BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth Telecommunications, Inc. to lift marketing restrictions imposed by Order PSC-96-1569-FOF-TP.	DOCKET NO. 971399-TP ORDER NO. PSC-98-0809-PHO-TP ISSUED: June 12, 1998

Pursuant to Notice, a Prehearing Conference was held on Monday, June 1, 1998, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

Nancy B. White, Esquire, and Robert G. Beatty, Esquire, 150 South Monroe Street, Room 400, Tallahassee, FL 32301; William J. Ellenberg II, Esquire, and Mary K. Keyer, Esquire, 675 West Peachtree Street, #4300, Atlanta, GA 30375
On behalf of BellSouth Telecommunications, Inc.

Joseph A. McGlothlin, Esquire and Vicki Gordon Kaufman, Esquire, McWhirter, Reeves, McGlothlin, Davidson, Rief & Bakas, 117 South Gadsden Street, Tallahassee, FL 32301
On behalf of Florida Competitive Carriers Association.

Thomas K. Bond, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30346, and Richard D. Melson, Esquire, Hopping Green Sams & Smith, P.A., Post Office Box 6526, Tallahassee, FL 32314
On behalf of MCI Telecommunications Corporation.

Marsha Rule, Esquire, 101 North Monroe Street, Suite 700, Tallahassee, FL 32301
On behalf of AT&T Communications of the Southern States, Inc.

Barbara D. Auger, Esquire, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A., 215 South Monroe Street, Tallahassee, FL 32302-2095
On behalf of Time Warner Communications.

William P. Cox, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On October 21, 1997, BellSouth Telecommunications, Inc. (BellSouth) filed a Petition to Lift the (intraLATA toll) Marketing Restrictions imposed by Order No. PSC-96-1569-FOF-TP, in Docket No. 930330-TP. On November 10, 1997, MCI Telecommunications Corporation (MCI), AT&T Communications of the Southern States, Inc. (AT&T), and the Florida Competitive Carriers Association (FCCA; formerly FIXCA) filed responses to BellSouth's petition. On the same day, the Joint Complainants filed a motion to dismiss BellSouth's petition. On November 18, 1997, BellSouth filed a Response and Opposition to the Joint Motion to Dismiss. On February 17, 1998, the Commission issued Order No. PSC-98-0293-FOF-TP denying the Joint Motion to Dismiss and setting the matter for hearing. This prehearing order sets out the issues to be addressed and the procedures to be followed at the hearing.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A

summary of each position of no more than 120 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

WITNESSES DIRECT/REBUTTAL*	APPEARING FOR	ISSUE NO.
Hilda Geer	BellSouth	All
Sandra Seay	FCCA/MCI/AT&T	All

*Direct and Rebuttal testimony will be combined for the hearing.

V. BASIC POSITIONS

JOINT FCCA/MCI/AT&T:

In Order No. PSC-95-0203-FOF-TP, the order in which the Commission ruled that 1+ intraLATA competition is in the public interest, the Commission approved a stipulation of parties that incorporated two primary components:

(1) 1+-based competition would not be implemented through redistributing customers on the basis of balloting; and

(2) local exchange companies must inform new customers of intraLATA options in the same way they are informed of their interLATA options.

The effect of the Commission's approval of this stipulation of parties was that local exchange companies were given 100% of existing 1+ intraLATA customers at the outset of competition, but were required to utilize a carrier-neutral protocol when informing new customers of competitive intraLATA options.

While the carrier-neutral requirement thus originated as a negotiated trade-off that the Commission approved, the Commission later recognized the wisdom of the requirement on the basis of policy considerations. In Docket Nos. 960658-TP and 930330-TP, FCCA, MCI, and AT&T complained that BellSouth was instructing its representatives to favor BellSouth in presentations to new customers. Under BellSouth's directives, BellSouth's name would be mentioned as a provider of intraLATA service in every conversation with a new customer, and any other carriers would be mentioned only if the customer specifically requested a list to be read. Because BellSouth is the dominant, virtual monopoly provider of local exchange service, its proposed change would have leveraged BellSouth's role of exclusive gatekeeper to gain unfair competitive advantages in the intraLATA market. Such a practice would not pass muster under the carrier-neutral routines required of BellSouth for interLATA purposes. The Commission ruled in favor of complainants, and required BellSouth to maintain a carrier-neutral approach to new customers. The requirements of a carrier-neutral protocol continued to have no time limitation.

