

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of  
Consideration of BellSouth  
Telecommunications, Inc.'s  
entry into InterLATA  
services pursuant to Section:  
271 of the Federal  
Telecommunications Act of  
1996.  
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PROCEEDINGS:           STATUS CONFERENCE

BEFORE:                 COMMISSIONER JULIA L. JOHNSON

DATE:                   Wednesday, October 2, 1996

TIME:                   Commenced at 8:00 a.m.  
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REPORTED BY:           JOY KELLY, CSR, RPR  
                          Chief, Bureau of Reporting  
                          Official Commission Reporter

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1 **IN ATTENDANCE:**

2 **MONICA BARONE**, FPSC, Division of Legal  
3 Services, 2540 Shumard Oak Boulevard, Tallahassee,  
4 Florida 32399-0870, Telephone No. (904) 413-6197,  
5 appearing on behalf of the **Commission Staff**.

6 **JOSEPH McGLOTHLIN**, McWhirter, Reeves, McGlothlin,  
7 Davidson & Bakas, 117 S. Gadsden Street, Tallahassee, Florida  
8 32301, Telephone (904) 222-2525, representing the **Florida**  
9 **Interexchange Carriers Association**, participating  
10 telephonically.

11 **PATRICK K. WIGGINS**, Wiggins & Villacorta,  
12 P.A., 501 East Tennessee Street, Suite B, Tallahassee,  
13 Florida, 32308, Telephone No. (904) 222-1534,  
14 appearing on behalf of **Intermedia Communications,**  
15 **Inc.**, participating telephonically.

16 **BENJAMIN FINCHER**, Ervin Varn Jacobs & Ervin  
17 law firm, 305 S. Gadsden Street, Tallahassee, Florida,  
18 Telephone (904) 224-9135, appearing on behalf of  
19 **Sprint Communications Company, L.P.**, participating  
20 telephonically.

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## 1 APPEARANCES CONTINUED:

2 PHILIP CARVER 150 West Flagler Street, Suite  
3 1910, Miami, Florida, Telephone (305) 347-5558, appearing on  
4 behalf of BellSouth Telecommunications, Inc., participating  
5 telephonically.

6 MARTHA McMILLIN,, 780 Johnson Ferry Road,  
7 Suite 700, Atlanta, Georgia 30342, Telephone No. (404)  
8 843-6375, appearing on behalf of MCI  
9 Telecommunications Corporation, participating  
10 telephonically.

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## P R O C E E D I N G S

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2           **COMMISSIONER JOHNSON:** Go on the record and  
3 take appearances.

4           **MR. CARVER:** Philip Carver representing  
5 BellSouth, 150 West Flagler Street, Suite 1910, Miami,  
6 Florida.

7           **MR. MCGLOTHLIN:** Joe McGlothlin, 117 South  
8 Gadsden Street, Tallahassee, appearing for the Florida  
9 Interexchange Carriers Association.

10           **MS. McMILLIN:** Martha McMillin, representing  
11 MCI Telecommunications Corporation, 780 Johnson Ferry  
12 Road, Suite 700, Atlanta, Georgia 30342.

13           **MR. FINCHER:** Benjamin Fincher representing  
14 Sprint Communications, 3100 Cumberland Circle,  
15 Atlanta, Georgia 33309.

16           **MR. SELF:** This is Floyd Self representing  
17 LDDS WorldCom with the Messer Caparello law firm,  
18 P. O. Box 1876, Tallahassee, Florida 32302.

19           **MR. WIGGINS:** This is Pat Wiggins  
20 representing Intermedia Communications, P. O. Box 1567  
21 Tallahassee 32302.

22           **MS. BARONE:** I'm Monica Barone, Staff  
23 counsel.

24           **COMMISSIONER JOHNSON:** Very good. Are there  
25 any preliminary matters that we need to address?

1 MS. BARONE: Not that I'm aware of.

2 COMMISSIONER JOHNSON: I guess we can go  
3 directly into the motion.

4 MR. CARVER: One thing I want to ask you,  
5 Commissioner Johnson, I understand you may have some  
6 time constraints this morning. So if I could just ask  
7 basically how long -- I assume the time will be  
8 divided up evenly, but I just wanted to ask how much  
9 time that would be.

