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November 6, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
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Re: Docket No.: 960786-A-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 Post-hearing Statement of Issues and Positions and Post-hearing Brief.

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth)
Telecommunications, Inc's entry into) Docket No. 960786A-TL
interLATA services pursuant to Section)
271 of the Federal Telecommunications) Filed: November 6, 2001
Act of 1996)

**ACCESS INTEGRATED NETWORKS, INC.'S POST-HEARING STATEMENT
OF ISSUES AND POSITIONS AND POST-HEARING BRIEF**

Pursuant to the governing Order on Procedure, ACCESS Integrated Networks, Inc. ("ACCESS") hereby submits its Statement of Issues and Positions and its Post-Hearing Brief.

PRELIMINARY STATEMENT

ACCESS Integrated Networks, Inc. ("ACCESS") is a small but growing ALEC that uses the UNE-P platform to provide competitive, alternative local exchange service to small-to-medium sized business customers in all nine states in which BellSouth is an ILEC. ACCESS serves some 57,000 access lines, approximately 3,000 of which are in Florida. Because ACCESS obtains unbundled network elements from BellSouth, ACCESS' ability to provide quality service to these and future customers depends absolutely on BellSouth's ability and willingness to fulfill its obligations to ALECs under the 1996 Act. Many observers have noted that BellSouth has no incentive to perform those obligations. ACCESS' experience is that BellSouth is acting overtly on its incentive to hamper the development of competition. Effective regulatory oversight is crucial to the creation and maintenance of a framework in which competition can develop and flourish in the face of BellSouth's incentive to thwart competition. ACCESS believes that setting a rigorous standard during a Section 271 evaluation is an essential component of an effective regulatory framework under the Act.¹

¹Once an ILEC has been authorized to enter the InterLATA market, active regulatory oversight would continue to be important, inasmuch as the ILEC would no longer have an inducement to fulfill its obligations, and the disincentive to do so would remain as strong.

A small company such as ACCESS can devote only limited resources to regulatory proceedings. ACCESS intervened in this case to participate, in a selective manner, in several aspects of the issues with which ACCESS has acquired knowledge and/or experience. ACCESS offered the testimony of Rodney Page, a Vice President of the Company, to address ACCESS' primary concern. Mr. Page testified that, in ACCESS' experience, BellSouth engages in conduct that impedes and stifles competition. He suggested that the Commission should question whether such conduct meets the test to be applied by a §271 application, which, as he summarized it, is whether BellSouth has fully opened its network to competition.²

In addition, ACCESS will comment briefly on subjects on which ACCESS participated through the cross-examination of BellSouth witnesses. They include BellSouth's refusal to provide new combinations; restrictions on BellSouth's "Winback" program imposed by other jurisdictions; and BellSouth's refusal to allow a UNE-P provider to convert to its voice service a customer receiving both voice and ADSL service from BellSouth; and the absence of a mature line splitting offering.

A. IN RENDERING ITS RECOMMENDATION ON BELLSOUTH'S SECTION 271 APPLICATION, WHAT IS THE NATURE OF THE COMMISSION'S CONSULTATIVE ROLE?

ACCESS: *The Commission's role is to inform the FCC, based on evidence of record and the Commission's own interpretation of checklist requirements, as to whether BellSouth has complied with the 1996 Act by opening its network to

²On the suggestion of Staff, the portion of Mr. Page's testimony in which he related specific experiences of certain of ACCESS' customers was stricken; however, the testimony in which he conveyed ACCESS' basic premise was received in evidence. Accordingly, based on this testimony, throughout this brief ACCESS will preserve its position that anticompetitive behavior is relevant to a consideration of BellSouth's application for §271 relief.

competition. BellSouth cannot fulfill those obligations while harming customer relationships or otherwise competing unfairly.*

Section 271(d)(2)(B) of the 1996 Act provides that the FCC shall consult with the State commission “. . . in order to verify the compliance of the Bell operating company with the requirements of subsection (c) (the “checklist”)”. In implementing this provision, the FCC has indicated that the State commission’s job goes farther than a sterile, mechanical review of checklist items. In the Ameritech decision, the FCC equated the checklist of the statute with the status of local competition and the extent to which the RBOC has opened the local network to competition:

In order to fulfil this [consultative] role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition in advance of the filing of section 271 applications. We believe that the state commissions’ knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs local networks to competition.

In the matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (“Ameritech”), 12 FCC Rcd 20543 (F.C.C. Aug. 19, 1997) (No. CC97-137).

