

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition by BellSouth Telecommunications, Inc. for
waiver of Rule 25-4.115, F.A.C., Directory Assistance, and
for authorization to provide National Directory Assistance
(NDA) in Florida.

DOCKET NO. 971560-TL

COPY

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER JOE GARCIA
COMMISSIONER E. LEON JACOBS

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 38**

DATE: December 1, 1998

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

JANE FAUROT, RPR
P.O. BOX 10751
TALLAHASSEE, FLORIDA 32302
(850) 561-5598

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APPEARANCES:

SID WHITE, Esquire, representing BellSouth
KENNETH RUTH, representing Communications Workers of
America
RICK MELSON, Esquire, representing MCI

STAFF RECOMMENDATION

Issue 1: Is the provision of NDA service a permissible activity for BellSouth under the MFJ and Section 271(1) of the Telecommunications Act?

Recommendation: No. Section 271(f) only permits the grandfathering of certain activities under specific waivers from the MFJ. BellSouth does not hold a waiver under the MFJ for the provision of NDA service. Without a waiver, the provision of NDA service is not a permissible activity under the MFJ or Section 271(f) of the Act.

Issue 2: Is the provision of NDA service an incidental interLATA service as defined in Section 271(g) of the Act, which BellSouth may offer pursuant to Section 251(b)(3)?

Recommendation: No. The provision of NDA service is not an incidental interLATA service as defined in Section 271(g) of the Act.

Issue 3: Is the provision of NDA service an adjunct-to-basic service, and therefore a permissible activity for BellSouth?

Recommendation: No. NDA service is not an adjunct-to-basic service; therefore, it is not permissible activity for BellSouth.

Issue 4: Is BellSouth's use of 411 to obtain access to NDA in violation of Order No. FCC 97-51 and therefore an unreasonable practice under Section 201(b) of the Act?

Recommendation: No. BellSouth is not precluded by Order No. FCC 97-51 and the Act from offering NDA using the 411 access code. BellSouth's proposal for NDA using the 411 access code would only constitute an unjust and unreasonable practice pursuant to Section 201(b) of the Act, if BellSouth fails to make NDA available through resale or unbundled network elements. In light of staff's recommendations in Issues 1, 2, and 3, however, BellSouth may not offer NDA by means of 411 or by any other means at this time.

Issue 5: Should this docket be closed?

Recommendation: Yes.

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P R O C E E D I N G S

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2 COMMISSIONER DEASON: As I indicated, it would be
3 desirous on the part of the Commission to take care of
4 the one panel item we have today, which is Item 38.
5 But that is contingent upon parties being present to
6 address the Commission.

7 Let me inquire of staff, do we know if parties
8 are present, all parties are present? Very well. We
9 will now proceed then to Item 38.

10 COMMISSION STAFF: Commissioners, Item 38 is a
11 Section 120.572 proceeding involving BellSouth's
12 petition for waiver to provide national directory
13 assistance in Florida.

14 There is one correction to the recommendation for
15 the record. At Page 15 of staff's recommendation, the
16 first sentence of the recommendation paragraph, the
17 words and the act in the second line should be
18 stricken.

19 COMMISSIONER GARCIA: I'm sorry, what did you
20 say?

21 COMMISSION STAFF: On Page 15.

22 COMMISSIONER GARCIA: Oh, you are just striking
23 words?

24 COMMISSION STAFF: And the act in the second line
25 of the recommendation of the paragraph.

1 COMMISSIONER GARCIA: Page 15 you said?

2 COMMISSION STAFF: Page 15.

3 COMMISSIONER GARCIA: The second line of --

4 COMMISSION STAFF: The recommendation paragraph.

5 COMMISSIONER GARCIA: Okay.

6 COMMISSION STAFF: And staff recommends denial of
7 BellSouth's petition for waiver to provide national
8 directory assistance in Florida, and leave it open for
9 questions.

10 COMMISSIONER DEASON: Okay. This matter has been
11 noticed to parties to be able to address the
12 Commission concerning their positions, and we will
13 proceed then with that. Since this is BellSouth's
14 petition, we will begin with BellSouth. Mr. White.

15 MR. WHITE: Thank you, Commissioners. I guess at
16 the outset I would like to state that BellSouth
17 believes the Commission correctly decided this issue
18 at the original agenda vote on the waiver of the rule
19 to allow BellSouth to provide national directory
20 assistance as an extension of our traditional
21 directory assistance service, and to provide more
22 opportunities and choice and expanded information
23 through our directory assistance services.

24 And we don't believe that either of the parties
25 who have intervened, MCI or AT&T, have brought

1 anything to the Commission through the informal
2 hearing process that would change that correct result
3 that you initially made.

4 I would like to reiterate some things that were
5 in the record earlier with regard to the public
6 interest relating to this service, and also to point
7 out that eight of the nine state commissions or sister
8 commissions in the southeast where BellSouth serves
9 have approved national directory assistance tariffs.
10 They have all -- these commissions were aware of
11 issues that were pending before the FCC relating to
12 interLATA service allegations, and all the states have
13 found that it's in the public interest and legal for
14 them to approve this.

15 MCI, neither MCI or AT&T were present at any of
16 those eight other state commission proceedings. They
17 would have had a full opportunity to be there. They
18 didn't show up, and to my knowledge they haven't
19 intervened in any of the other state proceedings where
20 U.S. West, Ameritech, or Bell Atlantic have filed
21 tariff revisions through -- to get NDA approved, as
22 well.

23 U.S. West is providing this service in their
24 western states today under almost the identical
25 serving arrangement that we are. Ameritech does it in

1 the Midwest. Just last week the State of New York
2 that has a very large staff and looks into these
3 issues very carefully approved Bell Atlantic's New
4 York request for NDA. And we believe that what we are
5 doing down here is fully legal, consistent with the
6 public interest, and gives our customers broader scope
7 of information to get information that helps them use
8 the public switched network, which is the very reason
9 we have directory assistance in the first place.