10 COMMISSIONER JOHNSON: I'm sorry, I thought  
11 that had already been discussed. 15 minutes per side.

12 MR. CARVER: Thank you.

13 MR. MCGLOTHLIN: I'll begin. Commissioner,  
14 we've asked you to consider FIXCA's Motion to Compel  
15 answers to its Interrogatories 40 through 43, and its  
16 fourth set of interrogatories. All of those  
17 interrogatories relate to the same subject matter so  
18 I'll make a single presentation. I'll try to time it  
19 so that I have a couple of minutes for response.

20 COMMISSIONER JOHNSON: Okay.

21 MR. MCGLOTHLIN: I want to begin with  
22 Interrogatories 40, 41, 42 and 43.

23 40 says "If and when it obtains requisite  
24 authority, to what extent does BellSouth plan to use  
25 its own network to provide interLATA toll service? If

1 the network is in place, describe the components of  
2 the network. If the network is not in place, please  
3 describe the actions BellSouth has taken to implement  
4 its interLATA network; the actions that must still be  
5 undertaken to implement BellSouth's interLATA network;  
6 and state when BellSouth expects the interLATA network  
7 to be in place ready to provide service."

8           41 asks whether BellSouth plans to use its  
9 own billing system for interLATA toll service and  
10 whether it is in place today. It also asks if not,  
11 when will BellSouth interLATA billing system be in  
12 place and ready to provide interLATA toll service to  
13 local exchange customers.

14           42 asks similar questions with respect to  
15 whether BellSouth plans to use its own support and  
16 ordering systems to provide interLATA toll service.

17           **CHAIRMAN CLARK:** 43 asks "If and when  
18 BellSouth is permitted to begin providing in-region  
19 interLATA toll service to its local exchange  
20 customers, what percentage of its network will be  
21 owned by BellSouth, and what percentage will be leased  
22 and resold from other carriers?"

23           In its first response to these  
24 interrogatories, BellSouth proposed both general and  
25 specific objections. In its general objection they

1 objected on the basis that the interrogatories were --  
2 (interference on telephone.)

3           **MS. BARONE:** Joe, could you repeat those  
4 last few words? The court reporter could not hear  
5 you.

6           **MR. MCGLOTHLIN:** Alright. And the general  
7 objection objected to any questions that imposed an  
8 obligation on BellSouth to respond on behalf of the  
9 subsidiaries, affiliates or other persons that are not  
10 party to the case.

11           With respect to specific objections, it says  
12 that -- claimed that the interrogatories were not  
13 relevant or reasonably calculated to lead to the  
14 discovery of admissible evidence related to the issue  
15 of whether BellSouth has met, or will be able to meet,  
16 the requirement of Section 271 of the  
17 Telecommunications Act of 1996.

18           We moved to compel answers to those  
19 questions. And in the Commissioner's ruling, you  
20 ruled in favor of FIXCA in Order PSC-96-41-FOF-TL.  
21 The order states "FIXCA's Motion to Compel answers to  
22 Interrogatories 40 through 43 shall be granted. The  
23 information which FIXCA seeks is reasonably calculated  
24 to lead to the discovery of admissible evidence.  
25 These questions could elicit information relating to

1 BellSouth's providing nondiscriminatory access to  
2 unbundled elements and interconnection arrangements,  
3 citing Sections 271(2)(b)(1), and 271(2)(b)(2).

4           So these interrogatories have already been  
5 the subject of a motion to compel. And answers --  
6 pages now -- BellSouth provided the same answer to  
7 each of the interrogatories. And the answer says  
8 "Pursuant to the Telecommunications Act of 1996, long  
9 distance interLATA toll service must be offered by a  
10 separate subsidiary. BellSouth Telecommunications,  
11 Inc. does not have the information necessary to  
12 respond on behalf of the long distance subsidiary.

13           Despite our diligent efforts to date,  
14 BellSouth Telecommunications have been unable to  
15 ascertain the answer to this interrogatory. We will  
16 continue to search for the responsive information for  
17 the next ten days, and will supplement our response on  
18 August 26th, 1996, with any information obtained in  
19 this time frame." Of course, August 26th has come and  
20 gone and counsel for BellSouth has confirmed that  
21 BellSouth intends no additional response.

