Bell Operating Company is providing nondiscriminatory access." Motion at p. 4. The Joint ALECs argue, therefore, that if this evidence is not allowed in the hearing track, there will be no evidence upon which a determination can be made as to whether BellSouth is actually complying with the 271 checklist. As such, they argue the Prehearing Officer erred by excluding evidence necessary for full resolution of this proceeding.

The Joint ALECs maintain that the Prehearing Officer erred by assigning this evidence to the non-hearing track of this Docket, because KPMG is only gathering performance data information in the aggregate. They contend that KPMG will not be analyzing how BellSouth actually performs in the market. In rendering this decision, the Joint ALECs contend that the Prehearing Officer has improperly delegated additional authority to KPMG beyond that originally contemplated by the Commission when it instituted Third-Party OSS testing.

The Joint ALECs further contend that if the Prehearing Officer's Order stands, the hearing will only address what BellSouth has promised on paper, not evidence of BellSouth's actual performance. They argue that the Commission will not hear evidence about BellSouth's discriminatory behavior and about the ALECs' attempts to obtain nondiscriminatory access to BellSouth's network. They assert that all of the evidence stricken pertains to BellSouth's discriminatory conduct in the marketplace, including evidence on duplicative billing, problems with hot cuts, ordering bundled services, line splitting, line sharing, loss of service to newly migrated UNE-P customers, missed appointments, loop quality issues, and access to loops. Without this testimony, the Joint ALECs contend that there will be no evidence regarding BellSouth's failure to comply in these areas.

The Joint ALECs note that the Commission has accepted the testimony of NuVox witness Willis, who presents actual problems with the ALEC-BellSouth relationship. They argue that the excluded testimony is very similar and should likewise be accepted.

Finally, the Joint ALECs argue that it is imperative that the Commission hear evidence regarding BellSouth's inability to accurately report its performance data. This testimony was also removed from the hearing track, but the Joint ALECs contend it should be heard in the hearing forum because there is a factual dispute as to whether BellSouth's reported performance data is accurate and reliable. They argue that witness Norris demonstrates that BellSouth's data is not accurate and cannot be relied upon in determining 271 compliance. Similarly, they note that witnesses Campbell and Padfield reached the same conclusion, which the Commission should have the opportunity to consider.

The Joint ALECs conclude that the Commission should hear the evidence presented in the stricken testimony, because it is essential in determining whether or not BellSouth has complied with the 271 checklist. They emphasize that this evidence should be heard in the hearing track, rather than the OSS Third-Party Testing track. Accordingly, they ask the Commission to reconsider the Prehearing Officer's decision in Order No. PSC-01-1830-PCO-TL.

BellSouth

BellSouth argues that the Joint ALECs have not only failed to identify a mistake of fact or law in the Prehearing Officer's decision in Order No. PSC-01-1830-PCO-TL, but are rearguing the decision reached in Order No. PSC-01-1025-PCO-TL. Therefore, BellSouth contends that the Joint ALECs have failed to meet the standard for reconsideration.

Specifically, BellSouth argues that in Order No. PSC-01-1025-PCO-TL, the Prehearing Officer explained that the OSS testing track is the proper venue for all OSS-related information. He also noted that KPMG will be conducting an analysis of commercial data as part of its report that will be provided with the test results. In addition, he noted that the interim metrics approved for the OSS test are the appropriate metrics for this proceeding, and that the permanent measures have been addressed in a separate docket. Order No. PSC-01-1025-PCO-TL at pp. 4-5. BellSouth also notes that in Order No. PSC-97-1459-FOF-TL (1997 271 Order), the Commission

concluded that the 271 proceeding is not the proper forum for handling complaints. Order at p. 14.

BellSouth contends that these Orders relied upon by the Prehearing Officer clearly define the parameters of this proceeding and that these Orders are final, non-appealable orders. BellSouth argues that all the Prehearing Officer did in Order No. PSC-01-1830-PCO-TL was to properly implement Order No. PSC-01-1025-PCO-TL and Order No. PSC-97-1459-FOF-TL. BellSouth maintains that just because the Joint ALECs are unhappy with those prior decisions is not a basis for reconsideration.