10 I guess one other thing is that in terms of the
11 public interest, the way the law is set up, when
12 BellSouth enhances its directory assistance services
13 like we are doing here, competitive local exchange
14 carriers get access to those directory assistance
15 services by law, and thereby their customers will get
16 broader access to information to give them the
17 broadest possible access to telephone numbers
18 possible.

19 And the FCC has indicated that that is their
20 desire, and that is consistent with the Federal
21 Telecom Act.

22 COMMISSIONER DEASON: How is that access
23 provided, Mr. White?

24 MR. WHITE: The directory assistance access?

25 COMMISSIONER DEASON: Yes. You are saying that

1 if you are permitted to provide this enhancement to
2 your DA service, that that enhanced service would
3 basically be available to your competitors.

4 MR. WHITE: Right. Through the interconnection
5 agreements, and I must say I don't do those
6 negotiations and do that part of the regulatory work,
7 but through our interconnection agreements competitive
8 local exchange carriers can ask for and choose to take
9 BellSouth's directory assistance services. And they
10 basically get the benefit of our service as a going
11 service for their customers.

12 COMMISSIONER DEASON: What about 411 service, is
13 that available?

14 MR. WHITE: That's right.

15 COMMISSIONER DEASON: That's also available
16 through interconnection agreements?

17 MR. WHITE: That's correct. The CLEC customers
18 dial 411, and if they choose to use our service
19 instead of their own platform, as far as the customer
20 experience is concerned, they see the same sort of
21 thing in terms of getting numbers that they request.

22 So, it's basically good, you know, it expands
23 customer convenience. Where they used to have to dial
24 and get an area code, hang up and then dial using that
25 area code to a foreign destination.

1 COMMISSIONER GARCIA: This doesn't complete their
2 call, does it?

3 MR. WHITE: No, sir, it does not. We do not
4 complete any interLATA transmission through NDA. That
5 is one of the misperceptions that the intervenors have
6 tried to muddy the waters with, but there is no
7 interLATA transmission whatsoever.

8 COMMISSIONER GARCIA: It's similar to the MCI
9 program that's being offered now,
10 10-10-something-or-the-other, which James Garner is
11 sort of the spokesman for. In that case they complete
12 the call for you, and in this case that will not
13 occur.

14 MR. WHITE: That's correct.

15 COMMISSIONER GARCIA: However, the service which
16 BellSouth charges and we have very little regulatory
17 authority over within the LATA that you do connect the
18 call, that will remain. It's just when you ask for a
19 number outside --

20 MR. WHITE: That's correct, Commissioner.

21 COMMISSIONER JACOBS: Just a question, I guess,
22 of staff. The alternative, I think, to this is when
23 somebody dials an area code and 555-1212, is that
24 correct?

25 MR. AUDU: That's correct.

1 COMMISSIONER JACOBS: Now, who gets that? What
2 happens in that instance?

3 MR. AUDU: Basically, the way -- I'm not sure if
4 I'm on or not.

5 COMMISSIONER JACOBS: Yes, you're on.

6 MR. AUDU: But the way that works, is you dial 1,
7 area code, then 555-1212. The way I understand it is
8 that from the very moment you go with the one, area
9 code, it goes to your presubscribed interLATA carrier.

10 COMMISSIONER JACOBS: Okay. So in this instance,
11 it wouldn't go to that, it would go just to their
12 office.

13 MR. AUDU: That's correct.

14 COMMISSIONER JACOBS: Or if a CLEC has subscribed
15 to your services, it would go to you. Okay.

16 COMMISSIONER DEASON: Mr. White, you're finished?

17 MR. WHITE: I just want to address a couple of
18 legal points, since we did do the informal hearing
19 process on legal issues. I didn't want to ignore
20 those. Because while the public interest
21 considerations are compelling in this case, and
22 interexchange carriers are offering this service to
23 their customers, CLECs can offer it to theirs,
24 non-Bell companies can offer this service unfettered
25 to their customers. We believe that it's clearly in

1 the public interest for our customers to also gain
2 this benefit of enriched information to help them use
3 the telecommunications network in this new and
4 expanding competitive environment.

5 But a couple of points on the legal issues. The
6 intervenors, both MCI and AT&T somehow suggest that
7 this expanded availability of numbers through
8 directory assistance would have somehow been unlawful
9 under the modified final judgment consent decree
10 orders, the old orders, and they rely on old, old
11 mid-80s orders.

12 And, quite frankly, we don't believe the orders
13 they have cited stand for the propositions that would
14 preclude this, but even if they did, even if they did,
15 the federal statute clearly states, and we cited this
16 in our brief, at Title VI, effect on other laws,
17 Section 601(a)(1) of that act, Congress specifically
18 directed that any conduct or activity that was before
19 enactment of this act subject to any restriction or
20 obligation imposed by the consent decree shall on or
21 after such date be subject to the restrictions and
22 obligations imposed by the '96 Act, and shall not be
23 subject to the restrictions and obligations of the
24 consent decree.

25 Now, simply stated, what that means is the Act

1 superceded all of that MFJ stuff that might have
2 restricted one thing or another. It is very important
3 in this case, because when you go to the Act and look
4 for what we have to do under the Act, Section 271 says
5 that we have to provide nondiscriminatory access to
6 directory assistance services to allow other carriers
7 customers to obtain telephone numbers.

8 It doesn't restrict the geographic scope of those
9 numbers, and the FCC has consistently stated that our
10 directory assistance services have to be made
11 available. We do that. And they also have indicated
12 in their orders after the Telecom Act that they want
13 directory assistance to make the broadest availability
14 of numbers possible.

15 So we are consistent with the express terms of
16 the Act as well as the FCC's inclination in that
17 regard. I had stated that we give area codes out, and
18 we have done that for years, and nobody has come in
19 and challenged the giving of a Seattle area code as
20 prohibited interLATA service. And rightly so, it's
21 just not the case.

22 It gives customers information that they need to
23 then make a call later. They could fly to Seattle
24 with that same information that we give in NDA and
25 make a call to their mother or grandmother when they

1 get to the Seattle airport as a local call. So
2 differentiating NDA as an interLATA service or
3 permissible DA service based on the geography of the
4 call we think is just improper and wrong.