22           Very simply, Commissioner, we believe that  
23 you've ruled on these already, and that in light of  
24 your ruling and in light of the fact that BellSouth  
25 would be the entity to determine the extent to which

1 its subsidiary utilizes the existing corporate network  
2 owned by BellSouth and the existing billing  
3 arrangement and servicing provisions, it's  
4 disingenuous to suggest it has no information or it's  
5 unable to obtain the information sought by these  
6 interrogatories. And we believe you should rule these  
7 answers are inadequate and unacceptable. With that  
8 I'll turn to the fourth set.

9           **COMMISSIONER JOHNSON:** Joe, let me ask you a  
10 question. With respect to the answers, I mean they're  
11 simply and directly stated. I'm a little confused by  
12 what you're suggesting here.

13           To the extent that what they are saying is  
14 accurately reflected on the document, it appears as if  
15 they have responded and they are simply suggesting  
16 they don't have the information. How can I compel  
17 them to provide something they have very directly  
18 stated that they don't have?

19           **MR. MCGLOTHLIN:** Well, they are saying -- in  
20 essence they are saying they can't answer on behalf of  
21 a subsidiary, which was basically the same objection  
22 that they raised earlier that you refused to accept.

23           And I believe when you look at the  
24 substantive content of the question and compare that  
25 with the proposition that BellSouth either has no

1 information or is unable to obtain it, I'm simply  
2 suggesting that it's disingenuous and unacceptable to  
3 believe that they have no ability to provide the  
4 information.

5 I agree that the answers are direct and  
6 succinct, but they directly and succinctly say they  
7 are not going to give us the information we seek. I  
8 don't think that conforms to either the rules of  
9 discovery or through your explicit ruling.

10 COMMISSIONER JOHNSON: Let me read this  
11 again, their response again. So you're suggesting  
12 that they aren't -- that the information is not  
13 available, it's just available through the subsidiary.

14 MR. MCGLOTHLIN: Yes.

15 COMMISSIONER JOHNSON: So you're suggesting  
16 that all they need to do is ask the subsidiary for the  
17 information.

18 MR. MCGLOTHLIN: In part that is correct. I  
19 do believe also that with respect to those questions  
20 that relate to decisions that the entity, BellSouth,  
21 would have made with respect to such things as the  
22 transfer of this corporate interLATA network, and with  
23 respect to billing procedures and servicing  
24 capacities, that would have been the property of  
25 BellSouth; that that information undeniably should be

1 available to BellSouth as well as its subsidiary.

2 COMMISSIONER JOHNSON: I see. Okay. Thank  
3 you.

4 MR. McGLOTHLIN: I'll turn now to the fourth  
5 set.

6 COMMISSIONER JOHNSON: Okay.

7 MR. McGLOTHLIN: These are interrogatories  
8 53 through 61.

9 53 states "Describe in detail the interLATA  
10 network owned, operated and controlled by BellSouth or  
11 its affiliates which is used by BellSouth for its  
12 internal "Official" interexchange calling."

13 54 says "Provide the construction cost of  
14 the interLATA network identified in Interrogatory 53  
15 by component, i.e. transmission, electronic."

16 55 says "List the depreciable lives of each  
17 component of the interLATA network described in  
18 Interrogatory No. 53 as contained in BellSouth's most  
19 recent depreciation study."

20 56 says "For each depreciation account of  
21 the interLATA network described in 53, list how much  
22 of the total value of each depreciation account has  
23 been depreciated and how much remains to be  
24 depreciated."

25 57 says "For each depreciation account on

1 the interLATA network described in 53, list the life  
2 over which it was depreciated."

3           58 says "Has BellSouth transferred or does  
4 BellSouth plan to transfer any portion of its  
5 interLATA network to its long distance affiliate."

6           59, "If the answer to 58 is yes, describe  
7 the assets that have or will be transferred, when the  
8 transfer will take place, how and in what amount  
9 BellSouth's affiliate will compensate BellSouth to for  
10 the transferred assets.

