

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

DECEMBER 26, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BARONE) *MS*  
DIVISION OF COMMUNICATIONS (GREER) *MCS RMT*

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

AGENDA: 01/07/97 - REGULAR  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE AT THIS TIME

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960786MO.RCM

CASE BACKGROUND

Pursuant to Section 271(d)(3) of the Telecommunications Act of 1996, the Federal Communications Commission (FCC) has ninety (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 applicable State Commission before making the BOC's entry into the interLATA market. (emphasis supplied) On June 28, 1996, the Florida Public Service Commission opened this docket to begin to fulfill its consultative role. Since that time, staff and parties have identified issues to be decided and have engaged in extensive discovery.

On November 13, 1996, AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation, Worldcom, Inc. d/b/a LDDS WorldCom (LDDS) and the Florida Interexchange Carriers Association (FIXCA), collectively the Joint Movants, filed a Joint Motion Requiring Advance Notice of Filing. BellSouth Telecommunications, Inc. filed its Response in opposition on November 21, 1996. Staff recommends the Commission deny the Joint Movants' Motion as discussed in detail below.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant AT&T Communications of the Southern States, Inc.'s, MCI Telecommunications Corporation's, Worldcom, Inc. d/b/a LDDS WorldCom's and the Florida Interexchange Carriers Association's Joint Motion Requiring Advance Notice of Filing?

**RECOMMENDATION:** No, the Commission should not grant AT&T Communications of the Southern States, Inc.'s, MCI Telecommunications Corporation's, Worldcom, Inc. d/b/a LDDS WorldCom's and the Florida Interexchange Carriers Association's Joint Motion Requiring Advance Notice of Filing. However, the Commission should issue an Order that: 1) requests BellSouth to provide sixty days advance notice; 2) concurrent with 1), requests BellSouth to identify the agreements it believes have met the competitive checklist and 3) urges BellSouth to present all of the evidence, upon which it intends to rely, to the Commission two weeks before it files its application for InterLATA authority with the FCC.

**STAFF ANALYSIS:** On November 13, 1996, AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation, Worldcom, Inc. d/b/a LDDS WorldCom (LDDS) and the Florida Interexchange Carriers Association (FIXCA), collectively the Joint Movants, filed a Joint Motion Requiring Advance Notice of Filing. In support of their Motion, the Joint Movants state:

1. Tentative issues were established in Order No. PSC-96-0945-PCO-TL, issued on July 19, 1996. Since that time the parties have been engaging in discovery in preparation for the future hearing.
2. The decision by the Commission regarding its recommendation to the FCC is of tremendous importance to Florida's competitive providers of telecommunications service, and hence, to Florida consumers.
3. The Commission must make its determination as to BellSouth's competitive position within a very short time period. The magnitude of the task, combined with the brevity of the time period within which the Commission must make its recommendation, make advance preparation essential.
4. Other state Commissions have required BellSouth to provide such advance notice. The Joint Movants cite to

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the South Carolina Public Service Commission and the North Carolina Utilities Commission.

Specifically, the Joint Movants request the Commission to order BellSouth to provide: 1) 120 days advance notice to the Commission and the parties in this docket of its intent to apply to the FCC for interLATA authority, and 2) all evidence, including prefiled testimony and exhibits, upon which BellSouth intends to rely in response to the issues identified in Order No. PSC-96-0945-PCO-TL and in any other procedural order issued before that date.

On November 21, 1996, BellSouth Telecommunications, Inc. (BellSouth) filed its Memorandum in Opposition to the Joint Motion. BellSouth argues that granting the Motion:

1. would prohibit BellSouth from filing a Section 271 application with the FCC for, at a minimum, the next four months. It would be forced to wait four months after the date upon which it has the basis for a factually sufficient 271 application before it can file with the FCC.
2. would contravene Section 271 and the Commission's procedural order in this case. It would establish a long and needless procedural delay in the process whereby BellSouth will bring new competition to the long distance market. It would force this Commission and the FCC to rely on four month old information in evaluating BellSouth's application to provide long distance service in Florida.

BellSouth argues:

1. that Section 271 places the decision as to when to file an application to obtain interLATA authority in the applicant's hands; it does not require a pre-filing notice or any other procedural prerequisite to the filing.
2. the joint movants argument that brevity compels the requested procedure is belied by the events that have transpired over the past several months. FIXCA alone as propounded over sixty interrogatories as well as requests for production of documents. Not only has the discovery been voluminous, its breadth has, at times, been truly staggering. Further, even more discovery continues to be available to the interexchange carriers.