5 I guess finally, in summary, I would just like to
6 say that, once again, we believe the Florida Public
7 Service Commission made the correct decision, and it
8 was a well reasoned decision initially. Nothing that
9 has come out in the hearing process has raised
10 anything that should change their decision, and we
11 believe that the Commission should proceed to reaffirm
12 its waiver of the rule, and to grant BellSouth's NDA
13 tariff. Thank you.

14 One other thing, Commissioners, to my right today
15 is Kenneth Ruth, Florida Director of the
16 Communications Workers of America, and if I may yield
17 to him for just a few minutes he wanted to make some
18 comments, as well.

19 COMMISSIONER DEASON: Very well. Sir, your last
20 name is Ruth?

21 MR. RUTH: The last name is Ruth, R-U-T-H.

22 COMMISSIONER DEASON: Okay. Please proceed, sir.

23 MR. RUTH: Thank you. A couple of points that we
24 wanted to make today is that clearly NDA is about
25 consumers in Florida, and NDA is about jobs in

1 Florida. And, quite clearly, what we are talking
2 about here is a directory assistance service, really
3 nothing more but a directory assistance service. A
4 service that we believe Florida consumers want and
5 Florida consumers use, especially one that is easy to
6 use, a one-step place for a consumer to contact for
7 number requests.

8 We think that the NDA becomes increasingly more
9 significant in today's environment of area code
10 changes, overlays, just some of the inconveniences
11 that the consumer has today to use the telephone
12 system. And, quite clearly, if we listened to our
13 consumers, convenience, ease of use, accessibility are
14 what is important to them.

15 We believe, CWA believes that BellSouth's NDA
16 meets the needs of Florida's consumers. And we really
17 are not talking about something that's totally new.
18 It is in effect. Other LECs, other CLECs, cellular
19 services have this type of service. BellSouth in
20 Florida should also be able to provide the service to
21 its customers.

22 NDA is also about jobs. It's about good paying
23 jobs. As NDA becomes more widely known and used,
24 expectations are that about 500 jobs will be created
25 in those areas in Florida where an NDA facility is

1 operable. These jobs help fuel the economies of those
2 communities. NDA provides a service the consumer
3 wants and uses. Good paying jobs are created to
4 provide career opportunities for Florida's work force.

5 Communications Workers of America works closely
6 with BellSouth and vice versa to find ways to improve
7 telecommunications services to not only Florida
8 consumers, but consumers in other states, as well.
9 NDA is one of those improvements. We support
10 BellSouth's NDA and believe that the service should be
11 provided to BellSouth customers. Thank you.

12 COMMISSIONER DEASON: Thank you, sir.

13 Mr. Hatch. Mr. Melson.

14 MR. MELSON: I will go first, if you don't mind,
15 Commissioner Deason.

16 COMMISSIONER DEASON: That's fine.

17 MR. MELSON: Rick Melson representing MCI.

18 Commissioners, the question before you today is not
19 whether BellSouth provided NDA is a good service or a
20 bad service, or whether it's something customers would
21 like or not like. The question is whether it is a
22 service that BellSouth is permitted to provide under
23 the Telecommunication Act, and therefore one for which
24 you should grant a waiver of your rule which today do
25 not permit Bellsouth to provide this type of service.

1 The policy decision has been made by the U.S.
2 Congress in Section 271 of the Telecommunications Act,
3 which says neither a Bell Operating Company or any
4 affiliate of a Bell Operating Company may provide
5 interLATA services except as provided in this section.
6 And there are a number of provisions, one is -- which
7 BellSouth has not yet met in Florida is they are
8 entitled to provide in-region interLATA services once
9 they have proved up a case under the checklist
10 provisions of Section 271 of the Act.

11 COMMISSIONER GARCIA: Mr. Melson, isn't
12 BellSouth, though, allowed to do this in other areas?
13 Haven't they been approved to do this in other parts
14 of their region?

15 MR. MELSON: My understanding is they have filed
16 tariffs in other states that have become effective.
17 Florida was the state in which doing this required a
18 waiver, and in which MCI felt it had a clear point of
19 entry to come in and put the legal issues on the
20 table.

21 COMMISSIONER GARCIA: But MCI did not appeal this
22 in any one of those states or object to it in any one
23 of those other states, did it?

24 MR. MELSON: I don't believe we have, no, sir.

25 COMMISSIONER GARCIA: Okay.

1 MR. MELSON: I would like to correct something
2 Mr. White said, though, with regard to U.S. West and
3 Ameritech. MCI has raised this issue. We filed a
4 complaint against Ameritech service. U.S. West filed
5 a petition for waiver at the FCC. We are
6 participating in that docket, and also have filed a
7 complaint against U.S. West.

8 Essentially, we are not fighting this in 50
9 jurisdictions. We are selecting our battles, and we
10 elected to fight the U.S. West and Ameritech at the
11 FCC, we elected to fight BellSouth in the State of
12 Florida.

13 COMMISSIONER GARCIA: Based on the quality of the
14 Commission you decided that --

15 MR. MELSON: Based on the fact that you sometimes
16 act more quickly than the FCC. The actions at the FCC
17 predate the ones in Florida, and they are still
18 pending.

19 Mr. White is right that the MFJ does not survive
20 the act, but it doesn't need to because of the
21 provision I just read you in 271(a) which prohibits
22 interLATA services except as provided in that section.

23 There is an exception --

24 COMMISSIONER DEASON: Mr. Melson, explain to me
25 how giving of information, which just happens to be an

1 interLATA number constitutes an interLATA service as
2 envisioned by the Act?

3 MR. MELSON: Commissioner, I believe there are
4 two answers to that. And the most straightforward
5 answer is the way that BellSouth provides the service.
6 They transport some of these calls from a customer to
7 an operator center in a different LATA, so they
8 actually are using BellSouth's official network to
9 transport a call on an interLATA basis. And the MFJ
10 said --

11 COMMISSIONER DEASON: But that customer doesn't
12 realize that, and he doesn't care if he is talking to
13 an operator in the room next door or in Seattle. He
14 just wants information about a number which perhaps
15 may be Seattle or anywhere else.