11           60 asks "Has BellSouth transferred or will  
12 BellSouth transfer any of BellSouth personnel to its  
13 long distance affiliate?"

14           And 61 asks "If the answer to Interrogatory  
15 No. 60 is yes, list the name and address of each  
16 person who will be transferred, the person's position,  
17 responsibilities and compensation of BellSouth, and  
18 the person's position, responsibilities and  
19 compensation of BellSouth long distance affiliate, and  
20 finally when the transfer occurred or will occur."

21           In response to the fourth set, again there  
22 are specific responses. First BellSouth says --  
23 objects on the basis that the interrogatory seeks  
24 information regarding a long distance affiliate of  
25 BellSouth. And prior objections to providing such

1 information in response to Interrogatories 20 and 21  
2 were sustained by the Commission in its Order 96-1041,  
3 the same order dated August 12.

4           Again, Commissioner, we believe that the  
5 claim that the discovery shouldn't be forthcoming  
6 because it relates to a subsidiary, considered by you  
7 and refused in the past, we believe that when you  
8 examine the content of question 53 through 59 you will  
9 agree that they are in the same category, or same  
10 family of information that you've determined were  
11 related to the issue of nondiscriminatory access in  
12 your ruling on Interrogatories 40 through 43.

13           With respect to the citation to  
14 Interrogatories 20 and 21, it is true that you denied  
15 our Motion to Compel answers there. 20 asks  
16 specifically how BellSouth intended to comply with the  
17 structural separation requirements of Section 272.  
18 And you determined that that particular interrogatory  
19 related to Section 272 rather than 271, and because  
20 the Commission has no obligation to make a  
21 determination under 272, you determined there was --  
22 the interrogatory was inappropriate.

23           No. 21 asks for information regarding  
24 officers and directors of the subsidiary and you  
25 treated that in the same fashion.

1           So I'll acknowledge that the final two  
2 interrogatories of the fourth set that relate to  
3 BellSouth personnel could be deemed to be similar to  
4 the vote for which you have reviewed discovery.

5           I would simply point out that in addition to  
6 whether these interrogatories relate to issues  
7 associated with the checklist of 271, we have also  
8 raised the need to prepare a complete record with  
9 respect to the public interest criterion of 271 as  
10 well.

11           We believe that the ability of BellSouth to  
12 create an instant interLATA network by virtue of  
13 transferring corporate assets to a subsidiary and to,  
14 as we believe, enter the interLATA market in a  
15 substantial way, in a short time frame, bears on the  
16 public interest that the FCC will have to review.

17           And we think it's proper and appropriate to  
18 include that through discovery information that bears  
19 on that aspect of 271 in addition to the checklist  
20 item.

21           I can't glean from the earlier order on  
22 Interrogatories 20 and 21 whether that is something  
23 you consider. So I would ask that you take that into  
24 account as you consider Interrogatories 60, 61.

25           With respect to the early ones, I believe

1 you'll find that they ask for additional detail of the  
2 same type of information that you ruled earlier was  
3 related to the checklist issues. And I believe that  
4 BellSouth has raised no valid objections to the  
5 discovery request that we presented.

6 And the fourth set of interrogatories, and  
7 their continued refusal to answer 40 through 43 in a  
8 meaningful way, particularly in light of your ruling  
9 on the earlier motion to compel should be  
10 unacceptable.

11 With that I'll stop.

12 **COMMISSIONER JOHNSON:** Okay. Thank you.  
13 Bell.

14 **MR. CARVER:** Let me start by asking several  
15 procedural questions. By my watch that took 15  
16 minutes. Should I assume that I'll speak and that  
17 will be it, or are we going to have another round?

18 **COMMISSIONER JOHNSON:** Actually by my watch,  
19 and I took out the questions that I asked, he has  
20 about two minutes.

21 **MR. CARVER:** Two minutes left. Okay. Thank  
22 you.

23 Okay. We have two separate sections of the  
24 Act that are being intermixed by FIXCA here fairly  
25 freely.

1           271, of course, is the portion of the Act  
2 that deals with what is necessary for BellSouth to  
3 enter the interLATA market. 272 has to do with what  
4 would be done by a separate affiliate once BellSouth  
5 enters the market. There are two separate provisions  
6 of the Act. Commissioner, I believe you previously  
7 ruled that 272 is not the subject of this proceeding;  
8 that 271 is.

