

HOPPING GREEN SAMS & SMITH
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314

(850) 222-7500
FAX (850) 224-8551
FAX (850) 425-3415

Writer's Direct Dial No.
(904) 425-2313

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ORIGINAL

JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
RICHARD S. BRIGHTMAN
KEVIN B. COVINGTON
PETER C. CUNNINGHAM
RALPH A. DeMEO
THOMAS M. DeROSE
RANDOLPH M. GIDDINGS
WILLIAM H. GREEN
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FRANK E. MATTHEWS
RICHARD D. MELSON

ANGELA R. MORRISON
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MICHAEL P. PETROVICH
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPLÉ
DOUGLAS S. ROBERTS
GARY P. SAMS
TIMOTHY G. SCHOENWALDER
ROBERT P. SMITH
CHERYL G. STUART
W. STEVE WYKES
T. KENT WETHERELL, II
OF COUNSEL
ELIZABETH C. BOWMAN

Ms. Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: BellSouth National Directory Assistance -- Docket No.
971560-TL

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation are the original and fifteen copies of MCI's Brief.

By copy of this letter, this document is being furnished to the parties on the attached service list.

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Very truly yours,

Richard D. Melson
Richard D. Melson

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interLATA service until, among other things, BellSouth demonstrates that it is providing access and interconnection to its network for unaffiliated competing facilities-based providers of business and residential service, that such access and interconnection is provided in accordance with the fourteen-point competitive checklist, and that its entry into the interLATA market is in the public interest. BellSouth has not yet filed its application for in-region authority in Florida with the FCC. However, this Commission, in its consultation docket, found that BellSouth had not met its obligations under Section 271. PSC Docket No. 960786-TL, Order No. PSC-97-1459-FOF-TL.

While local directory assistance is clearly a local exchange service, interLATA directory assistance -- i.e., providing callers with telephone numbers of subscribers in other LATAs -- is an interLATA service to be provided by IXC's. By providing interLATA directory assistance to its in-region customers, BellSouth violates the Act's prohibitions against BOC provision of in-region interLATA services. 47 U.S.C. § 271.

The Act represents Congress' attempt to carefully balance a number of competing interests. One of the major thrusts of the Act is that BellSouth should not be permitted to enter the interLATA long distance market until it has opened its local markets to competition and the FCC has determined that such entry is in the public interest. If the Commission grants BellSouth any unauthorized interLATA authority prior to the FCC's order authorizing such entry, then the balance envisioned by Congress has been disturbed and the prospects for local competition are diminished.

BellSouth requested that the Commission waive Rule 25-4.115 because it claims that the Rule imposes a substantial hardship on BellSouth by denying BellSouth the ability to provide NDA. Order No. PSC-98-0362-FOF-TL, p. 4. Since BellSouth is prohibited from

providing NDA under federal law, the rule's restriction should hardly be considered a hardship which would justify waiving the rule. BellSouth also argues that allowing it to provide NDA would promote competition and benefit Florida telecommunications customers. Order No. PSC-98-0362-FOF-TL, p. 4. On the contrary, allowing BellSouth to circumvent Section 271 reduces BellSouth's incentive to open its local markets to competition.

DISCUSSION AND CITATION TO RECORD AND AUTHORITY

Issue 1: Is the provision of National Directory Assistance a permissible activity for BellSouth Telecommunications, Inc., under the Modified Final Judgment and Section 271(f) of the Telecommunications Act of 1996?

****MCI:** No. BOC Provision of National Directory Assistance is not an activity previously authorized under the MFJ. **

Because the 1996 Act takes the place of the MFJ, the interpretation of the MFJ provides guidance in applying the 1996 Act. BellSouth would have required a waiver of the MFJ to provide interLATA directory assistance before the MFJ was vacated. See United States v. Western Elec. Co., Civil Action No. 82-0192 (D.D.C. Oct. 30, 1984), slip op. at 4. Thus, interLATA directory assistance is an interLATA service for purposes of applying Section 271.