16 MR. MELSON: Yes, sir. But under the MFJ --
17 under the Act, BellSouth cannot carry that call, even
18 if it is a DA call, and even if it is seeking
19 information across a LATA boundary, unless there is
20 some provision in the Act that permits it. There is
21 an exception in the Act for things that were approved,
22 permitted by the MFJ court.

23 The MFJ court had permitted the interLATA
24 carriage of those calls for the purpose of providing
25 local DA service. But it drew a line between local DA

1 and interLATA DA and denied -- while the MFJ was still
2 in effect, denied a request by U.S. West to provide
3 interLATA type DA service on the grounds that carrying
4 that call across the LATA boundary was sufficient to
5 trigger the restriction.

6 COMMISSIONER JACOBS: So if I can carry that a
7 little further, if a customer called a Bell, let's say
8 an RBHCs DA center and they wanted information on a
9 call within that numbering, within their numbering
10 plan, even though there would be some connection to
11 some center in another state, as long as the
12 information was relative to a number within their
13 home, their home numbering call then the MFJ allowed
14 that.

15 MR. MELSON: Correct.

16 COMMISSIONER JACOBS: But they were seeking
17 information on a number outside, even though it
18 followed the same track to identify that information,
19 then the MFJ did not allow that.

20 MR. MELSON: That's correct.

21 Now, Commissioner, it's also our position that
22 even --

23 COMMISSIONER DEASON: Did any court interpret
24 that? I'm talking about the provision within the Act
25 that refers back to what was or was not permitted

1 under the MFJ and made a definitive ruling as to
2 whether, what Commissioner Jacobs just described was
3 or was not permissible?

4 MR. MELSON: I don't believe so. I believe the
5 issue is pending at the FCC and before this
6 Commission. I don't believe it's pending in any
7 court.

8 COMMISSIONER DEASON: Okay.

9 MR. MELSON: Essentially, Commission, I think it
10 is a legal issue. And I believe given Section 271 of
11 the Act and the FCC's, and the MFJ court's prior
12 waivers, and the extent of those prior waivers, the
13 staff in its recommendation has reached the right
14 conclusion. This is not an activity for which there
15 is an exception under the Act. And, therefore, it's
16 an activity for which you should not grant a waiver of
17 your Florida rules.

18 COMMISSIONER DEASON: If we go back, and I don't
19 want to get into a debate of the MFJ, but realize that
20 was done in a different era and there was a concern
21 about exercise of monopoly control. And we know that
22 DA is probably one of the most competitive aspects of
23 this industry, and explain to me then, or even if it
24 -- maybe it's not relevant. If you think it's not
25 relevant, tell me.

1 Why is it that back in the era of the MFJ and
2 what was considered to be measures taken to prevent
3 monopoly abuses even relevant to what we have before
4 us today from two perspectives, one from a legal
5 perspective, and two from a public policy, what makes
6 good sense for the end use customer.

7 MR. MELSON: I think from a legal perspective
8 it's because Section 271 essentially continues the
9 prohibition of the MFJ and incorporates the specific
10 waivers, allows activities that previously have been
11 allowed under the MFJ. And to the extent the MFJ
12 court made a distinction between local directory
13 assistance and long distance directory assistance,
14 there is nothing in Section 271 that changes that.

15 From a policy perspective, you are right, long
16 distance directory service is intensely competitive.
17 Long distance service is intensely competitive.
18 Congress made the judgment that Bell Operating
19 Companies would not be allowed to enter that intensely
20 competitive market until they had fully opened their
21 local markets to competition.

22 This issue goes away as soon as Bell files a
23 successful 271 application for Florida. At that point
24 it's permitted to offer interLATA NDA just like it is
25 permitted to offer interLATA calls of any type. But

1 it's a carrot and stick, Commissioner. And it is
2 inappropriate to let BellSouth nibble away at the
3 edges of interLATA authority when Congress has said
4 it's all or nothing, and get your house in order,
5 bring us a completed checklist and then you can get
6 into the business.

7 COMMISSIONER DEASON: Is it your position that
8 the granting of this authority would erode the
9 incentives that BellSouth has to open up their local
10 network to be able to enter into full interLATA
11 service?

12 MR. MELSON: Yes, sir.

13 COMMISSIONER DEASON: Mr. Hatch.

14 MR. HATCH: I would adopt the comments of Mr.
15 Melson.

16 COMMISSIONER DEASON: Mr. Hatch, I have a
17 question for you. Are you familiar with a directory
18 assistance service provided by AT&T through the use of
19 double 0?

20 MR. HATAH: Yes.

21 COMMISSIONER DEASON: Explain to me how that
22 works.

23 MR. HATCH: Historically that was the way to
24 reach your presubscribed interexchange carrier
25 operator service post-divestiture in a competitive

1 long distance arena. When all of the LEC switches
2 were converted to equal access, they were required to
3 do a couple of things. One of them was 10XXX access,
4 which is sort of a dialing pattern to dial around to
5 reach the carrier of your choice. Zero zero was the
6 dialing pattern that you could use to opt as a
7 presubscribed carrier to reach your interLATA
8 operator, carrier's operator services in DA, that is
9 how it would work. If you dial zero, you
10 automatically would get a LEC operator. If you dialed
11 zero zero, it went to your interLATA carrier for that
12 interLATA carrier's operator service, including DA.

13 COMMISSIONER DEASON: So if a customer is
14 presubscribed to AT&T as their long distance carrier,
15 they dial zero zero, they get AT&T's directory
16 assistance service?

17 MR. HATCH: Yes, that should occur today.

18 COMMISSIONER DEASON: What happens if they are
19 not presubscribed to AT&T and they dial 00?

20 MR. HATAH: It would go to their presubscribed
21 carrier, whoever that would be. If they are a no PIC,
22 I don't know what happens to them.

23 COMMISSIONER DEASON: Staff, any concluding
24 comments? Questions, Commissioners? I have a
25 question for Mr. White. We basically have two

1 diametrically opposed positions. One is that legally
2 we can't do it regardless of whether we think it is
3 good public policy or not, as explained by Mr. Melson.
4 He basically indicates, and if I am incorrect, correct
5 me, Mr. Melson. But, basically, in simplicity he
6 states that the Act refers back to the MFJ, and the
7 restrictions of the MFJ are still active until there
8 is a change under 271.