9           What happens, though, is that FIXCA is  
10 attempting to drag in what will happen after we have  
11 interLATA relief and act as if it's part of 271 when  
12 it really isn't. And in order to do that, they have  
13 grafted onto this checklist pretty much anything they  
14 want to under the general rubric of public interest.

15           If they want information, they simply claim  
16 it relates in some manner to the public interest and,  
17 therefore, they're entitled to it. The fact of the  
18 matter is, though, what is going to happen after we  
19 have entry into the market and the manner in which our  
20 affiliate operates is not part of the checklist and  
21 should not be treated as if it were.

22           I'm going to address the interrogatories in  
23 a somewhat different order than Mr. McGlothlin did.  
24 I'm going to start through 53 through 57.

25           53 focuses on our own internal network that

1 we use for our own purposes, and it requests extremely  
2 detailed information about this.

3 54, 55 and 56 are all financial questions  
4 having to do with depreciation. None of this has any  
5 relevance to 271. None of this relates in any manner  
6 whatsoever to the checklist. None of this has to do  
7 with the competitive factors that are listed there.

8 This is simply one more chance by FIXCA to  
9 obtain information about our network or about other  
10 matters that are proprietary, that are sensitive, that  
11 they have no right to have. But, again, by trotting  
12 out the public interest and claiming that is somehow  
13 related, they are trying to get access to information  
14 they have absolutely no entitlement to.

15 Now, when we get to 58 through 61, we have  
16 something similar being done by FIXCA, except in this  
17 instance they are also proceeding in a manner that is  
18 contrary to your previous ruling.

19 In response to their Interrogatory No. 21,  
20 that we did not have to provide information about the  
21 affiliate; that we could provide information that  
22 BellSouth has, but that we don't provide information  
23 about the affiliate as if we were the same company or  
24 as if there were no separation there.

25 So what FIXCA does is they direct the

1 interrogatory to BellSouth as if it is not requesting  
2 the information from the affiliate. But I think it's  
3 fairly transparent.

4           The first two questions has to do with  
5 whether the affiliate will utilize any aspect of this  
6 internal network that they want all of the information  
7 about. And if so, in 59 they ask for a fairly  
8 detailed list of information about the network.  
9 Likewise, in 60 they, in fact, want to know who the  
10 network is going to hire, and whether they are going  
11 to hire anyone from Bell South. And then in 61 they  
12 get into again detailed information.

13           60 and 61, I think Mr. McGlothlin has pretty  
14 much conceded goes to the affiliate. Even if it were  
15 proper, and for that reason it's not proper -- but  
16 even if it were proper, it's still burdensome and  
17 intrusive, and it's still not proper.

18           If you look at 61(b) they want to know for  
19 every person who will be or may be transferred to the  
20 affiliate, what their position is, what their  
21 responsibilities are, what their compensation at  
22 BellSouth is, and the same information from the  
23 affiliate.

24           This has no relevance whatsoever, and to try  
25 to drag out and put it in a public forum that type of

1 information about our employees or the employees of  
2 our affiliate is just not proper.

3 Now, turning to 43, Section 271(b)(1) states  
4 that we shall operate independently -- I'm sorry, the  
5 affiliate shall operate independently from the Bell  
6 operating company. It's a legal requirement and it's  
7 a requirement that we honor.

8 To the extent we have efforts on behalf of  
9 the affiliate, begin to do things in preparation for  
10 operation in the interLATA market, that's separate  
11 from BellSouth. That's a real distinction, and it's  
12 one that should be honored.

13 Again, though, however, what FIXCA does is  
14 they simply act as if they are not asking for  
15 information from the affiliate; instead they direct  
16 the question to BellSouth.

17 On 41, 42 and 43, originally my belief was  
18 that although they had couched the question in terms  
19 that were a little bit vague, and as I say, perhaps  
20 even -- I don't think it really got to what they were  
21 asking -- but again they were asking for information  
22 from the affiliate.