Activities that comprise the business of providing long distance service -- e.g., interLATA 800 directory assistance -- are interLATA telecommunications services, whether or not they involve interLATA transmissions. U.S. v. Western Elec. Co., 627 F. Supp. at 1100, 1102. BellSouth's National Directory Assistance service is an integral part of long distance service; therefore, BellSouth is prohibited from providing the service to in-region

customers prior to obtaining in-region authority under Section 271. See United States v. Western Elec. Co., 569 F. Supp. 1057, 1102 (D.D.C. 1983). See also United States v. Western Elec. Co., 627 F. Supp. at 1100, 1102.

In addition, BellSouth's provision of National Directory Assistance would involve interLATA transmissions. Order No. PSC-98-0362-FOF-TL, p. 5. The interLATA transmissions that were previously authorized under the MFJ were only for local directory assistance service. See U.S. v. Western Elec. Co., 569 F. Supp. at 1097. The centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered; only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance. See 569 F. Supp. at 1098, n. 179. Thus, interLATA transmissions involved in the provision of BellSouth's long distance directory assistance service have not been previously authorized and are not within the exceptions under Section 271(f) of the Act. 47 U.S.C. § 271(f).

The MFJ authorization is limited in its scope. It permits BellSouth to provide only "exchange telecommunications and exchange access functions,"¹ including directory assistance service,² on a centralized -- and thus interLATA -- basis. Thus, the centralized provision of directory assistance authorized under the MFJ was directory assistance related to the BOCs' "exchange telecommunications" functions, or local directory assistance service. Accordingly, the provision of numbers of subscribers in other LATAs has not been previously authorized and is not within the exceptions allowed under Section 271(f) of the Act.

¹ See United States v. Western Electric Co., 569 F. Supp. 1057, 1100 (D.D.C. 1983).

² Id. at 1098.

Under the MFJ, local directory assistance, dialed by 411, was considered a permissible "official service" that the BOCs could provide to their customers on a centralized, interLATA basis without a waiver.³ In the case of directory assistance, however, the centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered; only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance, since only local directory assistance is within the "exchange telecommunications and exchange access functions" authorized by the Court. Moreover, the Commission has explicitly stated that "Official Services" refer to "interLATA networks that are used to manage the operation of local exchange services."⁴

US West, for example, was denied a broader MFJ waiver for in-bound directory assistance calls from other LATAs because IXCs can provide "interLATA directory assistance by using directory information provided by US West pursuant to its access tariffs."⁵ Moreover, when another BOC, Bell Atlantic, attempted to expand the scope of offerings falling under the Official Services designation, it was also rebuffed. The MFJ court held that Bell Atlantic's provision of directory assistance services to customers of independent LECs was not an Official Service and thus required a waiver.⁶ These decisions compel two conclusions: First, under the MFJ, US West and other BOCs would have needed

³ See 569 F. Supp. at 1097, n. 175.

⁴ See Non-Accounting Safeguards Order at n. 666 (emphasis added).

⁵ See United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. October 30, 1984), slip op. at 4.

⁶ United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. February 6, 1984); See also United States v. Western Elec. Co., 569 F. Supp. at 1097 (D.D.C. 1983); See also id. at 1102 (holding that "[i]t is abundantly clear . . . that this particular directory assistance is an interexchange, interLATA service which is appropriately assigned to AT&T.").

a waiver to provide directory assistance to a caller where an IXC could have provided that service, such as a request for the number of a subscriber in another LATA, irrespective of whether the operator providing the number is in the same LATA as the caller. Therefore, under MFJ precedent, the provision of National Directory Assistance would not be classified as an "exchange telecommunications" Official Service exempt from the interLATA prohibition. Second, the BOCs were authorized to provide only local directory assistance on an interLATA basis, not National Directory Assistance.

