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TALLAHASSEE OFFICE:  
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TALLAHASSEE, FLORIDA 32301  
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November 16, 2001

VIA HAND DELIVERY

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

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COMMISSION  
CLERK

Re: Docket No.: 011077-TL

Dear Ms. Bayo:

On behalf of Access Integrated Networks, Inc. (ACCESS), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Access Integrated Networks, Inc.'s Petition to Intervene.

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

Sincerely,

Joseph A. McGlothlin

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMY+ \_\_\_\_\_ JAM/bae  
COM 5 Enclosure  
CTR \_\_\_\_\_  
EOR \_\_\_\_\_  
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OPC \_\_\_\_\_  
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MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, F.A.

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Done 11/19/01

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

Investigation into allegations of  
anti-competitive behaviors and  
practices of BellSouth  
Telecommunications, Inc.

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Docket No. 011077-TL

Filed: November 16, 2001

**ACCESS INTEGRATED NETWORKS, INC.'S PETITION TO INTERVENE**

Pursuant to Rule 25-22.039, Florida Administrative Code, ACCESS Integrated Networks, Inc. ("ACCESS"), through its undersigned counsel, submits its Petition to Intervene and states:

1. The name and address of the Petitioner is:

ACCESS Integrated Network, Inc.  
4885 Riverside Drive, Suite 101  
Macon, Georgia 31210

2. Copies of all pleadings, notices, and orders in this Docket should be provided to:

Joseph A. McGlothlin  
McWhirter, Reeves, McGlothlin, Davidson,  
Decker, Kaufman, Arnold & Steen, P.A.  
117 S. Gadsden Street  
Tallahassee, Florida 32301

Rodney Page  
Access Integrated Networks, Inc.  
4885 Riverside Drive, Suite 101  
Macon, Georgia 31210

3. Statement of affected interests: ACCESS is a competitive provider of telecommunications services in Florida. ACCESS holds a certificate that authorizes it to provide competitive local exchange service. As a Florida ALEC, ACCESS has a substantial interest in ensuring that anticompetitive practices in the Florida telecommunications market are eliminated. As an ALEC that uses unbundled network elements to provide service, ACCESS must rely on

BellSouth to ensure proper access to the components of its network platform. When BellSouth fails in its duties under state and federal law, ACCESS cannot provide an equivalent level of service to its customers. In addition, if BellSouth fails to interact appropriately with ACCESS' customers, BellSouth's actions-- or inaction-- can cause ACCESS' customers to lose confidence in ACCESS. Anti-competitive behavior on the part of BellSouth would greatly impair ACCESS' ability to provide a competitive product to consumers. Thus, any determination as to the extent to which such behavior exists and, the remedies that should be afforded will affect ACCESS' substantial interests in having a fair, competitive framework.

4. Issues of disputed facts: The issues of fact that likely will be disputed involve whether and to what extent BellSouth engages in anticompetitive behavior in the marketplace. ACCESS asserts that, in its course of dealing with BellSouth, it has encountered numerous instances of anticompetitive behavior by BellSouth and its agents. ACCESS asserts that BellSouth has engaged in activities that have affected negatively the relationship between ACCESS and customers who leave BellSouth to accept ACCESS' service. In Docket 960786A-TL, the second BellSouth 271 case, ACCESS sought to present testimony relating to such experiences with BellSouth; however, much of the testimony relating to specific examples of misconduct was ruled to be outside the scope of that proceeding.<sup>1</sup> ACCESS intends to present such evidence in this docket.

5. ACCESS asserts that indications in other jurisdictions that BellSouth is competing unfairly there reinforce the Commission's decision to investigate BellSouth's behavior in Florida now. The Louisiana Public Service Commission recently placed restrictions on BellSouth's

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<sup>1</sup>See Order No. PSC-01-1830-PCO-TL, Page 7.

Winback activities. In Tennessee, evidence that BellSouth was violating its own tariffs to compete unfairly led ACCESS to file a complaint against BellSouth (Exhibit A). BellSouth's activities in these other states are indicative of an widespread policy to discriminate against ALECs on a continual basis in all of the company's regional operating areas. To create and maintain a fair playing field for the ultimate benefit of consumers, the Commission should investigate BellSouth's business practices and implement remedies against anticompetitive activities that its investigation brings to light.