ACCESS submits that, before forming any conclusion that BellSouth has satisfied all items of the statutory checklist, the Commission should require BellSouth to demonstrate that it has committed fully to satisfying its obligations under the Act. The reason is simple. Competitors such as ACCESS are entirely dependent upon that commitment. If BellSouth fails or refuses to carry out its obligations, ACCESS and others will be unable to provide quality service to their customers. ACCESS believes that BellSouth’s commitment to compliance must be evident - not only in the mechanics of ordering and provisioning - but in the manner in which BellSouth interacts with ALECs’ customers. Disappointingly, ACCESS has learned that BellSouth frequently interacts negatively with

ACCESS' customers. (Tr. 1395-96). Thus, with due regard for the ruling of the Commission with respect to evidence of specific instances that was proffered in this case, ACCESS respectfully continues to assert the relevancy of BellSouth's approach to an evaluation of BellSouth's §271 application.

Importantly, the Commission's assessment must be based - not only on the minimum requirements related to the of the checklist as pronounced by the FCC - but upon any additional requirements related to the checklist that the Commission decides to impose. The FCC has recognized the ability of the Commission to go farther than the minimum requirements embodied in FCC rules -- including, for instance, the ability to add state-prescribed UNEs to the national list. (*Local Competition Third Report and Order*, CC Docket 96-98, 15 FCC Rcd. 3696, 3767 (1999).

The Commission has the *ability* to go beyond the FCC's standards under federal law, and the strong *responsibility* to foster fair local competition under state law. Specifically, Florida Statutes impose on the Commission the obligation to promote competition by encouraging new entrants into telecommunications markets and to develop new or experimental telecommunications services. Significantly, state law also empowers and directs the Commission to prevent anticompetitive behavior. *See* Sections 364.01(4)(d),(e),(5); Section 364.3381(3), Florida Statutes.

Other state jurisdictions are beginning to act on evidence that BellSouth competes unfairly. For instance, the Louisiana Public Service Commission recently imposed stringent restrictions on BellSouth's "Winback" activities. The restrictions included a seven day period of time during which BellSouth may not contact a new customer of an ALEC; prohibitions on the sharing of customer migration information between BellSouth's wholesale and retail units; and a prohibition against the

inclusion of marketing material in the customer's last bill. (Tr. 341-342).³

State commissions in other jurisdictions are also imposing substantive requirements that go beyond the minimum standards established by the FCC. For instance, while BellSouth refuses to combine elements for ALECs in Florida, the states of Georgia, Louisiana, Tennessee, South Carolina, and Kentucky have imposed on BellSouth the obligation to combine for ALECs the elements that are ordinarily combined in BellSouth's network. And, while BellSouth may attempt to invoke the scope of the FCC's Section 271 requirements as expressed in individual orders, in every state for which Section 271 authority has been granted the RBOC either was ordered to combine such elements for ALECs or agreed to do so voluntarily.

Elsewhere, it is clear that pressure applied at the level of the state commission has led BellSouth to relent on other self-serving interpretations. For instance, during the hearing, BellSouth witness Thomas Williams told the Commissioners that, based on adverse proceedings in Louisiana and Georgia, BellSouth had "reconsidered" its policy regarding its willingness to provide splitters to ALECs in line splitting arrangements. (Tr. 668).

In short, the Commission should not regard its role as limited to a ministerial application of FCC standards. Rather, the Commission has the opportunity and the obligation to articulate its own understanding and interpretation of checklist standards and communicate to BellSouth the degree to which it must demonstrate a network that is "open to competition" before the Commission will support its Section 271 application.

One such opportunity to protect Florida consumers from BellSouth's efforts to thwart

³In Docket No. 011077-TL, this Commission has opened an investigation into anticompetitive practices by BellSouth.

competition involves BellSouth's "policy" regarding its ADSL service. BellSouth refuses to allow its voice/ADSL customers to continue to receive ADSL service if they choose to obtain voice service from a UNE-P based ALEC. (Tr.686-688; 709-711). BellSouth enforced this policy against some customers even after they had transferred their voice service to ALECs and were continuing to receive ADSL service from BellSouth. (Tr. 710-711).

BellSouth acknowledged that the policy is not based on technical considerations. (Tr. 709). BellSouth's witness would not defend the policy, other than to state that the FCC did not require BellSouth to permit such conversions in its order on line sharing. (Tr. 691-693). Access submits the "policy" is a transparent design to thwart ALECs' ability to compete by using the UNE-P platform. As information elicited by the Staff established, BellSouth's ADSL service is a rapidly growing segment of its business. (Tr. 731-732). Under its "policy" each new ADSL customer is "off limits" to UNE-P providers. Accordingly, the policy is a means with which BellSouth can insulate a growing portion of its customer base from competition by UNE-P providers. BellSouth's practice is as insidious as it is anticompetitive. The Commission should use all means at its disposal - including its consultative role - to prohibit it.

ACCESS believes the federal and state statutory schemes are consistent in their emphasis on the objectives of fair, broadly based competition. ACCESS urges the Commission to approach its consultative function with this objective in mind. Far from an affirmative showing that BellSouth has embraced the federal and state objectives of open and fair competition, the record indicates that regulatory action to police anticompetitive behavior is warranted. The Commission should not ignore such indications when evaluating whether BellSouth has opened its network to competition.