3. the joint movants will have the opportunity to examine prefiled testimony and detailed prehearing statements prior to the hearing. Any claim by the carriers that the expedited nature of this proceeding disadvantages them is specious for a specific reason in this case. The individual interexchange carriers have fully participated in detailed arbitration hearings in which they were afforded full discovery rights concerning local interconnection. Many of the issues covered in these arbitrations will be central to this 271 proceeding.
5. the interexchange carriers' argument that, because two states have sought to impose a prefiling requirement the Florida Commission can do the same without detrimental effect on BellSouth is plainly wrong. Section 271 envisions state-specific applications and the granting of authority on a state-by-state basis. Thus, each state's rules must stand on their own, as must each application for interLATA authority.
6. The Florida Commission has taken the approach of allowing full discovery prior to a filing combined with an expedited prehearing schedule after filing. BellSouth believes this is a better approach.

BellSouth concludes that the Motion is one attempt to obstruct and delay future interLATA competition and the benefits it will bring to Florida consumers. Further, their motion is contrary to the law and facts and is simply an attempt to handicap competition, frustrate Congress' intent in enacting 271 and obstruct this proceeding while ignoring the procedural rules this Commission has established for this proceeding.

Section 271(2)(B), Consultation With State Commissions, provides:

Before making any determination under this subsection, the Commission shall consult with the State Commission of any State that is the subject of the application in order to verify compliance of the Bell operating company with the requirements of subsection (c).

Section 271(3), Determination, provides in pertinent part:

Not later than 90 days after receiving an application under paragraph (1), the Commission shall issue a written determination approving or denying the authorization requested in the application for each State...

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Staff recommends that the Commission deny the Joint Movant's request. The provisions cited above provide that the FCC will make a determination no later than 90 days after receiving an application for interLATA authority. The Joint Movants have not cited to any authority that would permit this Commission to, in effect, tack on four months to the 271 application process. Also, staff has concerns about receiving evidence 120 days in advance that could be substantially different from what is actually filed with the FCC. If the Commission conducted a hearing during the 120 day pre-filing period and BellSouth relied upon evidence different from what BellSouth files with the FCC, the Commission would not be able to rely on the record from the proceeding to fulfill its consultative role.

Although staff recommends the Commission deny the Joint Movants' motion for an order requiring advance notice, staff recommends that the Commission issue an Order requesting BellSouth to provide 60 days advance notice of filing its Petition for interLATA authority with the FCC. We also recommend that when BellSouth notifies the Commission BellSouth should also identify the agreement or agreements it believes have met the checklist.

We recommend requesting advance notice for several reasons. First, there are several administrative difficulties in scheduling a hearing of this magnitude without advance notice. For example, the Commission's calendar has numerous hearings currently scheduled for next year. Advance notice will enable the Commission to resolve scheduling conflicts that will likely occur. Further, copies of the record in this proceeding will be forwarded to the FCC and the Department of Justice (DOJ) on an expedited basis, therefore, the Division of Records and Reporting will need to schedule reporters and prepare staff to handle the specifics involved. Second, Staff believes 60 days advance notice will be beneficial to all parties and to this Commission. We do not recommend that BellSouth file the evidence it intends to rely upon at that time. However, we do, as mentioned above, recommend that BellSouth identify the agreements it believes have met the checklist. Identifying the agreements would help narrow the scope of discovery. BellSouth, as noted above, asserts that the breadth of the discovery has, at times, been staggering in this proceeding. The intervenors would be able to focus their discovery on specific agreements, and BellSouth would have more time to demonstrate to the Commission that it has met the requirements of Section 271. Finally, staff believes that with 60 days advance notice and the agreement(s) identified, parties and staff will be able to conduct sufficient discovery prior to the commencement of the hearing.

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Staff also recommends that the Commission urge BellSouth to present all of the evidence, upon which it intends to rely, to the Commission two weeks prior to filing its application for interLATA authority with the FCC. We recommend this approach since the FCC has requested State Commissions to submit their findings within twenty days of the BOC filing its application with the FCC. Staff does not believe this request is unreasonable nor that it would stifle BellSouth's possible entry into the interLATA market. BellSouth, of course, would not be prohibited from presenting its case earlier if it chose to do so. However, BellSouth must commit to presenting the same evidence it submits to the FCC to this Commission.

In summary, staff recommends that the Commission deny the Joint Movants' request for an Order requiring advance notice. However, staff recommends that the Commission issue an order that requests BellSouth to give 60 days advance notice and that requests BellSouth to identify the agreements it believes have met the checklist. Staff also recommends that the Commission urge BellSouth to consider presenting all of the evidence, upon which it intends to rely, to the Commission two weeks prior to filing its application with the FCC. In any event, BellSouth must file with the Commission the same documentation that it files with the FCC in its application for interLATA authority.