6. Ultimate facts alleged: Rather than approaching its obligations from the standpoint of a mutually beneficial business relationship, BellSouth habitually attempts to thwart competition by undermining ACCESS' customer relationships and through other anticompetitive behavior.

7. Granting ACCESS leave to intervene in this docket will provide the Commission with greater insight into the problems encountered by ALECs in the marketplace, as well as provide ACCESS the opportunity to seek redress for BellSouth's failure to meet its obligations under state and federal law.

**WHEREFORE**, ACCESS Integrated Networks, Inc. requests the Commission to enter an Order authorizing it to intervene as a party in this case.

  
\_\_\_\_\_  
Joseph A. McGlothlin  
McWhirter, Reeves, McGlothlin, Decker,  
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117 South Gadsden Street  
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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 ACCESS Integrated Networks, Inc.'s Petition to Intervene has been furnished by (\*) hand delivery or by U. S. Mail on this 16th day of November, 2001, to the following:

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

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

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

Michael A. Gross  
Florida Cable Telecommunications Assoc.,  
Inc.  
246 E. 6th Avenue, Suite 100  
Tallahassee, Florida 32303

Lori Reese  
NewSouth Communications Corp.  
Two North Main Street  
Greenville, SC 29601-2719

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

Jim P. Lamoureux  
AT&T  
1200 Peachtree Street, NE, Suite 8100  
Atlanta, GA 30309

  
Joseph A. McGlothlin

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: COMPLAINT OF ACCESS )  
INTEGRATED NETWORK, INC. )  
AGAINST BELLSOUTH ) DOCKET NO. 01-00808  
TELECOMMUNICATIONS, INC. )

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MOTION TO OPEN SHOW CAUSE PROCEEDING

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Access Integrated Network, Inc. ("AIN") asks that the Tennessee Regulatory Authority ("TRA") open a show cause proceeding to investigate whether BellSouth Telecommunications, Inc. ("BellSouth") has engaged in a pattern of anticompetitive and discriminatory conduct by marketing service under terms and conditions which are inconsistent with the carrier's tariffs.

As set forth in AIN's complaint, a BellSouth marketing agent recently offered a Knoxville customer three months of free telephone service if the customer would sign up for BellSouth's Key Customer program. In response, BellSouth acknowledged that the offer of free service is not authorized by BellSouth's tariffs. The carrier implied that the offer was made in error and not authorized by BellSouth. Following the filing of AIN's complaint, XO Tennessee, inc. ("XO") filed a complaint involving a nearly identical offer. This time, the illegal offer was made by a BellSouth senior account executive to a customer in Shelby county. Finally, AIN has recently learned of a third incident in Southaven, Mississippi, near Memphis. (A copy is attached.) Although the TRA does not have jurisdiction over the marketing of service in Mississippi, the offer indicates that this illegal marketing scheme is being carried out not only in Tennessee but in other states in the BellSouth region.

As more fully discussed below, this mounting evidence of wrongdoing requires the Authority to carry out its legal duty to enforce state law by opening a show cause investigation.

## DISCUSSION

On September 19, 2001, AIN filed the above-captioned complaint against BellSouth alleging that BellSouth had offered a Tennessee customer three months of free service if the customer would agree to sign a long-term contract for service under the Key Customer program. Such an offer, which is not authorized by any tariff, violates both state law<sup>1</sup> and the rules of the TRA prohibiting anti-competitive conduct.<sup>2</sup>

In response to the complaint, BellSouth admitted that the offer of free service was made by BERRYDirect, a BellSouth marketing agent, and that the offer was inconsistent with BellSouth's approved tariffs. Although BellSouth did not respond directly to AIN's allegation that this offer constitutes a *prima facie* violation of state law and the TRA's rules, the company implicitly acknowledged that the offer was illegal by stating that the offer "is contrary to both the terms of the applicable tariff and BellSouth policy and practice." The company further stated that it had suspended all marketing in Tennessee by BERRYDirect and instructed BERRYDirect to withdraw any "sales proposals" which include offers of free service. Answer, at 7. The Answer does not, however, explain how BellSouth intends to handle customers who have already accepted the illegal offers.