BellSouth's Proposal in This Case is the Same Proposal That the Commission Found to Be Not Carrier-Neutral in the 1996 Case.

BellSouth has shown no valid basis for altering the decision of the Commission in this docket. BellSouth claims that evidence of growing numbers of customer who choose intraLATA carriers other than BellSouth constitutes a reason for discarding the carrier-neutral approach. Instead, such evidence merely shows -- not that BellSouth has been disadvantaged -- but that the competitive intraLATA market is evolving as the Commission hoped it would. Moreover, BellSouth misses the point. The fundamental reason why BellSouth should be required to maintain a carrier-neutral approach when dealing with new customers is that there is no competition in the local market.

BELLSOUTH:

The Commission imposed certain intraLATA marketing restrictions on BellSouth in Florida by its Order PSC-96-1569-FOF-TP issued on December 23, 1996, in Docket Nos. 930330-TP and 960658-TP. These restrictions prohibited BellSouth from marketing intraLATA toll services to existing customers for 18 months and from marketing intraLATA toll services to new customers without any term limitations. The intent of these marketing restrictions was to promote intraLATA toll competition in Florida by increasing customers' awareness and allowing the interexchange carriers (IXCs) time to establish their presence in the intraLATA toll market.

The restrictions as to existing customers expires June 23, 1998, and the current marketing conditions as to new customers are markedly different than they were when the Commission imposed these restrictions. There has been increased activity in the intraLATA market over the past two years indicating the presence of a thriving intraLATA toll market as was intended by the Commission Order. Therefore, the Commission should lift the marketing restrictions imposed on BellSouth by Order PSC-96-1569-FOF-TP since the intent of that Order has been met.

STAFF:

Staff has no basic position at this time.

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Should the Commission grant BellSouth relief from the requirements of Section III of Order No. PSC-96-1659-FOF-TP, issued December 23, 1996, in Docket Nos. 930330-TP and 960658-TP?

POSITION:

FCCA/MCI/AT&T:

No. The Commission should not alter the requirements of Section 3 of Order No. PSC-96-1659-FOF-TP. Specifically, the Commission should continue to require BellSouth to maintain a carrier-neutral approach when informing new customers of their intraLATA options. BellSouth's proposal would not pass muster under the carrier-neutral routines prescribed by federal law for interLATA purposes.

BELLSOUTH:

Yes. The current market conditions are markedly different than they were when the Commission imposed the restrictions at issue. The increased activity in the intraLATA market in the last two years is evidence of a thriving intraLATA toll market as intended by the Commission's Order. Since the intent of that Order has been met, the restrictions should be lifted.

STAFF:

Staff has no position at this time.

ISSUE 2: What relief, if any, is appropriate?

POSITION:

FCCA/MCI/AT&T:

No relief is appropriate; thus the Commission should not alter the requirements of Section 3 of Order No. PSC-96-1659-FOF-TP. BellSouth's own evidence shows that, with the requirement in place, 68% of new residential customers and 80% of new business customers choose BellSouth as their intraLATA carrier; the rest are divided among 51 competitors. Thus, BellSouth can hardly claim to be disadvantaged by a requirement that does no more than put BellSouth on an equal footing with its competitors when new customers learn of their intraLATA options. More importantly, BellSouth still has a virtual monopoly on local service. It has attendant obligations as exclusive gatekeeper to the intraLATA market. The Commission should not permit BellSouth to leverage that role and abuse its gatekeeper status in order to gain unfair advantages as an intraLATA competitor.

BELLSOUTH:

The marketing restrictions imposed by Order No. PSC 96-1659-FOF-TP should be lifted.

STAFF:

Staff has no position at this time.

VII. EXHIBIT LIST

WITNESS	PROFFERED BY	I.D. NUMBER	DESCRIPTION
Hilda Geer	BellSouth	HG-1	FL LPIC Activity from 1/1/97 - 3/1/98
Hilda Geer	BellSouth	HG-2	Letters of Authorization

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no stipulations at this time.

IX. RULINGS

1. **OPENING STATEMENTS:** Parties will be allowed five minutes per side for opening statements at the hearing.

2. **POSTHEARING STATEMENTS:** Parties will be allowed no more than 120 words for posthearing statements of positions.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 12th day of June, 1998.

Susan F. Clark, Commissioner
and Prehearing Officer

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida

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