ISSUE 2: DOES BELLSOUTH CURRENTLY PROVIDE INTERCONNECTION IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 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?

ACCESS: No. See 2(f) below.

(f) Has BellSouth satisfied other associated requirements, if any, for this item?

ACCESS: No. One “associated requirement” is that BellSouth must provide interconnection of a quality at least equal to that which BellSouth provides to itself. BellSouth’s practice is to attempt to hamper competition unfairly. This practice does not meet the standard of the 1996 Act.

ISSUE 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?

ACCESS: No. BellSouth refuses to provide combinations of elements that are ordinarily combined in its network; refuses to allow UNE-P providers to convert customers receiving ADSL and voice service; and has not implemented line splitting.

Currently, *in Florida*, BellSouth refuses to combine for ALECs elements that are ordinarily combined in its network. Instead, BellSouth says it will create -- distant from existing cross-connect frames -- new “assembly points” for the purpose of requiring ALECs to combine the elements. (Tr. 1813-1814). The inefficient, wasteful hoops through which BellSouth wants ALECs to jump in order to combine such elements are obviously designed to increase ALECs’ costs artificially.⁴ The “policy” is a blatant and brazen effort to erect barriers to competition. The ploy works -- ALECs find

⁴They also increase *BellSouth’s* costs artificially. (Tr. 1813).

themselves as a serious disadvantage when competing for new customers or when attempting to keep a customer that changes its location.

In the above paragraph, ACCESS was careful to specify that this is BellSouth's practice *in Florida*. Florida now finds itself in a minority of BellSouth states that have not required BellSouth to combine for ALECs elements that are ordinarily combined in its network. The state commissions of Georgia, Louisiana, Tennessee, Kentucky, and South Carolina have all ordered BellSouth to combine for ALECs those elements that are ordinarily combined in its network. BellSouth complies with the requirements of jurisdictions that impose this obligation.

At the hearing, BellSouth testified that providing "new" combinations is not a "legal obligation," and so is not a prerequisite to §271 relief. (Tr. 1279). However, in every state for which BellSouth has obtained §271 approval, BellSouth either has been ordered to provide new combinations or has voluntarily agreed to do so. (Tr. 347). In addition to other requirements, the Commission should not recommend favorably on BellSouth's application to the FCC unless and until BellSouth agrees to provide new combinations to ALECs.

BellSouth has not provisioned line splitting in Florida. "Line splitting" is an arrangement whereby a single ALEC or two separate ALECs acting together provide voice and data services over a single unbundled loop obtained from BellSouth. BellSouth witness Thomas Williams claimed that line spitting is available in Florida. (TR-638). However, the references to line splitting in the testimony are stated in the future tense. (TR- 638). ("How Does BellSouth Plan to Offer Line Spitting?")

When asked to confirm that BellSouth has not provisioned line splitting in Florida, Mr. Williams replied that no ALEC has ordered it. (Tr. 708-709). On redirect, Mr. Williams added that

line splitting is covered in BellSouth's SGAT. (Tr. 735). However, in light of the evidence of record, the Commission should not accept an entry on a paper SGAT as adequate proof that line splitting is available, for Mr. Williams testified that the "kick-off collaborative" that BellSouth formed to investigate the possible means for accomplishing line splitting ". . . plans to meet weekly until the product is stable." (Tr 650). Mr. Williams' testimony belies the implication that BellSouth presently has a line splitting product, and his attempt to lay the blame on ALECs rings hollow. The effort to implicate ALECs who somehow "boycott" line splitting is as disingenuous as BellSouth's argument that ALECs don't try to compete until after the ILEC enters the interLATA market.

With respect to BellSouth's refusal to combine elements, ACCESS adopts and incorporates by reference the points that appear in Issue A, above.

(ACCESS will provide its position on certain other issues without argument.)

ISSUE 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

ACCESS: No.

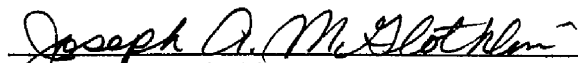
ISSUE 9: IN ORDER PAC-97-1459-FOF-TL, ISSUED NOVEMBER 19, 1997, THE COMMISSION FOUND THAT BELLSOUTH MET THE REQUIREMENTS OF SECTION 271(C)(2)(B)(VIII) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996. DOES BELLSOUTH CURRENTLY PROVIDE WHITE PAGES DIRECTORY LISTINGS FOR CUSTOMERS OF OTHER TELECOMMUNICATIONS CARRIER'S TELEPHONE EXCHANGE SERVICE, PURSUANT TO SECTION 271(C)(3)(B)(VIII) AND APPLICABLE RULES

PROMULGATED BY THE FCC?

ACCESS: No.

ISSUE 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?

ACCESS: No.


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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing ACCESS Integrated Networks, Inc.'s Post-Hearing Statement of Issues and Positions and Post-Hearing Brief has been furnished by (*) hand delivery or by U. S. Mail on this 6th day of November, 2001, to the following:

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