It should also be noted that the rationale for allowing the BOCs to retain and utilize interLATA Official Services facilities does not apply to the provision of a National Directory Assistance service. The MFJ court was concerned with efficiency losses associated with reconfiguring directory assistance systems that served a major portion of a state or at most an entire state,⁷ but not a directory assistance network that can retrieve telephone numbers nationally. Further, as noted above, "official services" refer to "interLATA networks that are used to manage the operation of *local exchange services*" (emphasis added).⁸ National Directory Assistance service does not relate to the operation of local exchange services; rather, National Directory Assistance enables subscribers to make interLATA calls and thus is "adjunct to" that basic interLATA service, not to local exchange service. Therefore, BOC National Directory Assistance service provided prior to in-region interLATA authority, is offered without prior authorization under the MFJ and thus in violation of Section 271 of the Act.

⁷ 569 F. Supp. at 1098.

⁸ See Non-Accounting Safeguards Order at n. 666.

Issue 2: Is the provision of National Directory Assistance service an incidental interLATA service as defined in Section 271(g) of the Telecommunications Act of 1996, which BellSouth Telecommunications, Inc., may offer pursuant to Section 251(b)(3) of the Telecommunications Act of 1996?

****MCI:** No. National Directory Assistance is not an incidental InterLATA service**

The Act does permit BellSouth to provide specific "incidental interLATA services" as defined in Section 271(g) without awaiting approval of an application under Section 271(d). However, "the provisions of subsection (g) are to be narrowly construed," §271(h), and none of the provisions in Section 271(g) permit BellSouth or its affiliates to provide National Directory Assistance. BellSouth's proposed unseparated provision of National Directory Assistance service to customers in Florida thus constitutes the provision of in-region interLATA services directly by a BOC in violation of both Sections 271 and 272 of the Act.

Section 271(g)(4) only contemplates the *electronic* retrieval of information stored in a central computer. The scope of services permitted under the 271(g)(4) exception should not be expanded to include services that utilize intervening operators.⁹ Indeed, Section 271(h) states that "[t]he provisions of subsection (g) are intended to be narrowly construed." 47 U.S.C. § 271(h). Moreover, the Non-Accounting Safeguards Order¹⁰ clearly

⁹ See In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220, (BOC Forbearance Order) (rel. Feb. 6, 1998) at ¶ 68. The Commission determined in the BOC Forbearance Order that the BellSouth reverse directory service fell "squarely within section 271(g)(4) of the Act." However, this finding referred to BellSouth's electronic reverse directory assistance, which is a purely electronic system by which BellSouth callers can retrieve stored electronic information without the intervention of a BellSouth operator. National Directory Assistance service, however, goes beyond the mere electronic retrieval of stored information because it involves live operator intervention.

¹⁰ See In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, at para. 107, CC Docket No. 96-149,

contemplated that incidental interLATA services within the meaning of Section 271(g)(4) are electronic database retrieval services, which are typically information services.¹¹

Finally, Section 271(h) requires that the Commission "ensure that the provision of services authorized under subsection (g) by a [BOC] or its affiliate will not adversely affect . . . competition in any telecommunications market." As MCI explains below, permitting BellSouth to provide National Directory Assistance pursuant to the Section 271(g)(4) incidental interLATA exception on an integrated basis presents significant potential for unreasonable and discriminatory practices on the part of BellSouth.

Issue 3: Is the provision of National Directory Service an adjunct-to-basic service, and therefore a permissible activity for BellSouth Telecommunications, Inc.?

****MCI:** No. NDA is an adjunct to basic interLATA service, not basic local exchange service. Therefore it is not a permissible activity for BellSouth. **

National Directory Assistance service does not relate to the operation of local exchange services; rather, National Directory Assistance enables subscribers to make interLATA calls and thus is "adjunct to" basic interLATA service, not to basic local exchange service. Therefore, BOC National Directory Assistance service provided prior to in-region interLATA authority is offered in violation of Section 271 of the Act.