On October 9, 2001, XO Tennessee, Inc. ("XO") filed a similar complaint against BellSouth alleging that BellSouth had once again offered three months of free service to a Tennessee customer if the customer would "com[e] back to BellSouth" by signing a three-year

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<sup>1</sup> See T.C.A. § 65-4-122, which prohibits discriminatory pricing.

<sup>2</sup> See TRA Rule 1220-4-8-.09(2)(C)(3) which prohibits anti-competitive conduct such as offering service at less than cost or at a price other than as authorized in the company's tariffs.



contract under the Key Customer program. See, Docket No. 01-00868. The offer was signed by a BellSouth senior account executive. BellSouth has not yet filed a response to XO's complaint.

Based on BellSouth's Answer to AIN's complaint and the evidence submitted by XO of a similar offer, the Authority now has ample basis to open a show cause proceeding, pursuant to T.C.A. § 65-2-106, for the purpose of conducting a complete investigation of this matter and to determine what, if any, sanctions should be imposed against BellSouth.

BellSouth has tacitly admitted the offer of free service was an illegal act, and it is highly unlikely that the offer was an accidental or isolated incident. BellSouth has explained that BERRYDirect markets service to potential customers through "outbound telemarketing." Letter to David Waddell, at 2. Therefore, the sales agent was presumably using a marketing script which had been written and approved by BellSouth. Other sales agents have presumably used the same script containing the same offer. Furthermore, unless BellSouth intended to cheat its customers of the promised free service, BellSouth must have made adjustments to its centralized billing systems so as not to charge the customer for three months of service.<sup>3</sup> Finally, the nearly identical offer described in the XO complaint and a third, similar offer recently made by BERRYDirect to a customer in Southaven, Mississippi,<sup>4</sup> indicate that this illegal marketing program is being implemented not only in Tennessee but in states throughout the region.

The Authority has not merely the discretion but an affirmative legal duty to enforce the laws under its jurisdiction. T.C.A. § 65-1-213 provides:

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<sup>3</sup> If, on the other hand, BellSouth promised customers three months of free service but failed to provide that service, the carrier has apparently violated Tennessee's consumer protection statutes.

<sup>4</sup> Based on AIN's preliminary investigation, there is no BellSouth tariff in effect in Mississippi, or in any other state, which authorizes BellSouth to offer three months free service as part of the Key Customer program.

**Enforcement - Duties of authority . -** It is the duty of the Tennessee regulatory authority to ensure that the provisions of Acts 1995, ch.305 and all laws of this state over which they have jurisdiction are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected.

The Authority has not hesitated to open show cause proceedings and to impose sanctions for such matters as violations of the "Do Not Call" statute (T.C.A. § 65-4-401), the "slamming" and "cramming" statutes (T.C.A. § 65-4-125), and even the late filing, on repeated occasions, of financial reports. If the Authority is to continue initiating investigations regarding those matters, the Agency must be willing to take equally strong measures to investigate what appear to be far more serious violations of the law . .

Based upon how the TRA staff typically handles "slamming" and "cramming" investigations, a staff-initiated investigation of BellSouth's marketing tactics would presumably require the company to turn over, among other things, the following information:

1. The names of all Tennessee customers who have been recently contacted by BellSouth or its agents concerning the Key Customer program.
2. Copies of marketing materials, including scripts, used by BellSouth and its agents to sell the Key Customer program.
3. Complete copies of all written offers, including fax cover sheets and e-mails, made under the program.
4. The names of all customers who have recently agreed to accept service under the program.
5. An explanation of how this marketing program originated, the names of all individuals involved, the duration of the program, and copies of all internal documents describing the program.-

6. An explanation of how BellSouth adjusted its billing systems to provide the promised months of free service.

7. An explanation of how BellSouth proposes to treat customers who accepted the illegal offers.

The answers to these questions may well lead to other information requests.