BellSouth emphasizes that each of the Joint ALECs' arguments is governed by the prior decision on the issues and the 1997 271 Order. BellSouth argues that all that the Joint ALECs seek is a "second bite at the apple"--they seek to have this information addressed in both the hearing track and the OSS testing track. BellSouth contends that this is exactly what the Commission sought to avoid by instituting the OSS Third Party Test.

In addition, BellSouth contends that the Joint ALECs have mischaracterized the parameters of this proceeding. BellSouth explains that this proceeding is designed solely to address whether BellSouth has met the requirements of the Section 271 checklist. When both the hearing track and the testing track are considered as a whole, BellSouth contends that the Commission will have an "extensive, thorough, and well-documented record upon which to make its decision on BellSouth's application." Response at p. 4.

Finally, BellSouth contends that testimony pertaining to performance data has been correctly removed to the OSS testing track by the Prehearing Officer based upon the earlier decision defining the issues to be addressed in the hearing track of this proceeding.

Based on the foregoing, BellSouth argues that the Joint ALECs' Motion for Reconsideration should be denied.

STAFF'S ANALYSIS

By Order No. PSC-01-1025-PCO-TL, issued April 25, 2001, the Prehearing Officer rendered his decision on the issues to be addressed at hearing. In that Order, among other things, he also determined that certain issues proposed by FCCA and AT&T, as well

as an issue proposed by FDN, were not appropriate for consideration in this proceeding.¹ The issues proposed by AT&T and FCCA pertained to OSS, performance measures, and commercial data. The Prehearing Officer determined that these issues were either being covered in the OSS Third-Party Test, or were not necessary because of the Commission's decision to rely upon the OSS test to resolve its concerns about BellSouth's OSS systems. The issue proposed by FDN sought a public interest determination regarding BellSouth's entry into the long distance market. In excluding this issue, the Prehearing Officer determined that:

. . . 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).

Order at p. 8. The Prehearing Officer's decision in Order No. PSC-01-1025-PCO-TL was upheld on reconsideration by the Commission as set forth in Order No. PSC-01-1252-FOF-TL, issued June 5, 2001.

In Order No. PSC-01-1830-PCO-TL, the Prehearing Officer determined that certain testimony was not appropriate for this proceeding based upon the issues to be addressed at hearing and the Commission's decision that OSS Third-Party Testing is the forum in which the Commission will resolve its concerns regarding BellSouth's OSS. Therein, the Prehearing Officer emphasized that:

¹An issue proposed by Sprint was also excluded, but the Prehearing Officer indicated that the subject matter could be addressed under another issue. Also, an issue regarding BellSouth's compliance with state law was also excluded as improper for consideration in this proceeding conducted pursuant to the federal Act.

The topics addressed in the identified testimony were contemplated to be addressed in the TPT, as set forth in Order No. PSC-99-1568-PAA-TP, issued August 9, 1999, (Order on Third Party Testing) and consummated as a final order on September 2, 1999; Order No. PSC-00-0104-PAA-TP, issued January 11, 2000, (Order Approving Master Test Plan) and consummated as a final order on February 2, 2000; and Order No. PSC-00-0260-PAA-TL, issued February 8, 2000, (Order on Interim Metrics) and consummated as a final order on March 1, 2000. Furthermore, in reliance on those Orders, I defined the scope of the hearing track of this proceeding in the Order Regarding Issues to be Addressed at Hearing, Order No. PSC-01-1025-PCO-TL, issued April 25, 2001.

Order at p. 7. Staff notes that the Prehearing Officer also decided that the testimony of NuVox witness Willis would not be stricken, because it provides relevant "real world" evidence not being addressed in the OSS test but relevant to a determination of BellSouth's compliance with the 271 checklist. However, portions of ACCESS's witness Page's testimony were stricken. While witness Page's testimony provides evidence of ACCESS's "real world" experiences, the Prehearing Officer determined that these experiences did not appear to relate to a checklist item. See Order at p. 8.

