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August 20, 1996

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. 960846-TP

960833-TP

ACK Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to MCI's Motion to Establish Procedure for Mediation Plus. Please file these documents 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 on the parties shown on the attached Certificate of Service.

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Sincerely,

Nancy B. White
(PW)

Nancy B. White

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
W. J. Ellenberg

DOCUMENT NUMBER-DATE

08811 AUG 20 96

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
DOCKET NO. 960833-TP
DOCKET NO. 960846-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 20th day of August, 1996 to the following:

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Nancy B. White (sw)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI for arbitration)
of certain terms and conditions of a)
proposed agreement with BellSouth) Docket No.960846-TP
Telecommunications, Inc. concerning)
interconnection and resale under the) Filed: August 20, 1996
Telecommunications Act of 1996)
)

**BELLSOUTH'S RESPONSE TO MCI'S MOTION TO
ESTABLISH PROCEDURE FOR "MEDIATION PLUS"**

COMES NOW, BellSouth Telecommunications, Inc.

("BellSouth" or "Company") and hereby responds to MCI's Motion to Establish Procedure for "Mediation Plus" and Request for Expedited Ruling, as follows:

1. Through its motion, MCI asks the Commission to bifurcate its arbitration proceeding by referring certain issues to a separate portion of the docket for resolution through a "Mediation Plus" procedure.¹ Although, BellSouth does not object to continuing to negotiate, and even mediate, remaining unresolved issues with MCI, MCI's proposal should have been raised when MCI and AT&T first asked the Commission to consolidate their respective arbitrations. MCI's proposal to bifurcate its arbitration in the manner suggested would complicate an already complex and compressed proceeding, and should cause the Commission to seriously rethink its decision to consolidate the AT&T and MCI proceedings.

¹ MCI never defines the term "Mediation Plus" or explains its context outside of this proceeding. Although a party negotiating an interconnection agreement may ask a state commission to "mediate any differences arising in the course of the negotiation" under 47 U.S.C. §252(a)(2), the procedure proposed by MCI is not expressly contemplated by the Telecommunications Act of 1996 (Act).

2. In its August 9, 1996 Order on Consolidation and Procedure, the Commission agreed to consolidate the AT&T and MCI arbitration proceedings as long as certain conditions were met.² The order also sets forth a schedule specific to BellSouth and MCI that established deadlines for 1) identifying the resolved and unresolved issues, 2) filing of direct and rebuttal testimony, 3) prehearing matters and a hearing, and 4) submission of briefs. MCI's "Mediation Plus" proposal would place yet another layer of meetings, reports and deadlines on top of an already compressed and crowded arbitration schedule.³ The resulting mishmash of mediation and arbitration deadlines would be unwieldy and would be an inefficient use of the parties' and Commission's resources in this consolidated docket.

3. Moreover, the Commission must soon decide whether it will grant ACSI's August 19, 1996 motion seeking to consolidate its arbitration proceeding involving BellSouth with the AT&T and MCI proceeding. If ACSI's request is granted, this will create another set of deadlines specific to ACSI's petition for arbitration. BellSouth submits that the Commission and the parties will have their plates full simply trying to manage the work and deadlines associated with arbitrating the respective petitions of AT&T and MCI

² See, Order No. PSC-96-1039-PCO-TP in Docket Nos. 960833-TP and 960846-TP. One of those conditions required MCI to show a "significant proportion of common issues" with the AT&T proceeding.

³ AT&T and BellSouth alone have prefiled direct testimony of 17 witnesses, with rebuttal testimony yet to be filed. The 3-day hearing schedule, therefore, was already in jeopardy even before MCI's arbitration was consolidated with AT&T's.

(and, perhaps, ACSI). The "Mediation Plus" procedure is another process that neither the parties nor the Commission have the time or resources to implement in a beneficial manner.⁴

Perhaps the better course would be for the Commission to reconsider its Order on Consolidation and Procedure and reevaluate whether MCI's request aligns with the goals the Commission hoped to achieve through consolidation. At a minimum, the Commission should convene the meeting contemplated by it in its consolidation order (p.3) to determine "whether further procedural conditions are necessary to preserve the purposes of arbitration and address any issues of undue prejudice." The due process concerns outlined by BellSouth when it opposed the AT&T's and MCI's consolidation request have only been heightened by MCI's "Mediation Plus" proposal and ACSI's recent motion to join this consolidated arbitration docket.

4. Lastly, while BellSouth remains open to mediation of these issues, it strongly believes that the mediator should not be a member of the Commission staff, as suggested by MCI. A fundamental tenet of mediation is that the mediator must be totally neutral on the matter before the parties and must have no role in an ultimate decision on the

⁴ Another risk the Commission should realistically assess is the precedential impact of authorizing "Mediation Plus." The Commission will be hard-pressed to reject bifurcated proposals raised by other parties if it grants MCI's request. Given the deadlines mandated by the Act for Commission action on arbitration requests, the Commission does not have the luxury of formally establishing dual mediation/arbitration tracks for each arbitration request.

merits of the issues mediated by the parties. If mediation is used, a neutral third-party must be hired to assist the parties in resolving the relevant issues.

WHEREFORE, for the reasons stated above, BellSouth asks the Commission to reconsider its consolidation of the AT&T and MCI arbitrations and, upon reconsideration, to sever those proceedings. Alternatively, the Commission should hold the meeting referenced in its consolidation order to assess the procedural complications caused by MCI's "Mediation Plus" request so that the parties and Commission can fairly and efficiently manage this consolidated docket.

Respectfully submitted this 20 day August, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

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