9 MR. MELSON: Almost.

10 COMMISSIONER DEASON: Okay. What is the --

11 MR. MELSON: 271 does not incorporate the MFJ, it
12 incorporates an independent restriction which is very
13 similar to the MFJ restriction, and then says to the
14 extent things were permitted, affirmatively permitted
15 under the MFJ they are affirmatively permitted under
16 the Act.

17 COMMISSIONER DEASON: Okay. Thanks for that
18 clarification. Explain to me why you think that
19 position is incorrect.

20 MR. WHITE: It's our position that just -- I will
21 agree with Mr. Melson that the Act says that the
22 things that were permitted under the MFJ are continued
23 to be permitted under the Act. But this issue is not
24 about that necessarily, because there was a lot of, at
25 best, confusion. We and other Bell Operating

1 Companies have always taken the position that
2 directory assistance services have always been
3 permitted under the serving arrangement that Mr.
4 Melson says constitutes interLATA service.

5 And even if the cases that they cite stood for
6 the proposition that the MFJ court might have said
7 that we couldn't do it, the Act supersedes that. And,
8 therefore, 271 says things you are permitted to do you
9 can continue to do. It does not say that things that
10 the MFJ court might have restricted are continued to
11 be restricted. A very important point.

12 So, like I said, stated another way, old MFJ
13 orders that might have constrained our ability to do
14 one thing or the other are replaced by the Telecom
15 Act. So you have to look at the Act, itself, to
16 govern.

17 COMMISSIONER GARCIA: Mr. White, what about the
18 U.S. West case that MCI cites for its proposition that
19 it has already basically been decided against you,
20 what is your feeling about that decision?

21 MR. WHITE: Two points on that. I guess I will
22 reiterate what I just said. Even if it stood for what
23 MCI says it stands for, which I will question, and I
24 will talk about that briefly in a moment, it's
25 irrelevant once the Act came into being. And that's

1 why I cited Section 601, which is so important.

2 The Congress specifically said that any
3 restrictions, or prohibitions, or things that were
4 imposed by the MFJ court on the Bell Operating
5 Companies prior to the passage of the Act would no
6 longer apply. So let's just make it simple. If they
7 said no, no, no, on three issues, those nos don't pass
8 and carry on into the Act. You have to look at the
9 Act.

10 And it intended to supersede the MFJ because of
11 the paternalistic way that the court was dealing with
12 telecommunications and holding competition back. The
13 very impetus for the statute itself. Now, the U.S.
14 West case, I noted that with interest. When I saw it
15 in their brief I went back and looked at it, and they
16 were talking about U.S. West providing intercept
17 service and operator services to independent companies
18 who might be in tangential areas, but areas outside of
19 the U.S. West serving territory.

20 By the way, we in Florida do that for
21 independents today, and nobody has ever questioned
22 whether or not we can provide directory assistance
23 services to independents. So I think this Commission
24 has been comfortable with that for many, many years.
25 And the U.S. West case, to me, looked like the issue

1 might have been whether or not you used interexchange
2 facilities or not to get to our operator service
3 platform to give the information, which was our
4 service. So we don't think it was on point at all.

5 COMMISSIONER DEASON: Further questions,
6 Commissioners? Is there a motion?

7 COMMISSIONER JACOBS: One question. I think I
8 would like to ask one question. If you follow that
9 line of reasoning, then, then how do you construe 271
10 to authorize this service?

11 MR. WHITE: Commissioner, 271, and I gave the
12 whole cite. It is a very long section cite, but it is
13 271(c)(2)(b), requires that BellSouth provide
14 nondiscriminatory access to directory assistance
15 services to allow the other carriers customers to
16 obtain telephone numbers. And I stress telephone
17 numbers. Congress could have used the term local
18 telephone numbers.

19 It could have otherwise constrained the
20 geographic scope of the numbers that we could include
21 in a DA. They didn't do it. Now, Congress,
22 presumably, was aware that there was a need for full
23 range of directory assistance offering that gave full
24 benefit to customers to help them use the network.
25 And we believe it's clear on its face that that, in

1 fact, gives us the ability to do this right within the
2 Act.

3 COMMISSIONER JACOBS: Wouldn't that have to take
4 place within the context of some kind of
5 interconnection agreement, or would you all --

6 MR. WHITE: Yes, that's the way it is actually
7 done. Those carriers can always have the option of
8 doing their own operator services and directory
9 assistance. The law doesn't compel MCI Metro or
10 AT&T's local arm to take our services, it just makes
11 us make them available if, in fact, they choose to do
12 so. And the way that they do it is they do an
13 interconnection agreement, and they say we will take
14 your DA or not.

15 COMMISSIONER JACOBS: How do you explain that,
16 Mr. Melson?

17 MR. MELSON: Commissioner Jacobs, if I could
18 respond. Mr. White is right, Section 271 is a lengthy
19 section. The provision that he has quoted is a
20 provision in the competitive checklist. It says that
21 in order for BellSouth to be allowed to offer in
22 region service among other things it has to provide
23 nondiscriminatory access to directory assistance
24 services. It can do that through resale of those
25 services.

1 Today, when MCI provides a directory assistance
2 service, we do it by buying access -- when we provide
3 a national service, we provide it in Florida by
4 purchasing access to BellSouth's data base. They have
5 got the DA data base and anybody who is going to
6 provide DA service has to have access to it.

7 What Mr. White didn't do is respond to the
8 question about 271(a), which is the prohibition on
9 providing interLATA services, and there is nothing --

10 COMMISSIONER JACOBS: Until you meet the 14 point
11 checklist.

12 MR. MELSON: Correct.

13 MR. HATCH: Just one more point to respond to Mr.
14 White when he talked about that Subsection (b) and
15 access to local numbers, where Congress could have
16 said local numbers instead of saying just telephone
17 numbers. Had they done so they would not be able to
18 provide intraLATA toll DA. That's the reason you
19 can't just constrain it to just local numbers because
20 they provide toll DA, but only on an intraLATA basis.