In reaching these conclusions, the Prehearing Officer considered all of the arguments presented by the Joint ALECs. These arguments are recycled for the Joint ALECs' Motion for Reconsideration. In his Order, the Prehearing Officer considered the arguments that the testimony presents "real world" experiences. See Order at p. 5. The Prehearing Officer also considered the argument that if this testimony is stricken, the hearing will address only ". . . BellSouth's 'paper promises' -BellSouth's public statements about what it will offer and how it will offer it." Id. The Prehearing Officer also considered arguments that the testimony addresses loop provisioning, BellSouth's provision of functioning T-1s, the reliability of BellSouth's reporting using performance metrics, and BellSouth's alleged anticompetitive behavior in the market. See Order at pp. 3 - 5. Nothing in the

Joint ALECs' reargument identifies any mistake of fact or law in the Prehearing Officer's decision.

Contrary to the Joint ALECs' assertions, staff also notes that the Prehearing Officer did not reach a determination that any of the testimony should be stricken solely because it pertains to a company-specific complaint, or based upon the Commission's prior indication in the 1997 271 Order that it was not appropriate to resolve complaints in a proceeding designed to address BellSouth's compliance with the 271 checklist. Instead, the Prehearing Officer determined that the testimony that was to be stricken was testimony that covered matters being addressed by the OSS testing, with the exception of the testimony of witness Page. Regarding witness Page's testimony, the Prehearing Officer determined that:

This testimony does not appear to address BellSouth's compliance with a checklist item, but instead focuses on BellSouth's manner of dealing with Access Integrated that Access Integrated finds inappropriate. This appears to be beyond the scope of this proceeding, and shall, therefore, be stricken.

Order at p. 8.

Based on the foregoing, staff recommends that the Joint ALECs have not identified a mistake of fact or law in the Prehearing Officer's decision, nor have they identified anything that the Prehearing Officer overlooked in rendering his decision on this matter. Furthermore, the points raised by the Joint ALECs in their motion are all points previously addressed by the Prehearing Officer in Order No. PSC-01-1830-PCO-TL. Therefore, staff recommends that the Joint ALECs' Motion for Reconsideration be denied.

ISSUE 2: Should ACCESS's Motion for Reconsideration of Order No. PSC-01-1830-PCO-TL be granted?

RECOMMENDATION: No. ACCESS has not identified a mistake of fact of law in the Prehearing Officer's decision, nor has it identified anything overlooked by the Prehearing Officer in rendering his decision. (KEATING)

STAFF ANALYSIS: As stated in Issue 1, pursuant to Rule 25-22.0376, Florida Administrative Code, any party who is adversely affected by an order of a Prehearing Officer may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after the issuance of the order. The purpose of a motion for reconsideration is to bring to the Commission's attention some material and relevant point of fact that it overlooked or failed to consider when the order was issued, a mistake of law or fact, or abuse of discretion. Diamond Cab Co. v. King, 146 So.2d 889, 891 (Fla. 1962). Reconsideration is not intended as a procedure for re-arguing a case merely because the losing party disagrees with the judgment or the order. Id. This standard also applies to reconsideration by the Commission of a Prehearing Officer's order. See Order No. PSC-96-0133-FOF-EI, issued in Docket No. 950110-EI, on January 29, 1996 (denying motion for Reconsideration of Prehearing Officer's order denying motion to continue).

ARGUMENT

ACCESS

ACCESS argues that the Prehearing Officer erred by striking the testimony of witness Page. The company argues that witness Page testifies as to BellSouth's anticompetitive conduct in the market, specifically, conduct designed to undermine ACCESS's ability to compete. ACCESS states that witness Page relates several instances where BellSouth interacted with ACCESS customers in an improper manner. ACCESS contends that this testimony goes to Issue 2(f) identified in this proceeding. ACCESS notes that BellSouth did not move to strike this testimony, but that Commission staff (staff) suggested that this testimony be stricken. This testimony was not included in the testimony directed towards the non-hearing track as relating to OSS. ACCESS explains that staff relied upon language in Order No. PSC-97-1459-FOF-TL, issued

November 19, 1997, the Commission's first 271 Order in this Docket (1997 271 Order), wherein the Commission warned ALECs that the 271 proceeding was not the proper proceeding to resolve ALEC complaints.