23 Orders to respond to those questions and the  
24 orders that these questions could elicit information  
25 relating to BellSouth providing nondiscriminatory

1 access to unbundled elements in interconnection  
2 arrangements.

3           In that portion of the order it told  
4 BellSouth to answer. It did not say we had to answer  
5 on behalf of the affiliate; that we had to obtain the  
6 information from the affiliate.

7           So what we have done is we have answered  
8 this in the only way that we can in keeping with the  
9 requirements of federal law. The affiliate operates  
10 separately from us, so we made a diligent effort in  
11 response to 40 through 43 to find out if any of these  
12 issues had been raised by the representatives of the  
13 affiliate, because essentially when they want  
14 something, they come to us and they negotiate the same  
15 way any IXC would, and we could not find any  
16 information.

17           So BellSouth doesn't know. And under the  
18 provisions of the federal act and under the rules of  
19 discovery that typically apply anywhere, we should not  
20 be required to go to a separate entity that is  
21 different from us, that is legally distinct, and  
22 answer these questions on their behalf. And FIXCA  
23 should not be allowed to force us to do that by simply  
24 directing the question to us rather than making it  
25 clear that what they are really after is the precise

1 type of information as you've already ruled in  
2 response to Interrogatory No. 20 and 21 they can't  
3 have.

4 I think I'll stop there and reserve the  
5 remainder of my time for additional comments.

6 **COMMISSIONER JOHNSON:** Mr. McGlothlin, could  
7 you start with his last point?

8 **MR. MCGLOTHLIN:** I would simply ask you to  
9 review the information requested in 40 through 43.

10 40 refers to whether BellSouth plans to use  
11 its own network to provide interLATA toll service.

12 41 relates to whether the BellSouth  
13 existing billing system will be utilized in the  
14 provision of interLATA service.

15 42 is support and ordering systems.

16 And 53, the percentage of the network owned  
17 by BellSouth and the percentage owned by other  
18 carriers.

19 It appears to me that BellSouth would not  
20 have to go to the affiliate to find out whether the  
21 interLATA network utilized by BellSouth is going to be  
22 transferred to the affiliate and utilized by the  
23 affiliate for interLATA service. The same way with  
24 the existing systems and provisions for billing and  
25 servicing.

1           That's the substance of our continued effort  
2 to get the information. And you've already ruled  
3 they're entitled to it.

4           With respect to the other points being  
5 raised, there is the idea that we somehow grafted  
6 inappropriate issues in by referring to the public  
7 interest standard. The law says that the criteria  
8 that the FCC will include -- that the FCC will apply  
9 include whether it is -- the request authorization is  
10 consistent with the public interest, convenience and  
11 necessity. We believe -- we submit that the basic  
12 premise of the Act is substantial trade.

13           That is, the opening of the local exchange  
14 market on the one hand, ones that have been opened and  
15 is made available to meaningful competition, then the  
16 FCC will entertain an application by BellSouth by  
17 inclusion in the intraLATA market.

18           We think the question of whether that  
19 interLATA competition should happen in a big way prior  
20 to the development of meaningful competition in the  
21 local exchange market, which by virtue of  
22 circumstances are going to be embryonic for some time  
23 to come, go straight to the public interest test, and  
24 it's -- the public interest test is large and broad  
25 because Congress worded it that way.

1           The other point I want to respond to is  
2 this: There's a suggestion that the ruling in the  
3 order on 20 and 21 is based upon the fact that we were  
4 trying to obtain permission from the affiliate is  
5 simply not true.

6           The order simply states -- I'm sorry, on 40  
7 through 43 -- the order states that we were entitled  
8 to the information because it's related to the issue  
9 of nondiscriminatory access. And the ruling on 20 and  
10 21 was based upon the fact -- your determination that  
11 we were seeking information related to a determination  
12 under 272; not because it related to the subsidiary of  
13 the interLATA entity. That's all I have.

14           **COMMISSIONER JOHNSON:** Mr. Carver, do you  
15 have anything additional?

16           **MR. CARVER:** Yes. I'd like to respond to  
17 three different points. First of all a general point.

18           Again, 272 is the specific statutory  
19 provision that has to do with the restrictions upon  
20 our separate affiliate, and the requirements for what  
21 they will do and how they will go about offering  
22 intraLATA service. It's not part of 271.