National Directory Assistance service is properly characterized as "interLATA service" under the Act. The provision of interLATA services encompasses more than simply the carrying of interLATA transmissions; otherwise there would have been no need for the

FCC 96-489, rel. December 24, 1996, ("Non-Accounting Safeguards Order"); on recon. 12 FCC Rcd. 2297 (1997); on further recon., Second Order on Reconsideration, FCC 97-222, rel. June 24, 1997.

¹¹ See id. at ¶ 121.

explicit authorization of BOC joint marketing and sale of local and interLATA services in Section 272(g)(3) of the Act to overcome the prohibition of such activities in Section 272(a)(2), which requires that certain types of "interLATA . . . services" be provided through a separate affiliate from the BOC's local services. Moreover, Section 222(b) of the Act further illustrates the point that the provision of interLATA services goes beyond the mere carrying of interLATA transmissions. Section 222(b) states that "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts." 47 U.S.C. § 222(b). The express prohibition of marketing in Section 222(b) suggests that such activity would otherwise have been allowed as part and parcel of "providing . . . telecommunications service." These specific references in the statute carving out exceptions for marketing from the general rules otherwise covering the "provid[ing]" of "interLATA . . . services"¹² demonstrate that the provision of interLATA service includes much more than simply carrying a transmission across LATA boundaries.

The Act's definition of "interLATA services" does not require that a "user" select his or her termination point. This argument makes no sense, since users make calls all the time without knowing or caring where the recipient of the call is located. For example, consumers place 800 calls without knowing or caring about the location of the 800 service subscriber, but that does not exempt 800 service from Section 271's prohibitions. Similarly, National Directory Assistance service involves calls placed to a National Directory

¹² 47 U.S.C. § 272(a)(2).

Assistance operator to request a number in another LATA; that is all the caller needs to specify for National Directory Assistance to qualify as an interLATA service.

Under the MFJ, activities that comprise the business of providing long distance service -- e.g., interLATA 800 directory assistance -- were considered interLATA telecommunications services, whether or not they involved interLATA transmissions,¹³ and the same should hold true in applying the restrictions in Section 271 on the provision of interLATA services. In the instance of National Directory Assistance, because interexchange carriers (IXCs) provide long distance directory assistance and BOCs must provide the information that permits IXCs to provide long distance directory assistance, BOCs would be competing with IXCs for the provision of long distance directory assistance. Thus, any provision of the telephone numbers of subscribers in other LATAs constitutes an interLATA service under Section 271 of the Act.

That a caller using a BOC's National Directory Assistance service *typically* uses such information to place interLATA calls is merely additional proof that the service is interLATA in nature. Local directory assistance is adjunct-to-basic based on the typical use of a number obtained from directory assistance -- namely, to place a call. That, in a particular instance, a caller might not make a call to a number obtained from directory assistance makes no difference in categorizing local directory assistance as adjunct to basic. Similarly, the actual use that a caller makes of a particular number obtained from National Directory Assistance should make no difference to its regulatory treatment. It is a simple matter to categorize a

¹³ See U.S. v. Western Elec. Co., 627 F. Supp. at 1100, 1102, appeal dismissed, 797 F.2d 1082 (D.C. Cir. 1986) (stating that BOCs cannot engage "activities that comprise the business of providing interexchange services" -- that is, "the performance of functions that are normally and necessarily performed by those who are engaged in that business").

particular request for directory information as a local or interLATA directory call, based on the location of the caller and the number requested. BOCs have no trouble dividing their directory assistance services into local and national directory assistance on that basis.

