BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996.	DOCKET NO. 960786-TL ORDER NO. PSC-97-1038-PCO-TL ISSUED: August 29, 1997

ORDER GRANTING MOTION TO COMPEL

Pursuant to Section 271(d)(3) of the Telecommunications Act of 1996 (the Act), the Federal Communications Commission (FCC) has 90 days to issue a written determination approving or denying a Bell Operating Company's (BOC) application for interLATA authority. Further, the FCC is directed to consult with the appropriate State Commission before making a determination regarding the BOC's entry into the interLATA market. Specifically, the ACT requires the FCC to consult with the State Commission in order to verify the BOC's compliance with the requirements of Section 271(c) of the Act. On June 28, 1996, we opened this docket to begin to fulfill our consultative role. Evidence will be presented on whether BellSouth Telecommunications, Inc. (BellSouth) has met the requirements of Section 271(c) of the Act during the hearing, which is scheduled to begin on September 2, 1997.

On August 19, 1997, the Florida Competitive Carriers Association (FCCA) filed a Motion to Compel BellSouth to respond to FCCA's Amended Seventh Set of Interrogatories and Amended Third Request for Production of Documents. By these discovery requests, FCCA seeks information regarding BellSouth's arrangements with other incumbent local exchange companies (ILECs) for originating and terminating traffic, providing operator services, and providing dedicated service and technical network services. BellSouth timely responded to FCCA's motion on August 26, 1997.

In its Motion to Compel, FCCA asserts that the information it seeks through these discovery requests is relevant to the determination of whether BellSouth has met the interconnection requirement of the Competitive Checklist found in §271(c)(2)(B)(I) of the Act, and that it has met that Checklist item in accordance with § 251(c) of the Act. FCCA states that §251(c)(2) requires that BellSouth provide interconnection to ALECs that is at least

equal in quality to that which it provides itself, any subsidiary, affiliate, or any other party to which BellSouth provides interconnection. FCCA further states that § 251 (c)(2)(D) requires that BellSouth provide interconnection that is nondiscriminatory.

FCCA then asserts that BellSouth does originate and terminate traffic from ILECs, as well as provide operator services and joint service. FCCA argues that unless BellSouth provides information regarding these arrangements, FCCA will not be able to assess whether BellSouth is providing these services to ALECS in equal quality and in a nondiscriminatory manner as compared to its provision of these services to others, including the ILECs.

In addition, FCCA states that it is not seeking this information pursuant to the agreement filing requirements in the Act. FCCA asserts that it only seeks this information based upon its right to the discovery of information relevant to determining the issues in this case.

In its Memorandum in Opposition to FCCA's motion, BellSouth argues that the Commission has been confronted with this issue previously in Docket No. 960290-TP. In that docket, AT&T requested that the Commission require BellSouth to file all interconnection agreements, including those with other ILECs, for approval under §252 of the Act. BellSouth notes that AT&T argued that if such agreements were not filed for approval, the result could be discriminatory treatment. BellSouth states that in its original determination on the question of which agreements must be filed for approval, the Commission determined that only those agreements between competitive carriers were subject to the filing and approval provisions in the Act. See Order No. PSC-96-0959-FOF-TP, issued July 24, 1996. BellSouth further states that while the Commission has since revisited that determination and conformed its ruling with the FCC rules that required all interconnection agreements be filed for approval, the Eighth Circuit Court of Appeals' July 18, 1997, Order vacated the FCC rules on the subject, leaving the decision to the state commissions regarding the filing of agreements. As such, BellSouth states that the Commission may now return to its previous ruling that only agreements between competitive carriers must be filed.

In addition, BellSouth relies upon the Commission's first interpretation of §252 and notes that FCCA does not dispute it. BellSouth emphasizes the Commission's statement in Order No. PSC-

96-0959-FOF-TP that, when §§ 251 and 252 are read together, the Act only requires the filing of those interconnection agreements entered into pursuant to the Act. BellSouth notes that the Commission further indicated that

> This Section, read in the context of Part II of the Act, means the types of existing interconnection agreements that must be filed are those interconnection agreements between competitive carriers in the same markets that were entered into before or after the enactment of the Act.

(Order No. PSC-96-0959-FOF-TP, p. 4)(Emphasis added in BellSouth's response).

Thus, BellSouth asserts that only agreements between competitive carriers must be filed in accordance with §252. BellSouth argues, therefore, that it should not be compelled to produce the information from agreements with other ILECs.

Upon consideration, I find that the information requested by FCCA appears reasonably calculated to lead to the discovery of admissible evidence in accordance with Rule 1.280, Florida Rules of Civil Procedure. While I understand that there may be some argument as to whether the filing of agreements under §252 is relevant to a determination under §271, that particular issue would more appropriately be addressed through the briefing process. I note, however, that the scope and requirements of discovery are separate from the filing requirements set forth in the Act. Thus, the issue of whether or not agreements between BellSouth and other ILECs must be filed does not alter the fact that pertinent information may be gleaned from those agreements in this proceeding.

Furthermore, I note that Order No. PSC-96-0959-FOF-TP, upon which BellSouth relies, was issued as Proposed Agency Action. That Order was timely protested; thus, the decision contained in the Order was nullified. Subsequently, Proposed Agency Action Order No. PSC-97-0760-FOF-TP was issued conforming the Commission's interpretation of the Act's filing requirements with the FCC's rules. That Order was not protested and became final on July 18, 1997. On that same day, the Eighth Circuit filed its opinion vacating FCC Rule 51.303 on filing agreements. The Eighth Circuit determined that FCC was without jurisdiction to establish that

regulation. While I cannot say whether or not the Commission will revisit its decision on the filing of interconnection agreements, I emphasize that the decision upon which BellSouth heavily relies is not the Commission decision currently in force. For these reasons, I hereby grant FCCA's Motion to Compel.

Based on the foregoing, it is therefore

ORDERED by Chairman Julia L. Johnson, as Prehearing Officer, that Motion to Compel filed by the Florida Competitive Carriers Association is hereby granted.

By ORDER of Chairman Julia L. Johnson, as Prehearing Officer, this 29th Day of August, 1997.

JULIA L. JOHNSON
Chairman and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.