### CONCLUSION

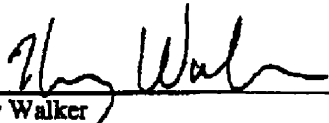
This matter is far broader than a dispute between BellSouth and a competing carrier. It involves allegations that, if proven true, may threaten the viability of competition in the local telephone market. For these reasons, it is not appropriate for the agency to treat this matter as simply another carrier-to-carrier complaint. Nor is it appropriate for the agency to expect AIN -- or any CLEC -- to bear the entire cost of conducting an investigation of what appears to be a widespread, illegal marketing program. Just as a violation of federal and state antitrust laws threatens not only competitors but consumers, this illegal marketing scheme could irrevocably hurt ratepayers by depriving them of competitive choices. It is the Authority's duty, AIN respectfully submits, to protect Tennessee consumers by strict enforcement of the TRA's rules and statutes. The Authority now has before it a virtual admission by BellSouth of one instance of illegal, anticompetitive activity as well as evidence that such activity seems to be part of a larger pattern and practice. The Authority's duty is clear.

For these reasons, AIN moves the TRA to open a show cause docket for the purpose of investigating the nature and extent of BellSouth's illegal offers of free telephone service as set forth in AIN's complaint.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

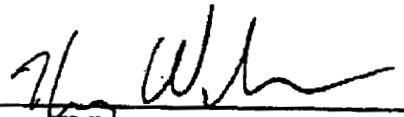
By: \_\_\_\_\_

  
Henry Walker  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 16 day of October, 2001.

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce St., Suite 2101  
Nashville, TN 37201-3300

  
Henry Walker

10/10/01 15:36 FAX 9017895869  
09/07/2001 08:03 FAX 4172065408

ONECALL  
THE BERRY CO

**BERRYDirect**

**a BellSouth Company**

*your sell tech connection*

L.M. Berry & Company  
3220 S. Wisconsin Ste A  
Joplin, MO. 64804  
(417) 206-5400

## FAX COVER SHEET

TO: LAFFRY FROM: Kim Rickey

Fax: \_\_\_\_\_ Fax: (417) 206-6911  
ext. \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: (877) 304-6163

Re: DISCOUNT ON SERVICE Date: 9/7/01

Total numbers of pages, including cover sheet: 6

HERE IS THE OFFER FOR YOU TO LOOK AT. THE FIRST FORM IS A LOA, WHICH ALLIWS US TO CALL YOUR CURRENT COMPANY AND SWITCH YOU BACK TO BELL SOUTH. THE SECOND, IS THE TERM CONTRACT THAT STATES YOU WILL RECEIVE THE 14% DISCOUNT FOR THE NEXT THREE YEARS. IF THE QUOTE IS COMPARABLE TO WHAT YOU ARE PAYING, SIMPLY SIGN BOTH FORMS AND FAX BACK TO THE NUMBER ABOVE. SHOULD YOU HAVE ANY QUESTIONS OR CONCERNS, FEEL FREE TO GIVE ME A CALL. THANK YOU FOR YOUR TIME. KIM RICKEY

Account Number: 662-342-6550  
Account Billing Name: \_\_\_\_\_  
Billing Address: J. SOUTHAVEN MS 38871

2

Telephone Number(s) covered by this request:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This letter is to provide authorization to:

- change local exchange carrier to BellSouth
- remove local exchange carrier, remain to BellSouth
- change inter-LATA long distance carrier to BellSouth
- remove inter-LATA long distance carrier to BELLSOUTH
- remove inter-LATA long distance carrier to \_\_\_\_\_

I understand that I may select only one primary intra-LATA long distance carrier, one primary local exchange carrier, and one primary inter-LATA long distance carrier for any one telephone number. I also understand that the primary inter-LATA long distance carrier may be different from the primary intra-LATA long distance carrier or primary local exchange carrier and that the primary intra-LATA long distance carrier may be different from the Primary local exchange carrier.

I further understand that there may be a charge for each provider change and could involve a charge in changing back to the previous primary carrier.

I have elected to subscribe to the 5 BUSINESS LINES W/ 14% DISCOUNT (name of product or service that is being promised or offered in exchange for the switch). This service INCLUDES THREE MONTHS OF COMPLIMENTARY SERVICE. (including a description of any and all terms, conditions or charges that will be incurred).

←  
←

I am authorized to request changes on this account.

LARRY HANKINS Name (Printed)  
Larry Hankins Signature

This signature will result in a change of your provider.

Date: 9/7/01

Agent: Kim Rickey