21 Mr. White argued that the reference in the
22 language in the Act that says telephone numbers is
23 broader than intraLATA telephone numbers or broader
24 than local, he is correct. It cannot be construed to
25 be broader than intraLATA because of the interLATA

1 prohibition. When he said Congress could have said
2 just local numbers if that's what they meant, had they
3 done so they would have been precluded from doing
4 something they have always been able to do, which is
5 intraLATA toll DA. So be careful about the language
6 on its face.

7 COMMISSIONER DEASON: Mr. Hatch, let me ask you a
8 question. Under your interpretation would it be
9 permissible for BellSouth to provide information,
10 numbers outside of its LATA as long as the call is
11 made by a customer within the LATA and is answered by
12 an operator within that LATA?

13 MR. HATCH: Could you repeat that, I missed part
14 of the scenario.

15 COMMISSIONER DEASON: Okay. Let's assume we have
16 a customer within a given LATA and the DA service is
17 physically located within that LATA such that the call
18 is over facilities within the LATA, but the customer
19 asked for a number outside of that LATA. Now that's
20 probably not a realistic hypothetical, but given that,
21 would that be permissible under the Act?

22 MR. HATCH: I'm not sure that it would,
23 Commissioner Deason, because the whole notion of the
24 interLATA DA service is that it is incident to
25 interLATA service, a service which they cannot provide

1 until they make a sufficient showing under 271.

2 COMMISSIONER DEASON: So just the mere fact that
3 giving that information is incidental to an interLATA
4 service makes it, in fact, interLATA and prohibited
5 under the Act?

6 MR. HATCH: Potentially so. That's a far more
7 distinct question, but that is not the question you
8 have before you today, because that's not what they
9 are doing today.

10 COMMISSIONER GARCIA: Ms. Bedell, if they offer
11 this service, if we deny staff's rec, and we approve
12 it, tell me what happens to this service; do they have
13 to offer it to resellers, do they --

14 MS. BEDELL: That would be staff's position. You
15 all have not made a decision on that actually being
16 required to be unbundled, but that is our
17 understanding.

18 COMMISSIONER GARCIA: Well, unless there are some
19 more questions, I'm going to move to deny staff. I
20 think -- I mean, I think it makes perfect sense. I
21 don't think that anything that I read, and I felt very
22 comfortable meeting with staff to some degree. I know
23 my aide met at length with staff. I think that this
24 was sort of -- we are splitting hairs. I just ended
25 up on a different side, and I think there is more than

1 enough justification to go the other way for staff.
2 So I feel comfortable with denying staff and granting
3 them the ability to provide this service. I think it
4 is a service --

5 COMMISSIONER DEASON: Can we go issue-by-issue,
6 because there are some distinctions within those
7 issues.

8 COMMISSIONER GARCIA: Okay. That's fine.

9 COMMISSIONER DEASON: I take it then that on
10 Issue 1 you would move to deny staff?

11 COMMISSIONER GARCIA: Correct.

12 COMMISSIONER DEASON: Okay. There has been a
13 motion to deny staff on Issue 1. Is there a second?

14 COMMISSIONER JACOBS: I agree that -- that there
15 is some latitude for interpreting the language, but I
16 think you have to be consistent. And the great
17 concern I have here is that to do this appears to be a
18 significant deviation from what has been consistently
19 followed. And I'm not comfortable -- absent clearer
20 language, I'm not comfortable taking such a dramatic
21 deviation from what I perceive to be the consistent
22 treatment of this kind of activity through the Act and
23 through the MFJ.

24 COMMISSIONER DEASON: So I take it there is not a
25 second.

1 COMMISSIONER JACOBS: There is not a second.

2 COMMISSIONER DEASON: Okay. What I'm going to
3 do, I assume the appropriate thing to do is pass the
4 gavel to Commissioner Jacobs, because I'm going to
5 second the motion. And let me indicate that I agree
6 with you that there is ambiguity within the Act. It
7 is certainly not crystal clear. And given that
8 ambiguity, I am forced to look at this in the broader
9 context, and that is what do I think is best for the
10 customer and best for competition. And I think
11 allowing this service is best for the customer and
12 best for competition.

13 And I cannot divorce myself and read, put narrow
14 constraints on reading the Act and come down to the
15 same conclusion you do. I understand it, and I
16 respect your position on that, and it certainly is a
17 valid one, but I fall down on the other side and would
18 agree with the motion.

19 So we have a motion and second --

20 COMMISSIONER JACOBS: There is a motion and a
21 second on Issue 1 to deny staff. All those in favor
22 say aye.

23 COMMISSIONER DEASON: Aye.

24 COMMISSIONER GARCIA: Aye.

25 COMMISSIONER JACOBS: All opposed, nay.

1 Nay.

2 COMMISSIONER DEASON: That disposes of Issue 1.
3 Issue 2.

4 COMMISSIONER JACOBS: That becomes moot, I think.
5 Actually, Issue 2 and 3 become moot, don't they?

6 COMMISSIONER GARCIA: Do they?

7 COMMISSIONER DEASON: All the parties basically
8 agree on Issue 2, so there is a motion to approve
9 staff. Is there a second on the motion?

10 COMMISSIONER JACOBS: Second.

11 COMMISSIONER DEASON: It has been moved and
12 seconded. Show staff's recommendation approved on
13 Issue 2. Issue 3.

14 COMMISSIONER JACOBS: I move to approve staff.

15 COMMISSIONER DEASON: I'm sorry, Issue 3 there is
16 a motion to approve staff.

17 I'm sorry, Commissioner Jacobs, did you move
18 staff on Issue 3?

19 COMMISSIONER JACOBS: Well --

20 COMMISSIONER GARCIA: Tell me how we have to vote
21 that one out?

22 COMMISSIONER JACOBS: Yes. That's interesting,
23 given how we did 1.

24 MS. BEDELL: If you wish to approve the petition,
25 then it would not be affected by your agreeing with

1 staff on Issue 3. Am I helping there?