23           Mr. McGlothlin argues that he can take the  
24 term "public interest" and argue that in essence  
25 whatever he wants to have discovery on is somehow

1 relevant to the public interest. In general I don't  
2 think that's appropriate.

3 In this instance it makes no sense when  
4 looking at the statute, because he is arguing that  
5 issues having to do with the matter in which we will  
6 offer interLATA service, or I should say the manner in  
7 which our affiliate will offer interLATA service,  
8 relates to the public interest, and, therefore, they  
9 become part of 271.

10 The fact is, though, that the statute has  
11 those provisions and those requirements in a separate  
12 section. If what Mr. McGlothlin is arguing were in  
13 effect true, then there would be an additional  
14 checklist item and it would say that it should also be  
15 considered what will happen after we have interLATA  
16 authority. That's not the case. It's a separate  
17 issue and should not be allowed to bring it back into  
18 271 as if it belonged there because it doesn't.

19 Second, to move specifically to 40 through  
20 43. Again I'd like to read a portion of the order.  
21 It says -- it compels us to answer the questions  
22 because, quote, "These questions could elicit  
23 information relating to BellSouth providing  
24 nondiscriminatory access to unbundled elements in the  
25 interconnection arrangements." The order doesn't tell

1 us to ignore the corporate separation, it doesn't tell  
2 us to ignore the legal requirements; it doesn't tell us  
3 to provide things that affiliate knows but that  
4 BellSouth does not know.

5 So we complied with the order and tried to  
6 find out the information we could, or we tried to find  
7 out if any information had been communicated to us by  
8 those who represent the affiliate as to what their  
9 plans are.

10 Now, Mr. McGlothlin argues that we can tell  
11 you what affiliate is going to do without disregarding  
12 the entity or without obtaining the information  
13 within. That is absolutely wrong.

14 What we did in this instance was we made a  
15 diligent effort to find out if the affiliate had  
16 approached anyone from BellSouth and requested, for  
17 example, that we transfer the network to them or that  
18 they be allowed to use a portion of it, or that they  
19 be allowed to hire someone who currently works for  
20 BellSouth.

21 We could find no information and that's the  
22 way we answered. We can't go any further unless you  
23 disregard the corporate entity and force us to give  
24 you information that we don't have and that only the  
25 affiliate has. So in that regard, again,

1 Mr. McGlothlin is simply wrong. And it would not be  
2 right to force us to disregard the entity and to give  
3 you the information that they have and that we don't.  
4 And that's all I have. Thank you.

5 COMMISSIONER JOHNSON: Mr. McGlothlin, I  
6 have one question for you.

7 This Commission had the authority to request  
8 that BellSouth Telecommunications, Inc. get  
9 information from a separate corporate entity and  
10 provide it to us, whether under federal or state law.  
11 Do we even have that authority?

12 MR. MCGLOTHLIN: Let me give the answer in  
13 two parts, Commissioner.

14 First of all, I don't accept the idea that  
15 the information has to rest in the entity of BellSouth  
16 at the top, the subsidiary has established for the  
17 purposes of the Act, that they can refuse to answer on  
18 the basis that at some point information and assets  
19 become the property of the subsidiary and not  
20 BellSouth.

21 Secondly, with respect to this situation,  
22 where the subsidiary is created as a function of the  
23 same Telecommunications Act under which you are  
24 exercising your responsibilities, I believe that you  
25 have the authority to require that information be

1 produced.

2           **COMMISSIONER JOHNSON:** Mr. Carver, do you  
3 want to add anything to that? Or rebut that?

4           **MR. CARVER:** Well, on the first point, we're  
5 adhering to the legal requirement. We are operating  
6 the affiliate portion and the parts that will be  
7 offered interLATA service separately.

8           Mr. McGlothlin, I suppose, is trying to make  
9 some sort of distinction between now and later, and  
10 that once we are offering it, they can't ask but now  
11 we can. That's not the way the Act reads and that's  
12 not the way it is. We have a separation there. We've  
13 complied with the order. We've provided you with the  
14 information that BellSouth has, that is BellSouth  
15 Telecommunications. We have not gone to anyone in the  
16 affiliate and asked them what their plans are unless  
17 they have communicated them to us otherwise. I  
18 believe that's appropriate.

