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FILED

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APR 11 1996

April 11, 1996

FPSC-RECORDS/REPORTING

Ms. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, Florida 32399-0850

Re: **Docket No. 960191-TL**
Penalty Assessment Fee

Dear Mrs. Bayó:

Enclosed please find an original and fifteen copies of BellSouth Telecommunications, Inc.'s Request For Oral Argument On Petition For Declaratory Statement Or, Alternatively, For Waiver Of Penalty, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,

J. Phillip Carver
J. Phillip Carver (JPC)

Enclosures

cc: All Parties of Record
R. G. Beatty
A. M. Lombardo
R. Douglas Lackey

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DOCUMENT NUMBER-DATE

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CERTIFICATE OF SERVICE
DOCKET NO. 960191-TL

I HEREBY CERTIFY that a true and correct copy of the
foregoing was served by U.S. Mail this 11th day of April, 1996
to the following:

M. Helton
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

J. Phillip Carver
J. Phillip Carver (1001)

In re: BellSouth Telecommunications,)
Inc.'s Petition For Declaratory)
Statement, or Alternatively, for)
Waiver of Penalty.)

Docket No. 960191

Filed: April 11, 1996

**REQUEST FOR ORAL ARGUMENT ON PETITION FOR
DECLARATORY STATEMENT OR, ALTERNATIVELY, FOR WAIVER OF PENALTY**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Request For Oral Argument On Petition For Declaratory Statement Or, Alternatively, For Waiver Of Penalty, and states the following:

1. On February 16, 1996 BellSouth filed its Petition For Declaratory Statement or, Alternatively, For Waiver Of Penalty. In this Petition, BellSouth requested that the Florida Public Service Commission ("Commission") make the declaratory ruling (1) that BellSouth has substantially complied with the pertinent Florida Statutes and Commission rules regarding regulatory assessment fees and (2) hold that BellSouth does not owe a penalty for late filing of the subject fee. In the alternative, BellSouth has requested that the Commission waive any penalty that it finds to be due. Thus, in its Petition, BellSouth has requested two separate and distinct forms of relief.

2. On April 4, 1996, the Commission Staff filed its recommendation in this matter. The Staff has recommended therein that the Commission make a declaratory statement, but that the statement should deny BellSouths request for relief and, instead, find that BellSouth under the "facts and circumstances of this

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04195 APR 11 96

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case" (Staff Recommendation pg. 2) has not complied with the applicable rule. In the recommendation, Staff also takes the position that the Commission should decline to waive the applicable penalty. Finally, this recommendation states that "participation is limited to Commissioners and Staff".

3. It is true that Rule 25-22.022(3), F.A.C. states that oral argument and rebuttal to a staff recommendation concerning a Petition For Declaratory Statement is generally not appropriate. BellSouth asserts that it should be allowed to participate and to make oral argument at the Agenda Conference at which this matter will be considered, however, for two reasons.

4. First, Rule 25-22.022(1) states that the Commission "may hold a hearing to dispose of a Petition" ... of this type. In the instant case, the declaration sought does not simply require a legal interpretation, but instead requires the application of the statute, and of the corresponding rule, to the particular facts set forth in BellSouth's Petition. In other words, a decision on this petition necessarily involves a consideration of the facts. It is this type of matter for which a \$120.57 hearing, if ultimately necessary, is appropriate. For this reason, it is also appropriate to allow the party filing the Petition to address the facts and circumstances of the instant situation before the Commission when the Petition is first considered at the Agenda Conference.


4. Second, and perhaps even more persuasively, BellSouth has

requested two separate and distinct types of relief. In addition to its request for a the declaratory statement, BellSouth has also requested that the Commission (in the alternative) waive the application of the rule and the assessment of a penalty. The Staff recommendation addresses not only the request for declaratory statement, but also urges the Commission, to, in effect, deny the request for waiver. When waivers are requested, parties are routinely allowed to appear and address the Commission at Agenda Conference as a matter of right. Accordingly, to the extent that BellSouth's Petition constitutes a request for a waiver, the Commission should not rule on this request without allowing BellSouth the opportunity to present oral argument.

5. WHEREFORE, for the reasons set forth above, BellSouth respectfully requests that it be allowed to appear at the Agenda Conference at which this item will be considered and to present oral argument in support of its position.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.


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