2 COMMISSIONER GARCIA: If we were not to move
3 staff on Issue 3, and we would still be all right with
4 Issue 1?

5 MS. BEDELL: I believe so.

6 COMMISSIONER GARCIA: Make sure, because
7 (inaudible, microphone not on.)

8 COMMISSIONER DEASON: Well, I think this issue
9 addresses a rationale, a reasoning to allow the
10 service and be consistent with the Act. That it is an
11 adjunct-to-basic service. Just the fact that
12 information which is given happens to be of an
13 interLATA number, that does not constitute interLATA
14 service. And so I personally would be inclined to
15 deny staff on Issue 3. That's how I fall down. But,
16 anyway, I'm not here to make a motion. I'm here to
17 get a motion.

18 COMMISSIONER GARCIA: You've got a motion.

19 MS. BEDELL: Well, I would not disagree with what
20 Commissioner Deason has said, but I don't know that it
21 is absolutely necessary to find it an adjunct-to-basic
22 service in order to approve the carrier.

23 COMMISSIONER GARCIA: All right. So in what way
24 do we address it? Can we just not address it?

25 MS. BEDELL: Yes, I believe so. But this is an

1 issue that was raised here by the parties and that's
2 why it would be necessary to either agree with staff
3 or not.

4 COMMISSIONER DEASON: I'm going to allow -- I'm
5 going to open it up again for the parties to address
6 this very specific issue on a limited basis.

7 Mr. White.

8 MR. WHITE: Thank you, Commissioner. I believe,
9 obviously, our position has been it's adjunct-to-basic
10 and the Commission to make a consistent and clean
11 record will need some basis for making its
12 determination. It has plenty of public interest
13 considerations, but considering it adjunct-to-basic
14 will also support it from the legal standpoint which
15 is what the hearing went forward on. So we would
16 recommend that you deny staff there and find it
17 adjunct-to-basic.

18 COMMISSIONER DEASON: Mr. Melson.

19 MR. MELSON: And, Commissioner, we would
20 recommend that you approve staff. Adjunct-to-basic is
21 a term that the FCC has coined, and they have made it
22 clear in their N11 order when they talk about DA
23 service being adjunct-to-basic that they are talking
24 only about local DA service. Interlata DA service in
25 our view is an adjunct to interexchange service, not

1 an adjunct-to-basic.

2 COMMISSIONER DEASON: Well, the way I fall down
3 on it, I think it's an adjunct to telephone service,
4 and that the distinctions -- that the customers don't
5 care about whether it's inter or intra, they want to
6 be able to get DA information and they probably want
7 as many providers out there who are willing to compete
8 for their business. And maybe this is an issue we
9 don't have to address.

10 COMMISSIONER GARCIA: I would rather not address
11 it.

12 COMMISSIONER JACOBS: Let's have some language in
13 the order that makes it clear, though, that we are
14 choosing not to address that rather than leaving it
15 ambiguous.

16 MS. BEDELL: I think that you can --

17 COMMISSIONER JACOBS: I guess we do leave it
18 ambiguous, but making it clear that we are not trying
19 to waffle.

20 MS. BEDELL: Right. We can write the order
21 approving the petition for the waiver and having
22 reached it on the basis that you have reached your
23 conclusion, it wouldn't be necessary to make an
24 official determination on adjunct-to-basic.

25 COMMISSIONER DEASON: Well, let me make it clear

1 that where I'm falling down on this is that I think
2 that the giving of DA information to a customer, even
3 though it may be an interLATA number, does not
4 constitute an interLATA service. Now, whether it's
5 adjunct-to-local or to inter, it doesn't matter to me.
6 It is adjunct to telephone service, and the customers
7 want the service. But I'm willing --

8 COMMISSIONER GARCIA: If the lawyers can put that
9 down and just send that out, that would be perfect.
10 That's exactly what we are doing here. I think it's a
11 question of cutting down confusion. We all realize
12 with the dockets that we have in Florida (inaudible,
13 microphone not on). This is the sensible thing to do.
14 And I honestly don't agree with Mr. Melson that there
15 is a great incentive for the company to meet the 271
16 standard, this is essential to that issue, this is a
17 service that is necessary to phone service in our
18 (inaudible). So then you've got to withdraw your
19 motion or just get it voted down either way, but
20 you've got that motion.

21 COMMISSIONER JACOBS: I'm comfortable with not
22 addressing it in lieu of that kind of a statement in
23 the order. I will withdraw my motion.

24 COMMISSIONER GARCIA: (Inaudible).

25 MS. BEDELL: I think you can.

1 COMMISSIONER GARCIA: All right. I will move 4.

2 COMMISSIONER DEASON: You would move staff on
3 Issue 4?

4 COMMISSIONER GARCIA: I move staff on Issue 4.

5 COMMISSIONER DEASON: That's fine. I'm probably
6 going to oppose that, just to let my position be
7 known. We have represented here today that the
8 company is going to allow access to competitors to the
9 411 service -- I'm sorry, Issue 4 is the provision of
10 -- utilization of 411 as the mechanism to provision
11 directory assistance. And staff's recommendation --
12 well, correct me. What is staff's recommendation?
13 Your position is no.

14 MS. BEDELL: Our position is that they can use --
15 that they are not prohibited from using 411 under the
16 FCC Order 97-51, and I think that is --

17 COMMISSIONER DEASON: They are not prohibited.
18 Okay, that's right.

19 MS. BEDELL: -- consistent with the other things
20 you are saying.

21 MR. WHITE: But the final conclusion, if I may
22 add, was that we couldn't use it for NDA, so I guess
23 the only thing we would suggest is to make clear in
24 the order basically the wishes of the Commission that
25 since you have approved it we can use 411 for it.

1 COMMISSIONER GARCIA: Right. That's the only
2 thing that changes, and obviously in light of what we
3 did with Issue 1 that obviously they can do. That 411
4 will provide (inaudible).

5 MS. BEDELL: Right. And I think that, you know,
6 fundamentally your decision in Issue 1 is that this is
7 not prohibited interLATA service, and we will move
8 from there and develop the rest of the order.