As discussed above, National Directory Assistance is not a previously authorized activity under the MFJ and thus is not permissible under Section 271(f). Under the MFJ, local directory assistance, dialed by 411, was considered a permissible "official service" that the BOCs could provide to their customers on a centralized, interLATA basis without a waiver. In the case of directory assistance, however, the centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered; only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance, since only local directory assistance is within the "exchange telecommunications and exchange access functions" authorized by the Court. Moreover, the Commission has explicitly stated that "Official Services" refer to "interLATA networks that are used to manage the operation of *local exchange services*" (emphasis added).¹⁴

As noted above, "official services" refer to "interLATA networks that are used to manage the operation of *local exchange services*" (emphasis added).¹⁵ National Directory Assistance service does not relate to the operation of local exchange services; rather, National Directory Assistance enables subscribers to make interLATA calls and thus is "adjunct to" that basic interLATA service, not to local exchange service. Therefore, BOC National Directory Assistance service provided prior to in-region interLATA authority, is

¹⁴ See Non-Accounting Safeguards Order at n. 666.

¹⁵ See Non-Accounting Safeguards Order at n. 666.

offered without prior authorization under the MFJ and is in violation of Section 271 of the Act.

Issue 4: Is BellSouth Telecommunications, Inc.'s use of 411 for access to National Directory Assistance in violation of Order FCC 97-51 and therefore an unreasonable practice under Section 201(b) of the Telecommunications Act of 1996?

****MCI:** Yes. BellSouth's use of 411 is in violation of Order FCC 97-51 and is an unreasonable, anti-competitive practice.**

BellSouth's proposed provision of National Directory Assistance would also violate the FCC's N11 Order and constitutes an unreasonable practice in violation of Sections 201(b) and 251(b) of the Act. BellSouth's proposal to provide NDA would allow customers to obtain numbers by dialing 411. Order No. PSC-98-0362-FOF-TL, p. 5. In the First Report and Order in its docket captioned Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, (rel. Feb. 19, 1997) (N11 Order), at para. 47, the FCC concluded that 411 should only be used for local directory assistance. In offering National Directory Assistance using 411, BellSouth violates that Order.

BellSouth's violation of the FCC's N11 Order would constitute an unreasonable practice under Section 201(b), since other IXCs cannot offer National Directory Assistance using a 411 access code. BellSouth retains its market dominance in the local market and the 411 local directory assistance market in its region. By offering long distance directory assistance, which is competitive, using an access number that is reserved for local directory assistance, BellSouth's offering of National Directory Assistance service would exploit its dominance in the local market to secure a competitive advantage in the interLATA market.

BellSouth's leveraging of market power and misuse of the 411 access number in an effort to secure a competitive advantage in the interLATA market is an unreasonable practice in violation of Section 201(b) of the Act. See AT&T Communications, Transmittal Nos. 2071 and 2212, 5 FCC Rcd. 3833 (1990), appeal dismissed, No. 90-1415 (D.C. Cir. March 21, 1990), review denied, 7 FCC Rcd. 5656 (1992). See also, AT&T's Private Payphone Commission Plan, 3 FCC Rcd. 5834 (1988), reconsideration denied, 7 FCC Rcd. 7135 (1992).

Non-local directory assistance, by its very nature and definition an interLATA service, is a fully competitive service. BellSouth is simply attempting to enter the competitive nonlocal directory assistance market prior to receiving the appropriate in-region interLATA authority under Section 271. The BOC provision of National Directory Assistance introduces an illegal and discriminatory alternative that no other carrier can offer either through the simplicity and ubiquity of the "411" dialing pattern or with the accuracy of the directory assistance database derived from an ILEC's monopoly position. BellSouth's statement that it can provide National Directory Assistance at a lower cost than IXC's is no more compelling than if it stated that it is currently providing in-region long distance because it can exert its monopoly power in its region to offer consumers a lower-cost alternative to the IXC's. Moreover, the per call prices for IXC long distance directory assistance are quite varied and BellSouth has presented no evidence that its rates are cheaper than all other offerings. In any event, even if it could provide service at a lower cost, it would merely be a result of the competitive advantages it would enjoy in providing NDA through 411.