19           Beyond that, in terms of compelling  
20 production from unrelated entities, or subsidiaries,  
21 first of all, the discovery is not directed to them.  
22 It's directed to BellSouth. And I don't think we have  
23 a duty to go to those entities. Beyond that, we're  
24 dealing with a situation here where there is a  
25 federally mandated separation, and it's a separation

1 that we observe. I don't believe that FIXCA should be  
2 allowed to disregard that separation just because they  
3 want discovery about something that relates to 272;  
4 something that will happen after we have authority and  
5 something that's not even in a strict sense related to  
6 271.

7 So I just close by saying, no, I don't  
8 believe that the authority is there. I don't believe  
9 that even if it were it would be proper to exercise it  
10 in the manner that FIXCA argues.

11 **COMMISSIONER JOHNSON:** Okay. Ms. Barone, do  
12 you have any questions?

13 **MS. BARONE:** Mr. Carver, do you know if the  
14 long distance affiliate has applied for a certificate  
15 here in Florida?

16 **MR. CARVER:** Personally, right now, no, I  
17 don't. There may be somebody in the company who knows  
18 but I don't.

19 **MR. MCGLOTHLIN:** This is Joe McGlothlin. I  
20 believe the answer to that is yes. I've seen the  
21 application.

22 **MR. CARVER:** Well, in that case  
23 Mr. McGlothlin knows more about what our affiliate is  
24 doing than I do.

25 **COMMISSIONER JOHNSON:** Any other questions?

1           **MS. BARONE:** Earlier, Phil, you stated that  
2 BellSouth was in compliance with federal law, I think  
3 is what you said. Could you succinctly tell me what  
4 you meant by that?

5           **MR. CARVER:** What I mean is in 272 it says  
6 the affiliate is to be operated independently. So to  
7 the extent there is business planning that is going  
8 on, it's being done by a group that will be  
9 affiliates. They will offer it, BellSouth  
10 Telecommunications won't.

11           We don't inquire of them what they are  
12 doing. We don't have information about what they are  
13 doing. To the extent they want to enter into some  
14 sort of business arrangement or have a discussion with  
15 us about the possibility of an arrangement, they  
16 approach this in the same manner as an IXC would.  
17 There's a separation there and that's all I meant.

18           **MS. BARONE:** That's all I have.

19           **COMMISSIONER JOHNSON:** Okay. Are you in  
20 your office, Monica?

21           **MS. BARONE:** No. I'm in your office with  
22 the court reporter.

23           **COMMISSIONER JOHNSON:** I'll be calling back  
24 in a few minutes.

25           We will get back with you when I'll make a

1 ruling on this issue and when I'll get an order out.  
2 I'll try to do it in an expeditious a manner as I can.  
3 But by sometime tomorrow we'll give you notice as to  
4 when we will make a ruling on this particular issue.

5 Thank you very much for your participation.

6 MR. MCGLOTHLIN: Thank you. Over 8:37 a.m.

7 (Thereupon, the hearing concluded at 8:37

8 a..m.)

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1 STATE OF FLORIDA)  
 2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

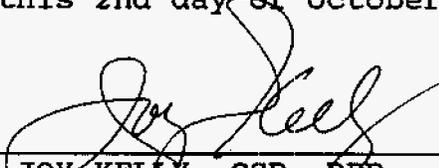
3 I, JOY KELLY, CSR, RPR, Chief, Bureau of  
 4 Reporting, Official Commission Reporter,

5 DO HEREBY CERTIFY that the Status Conference  
 6 in Docket No. 960786-TL was heard by the Prehearing  
 7 Officer at the time and place herein stated; it is  
 8 further

9 CERTIFIED that I stenographically reported  
 10 the said proceedings; that the same has been  
 11 transcribed under my direct supervision; and that this  
 12 transcript, consisting of 30 pages, constitutes a true  
 13 transcription of my notes of said proceedings.

14 DATED this 2nd day of October, 1996.

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 JOY KELLY, CSR, RPR  
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