9 COMMISSIONER GARCIA: Correct.

10 MS. BEDELL: And we would like for you to also
11 vote on Issue 5.

12 COMMISSIONER DEASON: One thing before we move
13 off of Issue 4. And I guess the reason I was
14 hesitant, and I was -- in your concluding paragraph on
15 Page 17, or the next to the last paragraph, you state
16 that it is your belief that using the 411 access code
17 would only constitute an unjust and unreasonable
18 practice pursuant to Section 201(b) of the Act, and
19 then you qualify, if BellSouth fails to make NDA
20 available through resale or unbundled network
21 elements.

22 MS. BEDELL: That's correct.

23 COMMISSIONER DEASON: And it has been indicated
24 that they are going to provide that, so in staff's
25 view then there is not a conflict.

1 MS. BEDELL: Right. We believe they are
2 obligated to do that, and we just wanted to make it
3 clear.

4 COMMISSIONER GARCIA: Then let me do this, let me
5 move 4 and 5.

6 COMMISSIONER DEASON: Okay. We have a motion to
7 approve staff on 4 and 5 --

8 COMMISSIONER JACOBS: Before we move 5, I have a
9 question. Did this not come on a petition for waiver
10 of our rule? Have we spoken to that? Well, then
11 maybe we have in total, but I'm unsure about where we
12 are as to the applicability of the rule now.

13 MR. WHITE: Well, BellSouth's final statement in
14 summary is that the way you dispose of it in the order
15 is you reaffirm the waiver of the rule, because it is
16 in effect otherwise.

17 COMMISSIONER JACOBS: Well, is it the whole rule
18 or just that one section that speaks to interLATA?

19 MR. WHITE: No. It's 25-4.115 that has a
20 geographic restrictor in there that we felt that we
21 needed to file.

22 COMMISSIONER JACOBS: I was looking at -- I did
23 not get the impression that the entire rule had that
24 geographic restriction. I got the impression that it
25 was only one subsection, and that all the other

1 elements in 115 had to do with the tariff filing
2 requirements and those sorts of things. And my
3 question is, we are not waiving tariff filing
4 requirements and all of those sorts of things, are we?

5 MS. BEDELL: We are really granting them the
6 waiver as it relates to the geographic limitation.

7 COMMISSIONER JACOBS: But they have to do so
8 under all the other requirements of that rule?

9 COMMISSIONER GARCIA: Let me ask you, by granting
10 this waiver, because that is what we are doing here,
11 right, we are, in effect, granting a waiver. If the
12 FCC comes out with some ruling or something else, then
13 we can always revisit this?

14 MS. BEDELL: Yes. In fact, that would preempt
15 our decision here.

16 COMMISSIONER GARCIA: All right. I will move 4
17 and 5 --

18 COMMISSIONER DEASON: I think Mr. Melson wanted
19 to say something.

20 COMMISSIONER GARCIA: Okay.

21 COMMISSIONER JACOBS: And please confirm that,
22 that waiver of the whole rule is necessary. If not,
23 then I only want to waive those parts that allow --

24 MS. BEDELL: I think their petition was very
25 explicit in what they were asking for. And to the

1 extent that what is we were granting, we will --

2 COMMISSIONER JACOBS: Okay.

3 COMMISSIONER DEASON: Mr. Melson.

4 MR. MELSON: Chairman Deason, I don't know if
5 this is technically out of order or not. I just want
6 to make sure, if possible, that I understand Bell's
7 position on the use of the 411 access code. Are they
8 indicating that when a competitive local carrier uses
9 unbundled network elements, that they will be able to
10 purchase 411 service and have it routed to their
11 choice of a platform?

12 Mr. White has talked broadly in terms of resale
13 and elements, but I'm not sure I got as specific an
14 understanding as I would like to have.

15 COMMISSIONER DEASON: And we may not able to get
16 that degree of specificity here today. It may be a
17 debate for another day. But to the extent BellSouth
18 wants to provide that, that's --

19 COMMISSIONER GARCIA: He does make a good point.
20 I think what Mr. Melson is saying, if I am Joe
21 Garcia's local phone provider, and if I, Joe Garcia,
22 dial 411, do I get MCI's operator or do I get
23 BellSouth's operator? And I think that I -- I would
24 like to specify it that way here. And if BellSouth
25 has a problem with it they can bring it back to us.

1 But that makes sense to me. If you are providing
2 local service to someone, this is part of that
3 service. And if the company wants to rebuy it from
4 BellSouth, they can buy it from BellSouth.

5 But if they don't, then the company can provide
6 it. And that's fine. BellSouth is sort of shrugging
7 its shoulders, but I would like it to be understood
8 that way, Commissioner, because I don't want this to
9 be an impediment to competition in the future.

10 COMMISSIONER DEASON: I think -- we will wait for
11 Commissioner Jacobs. I think he is making an inquiry.

12 COMMISSIONER GARCIA: Okay.

13 MR. WHITE: Could I make a comment on that? My
14 learned colleague behind me has just whispered into my
15 ear and said that selective routing is available in
16 Florida, and those carriers can get it via that route
17 to their platform or they can take our service. They
18 have the choice.

19 (Simultaneous conversation.)

20 COMMISSIONER GARCIA: Is that all right with you,
21 Mr. Melson?

22 MR. MELSON: I appreciate the clarification. I
23 had not understood whether that was available for 411.
24 I take that as a representation that it is.

25 COMMISSIONER GARCIA: We are on the same page.

1 Another issue we won't have to litigate later on.

2 COMMISSIONER JACOBS: So we are waiting on a
3 second from Commissioner -- I second it.

4 COMMISSIONER DEASON: Okay. We have a motion and
5 a second to approve staff on Issues 4 and 5. That has
6 been seconded. Show that approved without objection.
7 And that disposes of Item 38.

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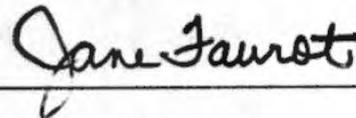
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, RPR, do hereby certify that the foregoing proceeding was transcribed from cassette tape, and the foregoing pages number 1 through 44 are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 14th day of December, 1998.



JANE FAUROT, RPR
P. O. Box 10751
Tallahassee, Florida 32302