ACCESS contends that the Commission's 1997 271 Order in this Docket is not a basis for striking the testimony of witness Page. It maintains that witness Page is not seeking a "resolution" of a complaint as prohibited by the Commission, but is instead relating pertinent evidence of BellSouth's improper actions in the marketplace. ACCESS argues that while this testimony would be appropriate in a complaint if ACCESS were seeking an affirmative remedy, that does not mean that a complaint is the only proper forum for this testimony to be heard. In fact, ACCESS contends that this testimony is also relevant to BellSouth's compliance with the 271 checklist.

ACCESS emphasizes that the Prehearing Officer erred by concluding that the Commission's 1997 271 Order precluded the testimony offered by witness Page. ACCESS contends that this is an incorrect interpretation of the Commission's decision and that to exclude this testimony would unduly limit the scope of the Commission's evaluation and the adequacy of the record. The company contends that to construe the 1997 271 Order as the Prehearing Officer has done virtually eliminates any testimony based on ALECs' first-hand experiences. ACCESS adds that without witness Page's testimony, the record will be devoid of ALEC first-hand experiences.

No response to ACCESS's Motion was filed.

STAFF'S ANALYSIS

As set forth in the previous issue, by Order No. PSC-01-1025-PCO-TL, issued April 25, 2001, the Prehearing Officer rendered his decision on the issues to be addressed at hearing. In that Order, among other things, he also determined that certain issues proposed by FCCA and AT&T, as well as an issue proposed by FDN, were not appropriate for consideration in this proceeding. The issue proposed by FDN sought a public interest determination regarding BellSouth's entry into the long distance market. In excluding this issue, the Prehearing Officer determined that:

. . . 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).

Order at p. 8. The Prehearing Officer's decision in Order No. PSC-01-1025-PCO-TL was upheld on reconsideration by the Commission as set forth in Order No. PSC-01-1252-FOF-TL, issued June 5, 2001.

In Order No. PSC-01-1830-PCO-TL, the Prehearing Officer determined that certain portions of ACCESS's witness Page's testimony would be stricken. While witness Page's testimony provides evidence of ACCESS's "real world" experiences, the Prehearing Officer determined that these experiences did not appear to relate to a 271 checklist item. See Order at p. 8.

In reaching this conclusion, the Prehearing Officer considered all of the arguments presented by ACCESS. See Order at p. 4. The Prehearing Officer determined that the testimony:

. . . does not appear to address BellSouth's compliance with a checklist item, but instead focuses on BellSouth's manner of dealing with Access Integrated that Access Integrated finds inappropriate. This appears to be beyond the scope of this proceeding, and shall, therefore, be stricken.

Order at p. 8.

Based on the foregoing, staff recommends that ACCESS has not identified a mistake of fact or law in the Prehearing Officer's decision, nor has it identified anything that the Prehearing

DOCKET NO. 960786-TL
DATE: SEPTEMBER 28,2001

Officer overlooked in rendering his decision on this matter. Furthermore, the points raised by ACCESS in its motion are all points previously addressed by the Prehearing Officer in Order No. PSC-01-1830-PCO-TL. Therefore, staff recommends that ACCESS's Motion for Reconsideration be denied.

ISSUE 3: Should this Docket be closed?

RECOMMENDATION: No. This Docket should remain open pending the outcome of the hearing and the Third-Party OSS Testing currently ongoing in this Docket. (**KEATING**)

STAFF ANALYSIS: This Docket should remain open pending the outcome of the hearing and the Third-Party OSS Testing currently ongoing in this Docket.