Because the IXC's are not given access to the "411" dialing code in providing National Directory Assistance, the BellSouth is able to take full advantage of its control over

that familiar dialing pattern. This anti-competitive advantage inherent in BellSouth's use and control of the "411" access code would be greatly aggravated if it were permitted to provide National Directory Assistance service on an integrated basis. Permitting BellSouth to provide National Directory Assistance service on an integrated basis would not promote competition among providers of telecommunications services; rather, it would stifle competition and permit BellSouth to extend its monopoly local bottleneck power into the interLATA market.

Further, although BellSouth claims that it will provide National Directory Assistance service at a "wholesale discount" to any carrier wishing to resell the service, such a claim is woefully inadequate. Under Sections 251 and 252 of the Act, MCI and other IXCs have a right to dialing parity and unbundled network elements.¹⁶ This right includes nondiscriminatory access to BellSouth's subscriber listing and directory assistance databases, including, but not limited to, the ILEC listings in BellSouth's region. Further, Section 251(b)(3) imposes a duty on each and every LEC to provide all carriers with access to its directory assistance and directory listings databases on a nondiscriminatory basis.¹⁷ BellSouth is required to provide MCI and all other carriers with nondiscriminatory access to all listings that it provides through its directory assistance services; however, as this Commission found in Order No. PSC-97-1459-FOF-TL, p. 117, BellSouth has not provided MCI with access to all of the listings it uses in providing directory assistance services. See MCI's Enforcement Complaint, Docket No. 980281-TP.

¹⁶ 47 U.S.C. §§ 251 and 252.

¹⁷ See 47 U.S.C. § 251(b)(3).

Although BellSouth has argued previously that it cannot provide MCI with listings not owned by BellSouth, BellSouth is incorrect in its interpretation of Section 251(b)(3) of the Act. Section 251(b)(3) states that each LEC has the duty to permit each competing provider of telephone exchange service and telephone toll service "to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable delays."¹⁸ Further, because it contains no limiting language to support the position taken by BellSouth, Section 251(b)(3) should be read to impose on BellSouth the duty to provide MCI and all other carriers with access to all listings to which BellSouth has access. If BellSouth cannot provide MCI with access to all of the listings accessed and used by BellSouth, then BellSouth should be foreclosed from using such listings.

BellSouth possesses such a complete directory assistance database only because of its position as a monopoly local service provider throughout its service region. BellSouth's failure to provide MCI with nondiscriminatory access to all of the listings it provides through all forms of directory assistance, including National Directory Assistance, constitutes an anti-competitive and unreasonable practice.

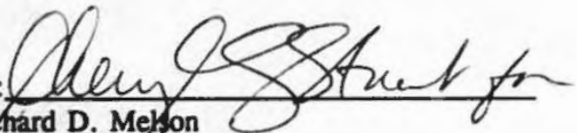
II. CONCLUSION

For the foregoing reasons, the Commission should deny the request of BellSouth Telecommunications, Inc. (BellSouth) for a waiver of Rule 25-4.115, Florida Administrative Code. In addition, the Commission should not permit BellSouth to offer National Directory Services as a tariffed offering.

¹⁸ 47 U.S.C. § 251(b)(3).

RESPECTFULLY SUBMITTED this 15th day of June, 1998.

HOPPING GREEN SAMS & SMITH, P.A.

By: 
Richard D. Melton
P.O. Box 6526
Tallahassee, FL 32314
(850) 425-2313

and

THOMAS K. BOND and
MARSHA WARD
MCI Telecommunications Corporation
780 Johnson Ferry Road, Ste. 700
Atlanta, GA 30342
(404) 267-6374

Attorneys for MCI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail or Hand Delivery (*) this 15th day of June, 1998.

Charles J. Pellegrini (*)
Division of Legal Services
FL Public Service Commission
2540 Shumard Oak Boulevard
Suite 370
Tallahassee, FL 32399

BellSouth Telecommunications,
Inc. (*)
Nancy B. White
c/o Ms. Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

P. D. Me

ATTORNEY