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October 23, 1996

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket Nos. 960846-TP, ~~960833~~, 960916

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. in the above docket are the original and 15 copies of MCI's Motion to Strike BellSouth's Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief.

By copy of this letter, this document has been provided to the parties on the attached service list.

Very truly yours,

Richard D. Melson

ACK _____

AFA _____

APP _____

CAF _____ RDM/cc

Enclosures

CMU Relto Parties of Record

CTR _____

EAG _____

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions by AT&T)
Communications of the Southern)
States, Inc., MCI)
Telecommunications Corporation,)
MCI Metro Access Transmission)
Services, Inc., American)
Communications Services, Inc.)
for arbitration of certain terms)
and conditions of a proposed)
agreement with BellSouth)
Telecommunications, Inc.)
concerning interconnection and)
resale under the)
Telecommunications Act of 1996.)
_____)

Docket No. 960833-TP
Docket No. 960846-TP
Docket No. 960916-TP

Filed: October 23, 1996

**MCI'S MOTION TO STRIKE
BELLSOUTH'S NOTICE OF ORDER OF THE EIGHTH CIRCUIT
COURT OF APPEAL'S ORDER GRANTING STAY PENDING JUDICIAL REVIEW
AND REQUEST FOR RELIEF**

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, MCI) hereby file their Motion to Strike the pleading filed by BellSouth on October 17, 1996, and entitled "BellSouth's Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief" (Notice). As grounds for this Motion to Strike, MCI states:

1. The Notice does three things: (a) it calls to the Commission's attention the stay order entered by the Eighth Circuit Court of Appeals (Stay Order); (b) it argues the effect that various provisions of the Stay Order should have on the Commission's resolution of issues being litigated in this docket; and (c) it requests that the Commission grant various forms of relief based on the Stay Order, including but not limited to the

setting of interim rates for unbundled elements while BellSouth prepares additional cost studies.

2. MCI does not object to the Notice to the extent that it calls the Stay Order to the Commission's attention. In fact, MCI encourages the Commission to take official notice of the Stay Order.

3. MCI does object to the Notice to the extent that it presents argument about the effect of the Stay Order and requests the Commission to grant relief to BellSouth based on the Stay Order.

(a) Argument About Effect of Stay Order. The Commission's procedures for this docket allow each party to submit a post-hearing brief and statement of position on issues, limited to 100 pages, to address each of the issues identified for resolution in this proceeding. (BellSouth in fact filed a 100-page brief on October 22, 1996.) The Commission's decisions on those issues will be governed by the controlling statutes, FCC regulations (to the extent they have not been stayed), and the record built in this proceeding. If BellSouth believes that the Commission's decision must take into account the effect of the stay of some portions of the FCC regulations, that is a matter that must be addressed in its post-hearing brief. The Stay Order did not interject any new issues into this proceeding, and BellSouth should not be permitted to use the filing of the Notice as a means of presenting an additional 17 pages of argument above and beyond its 100-page post-hearing filing. This portion of its

Notice should therefore be stricken as an improper attempt to sidestep the page limit on BellSouth's post-hearing brief.

(b) BellSouth's Request for Relief. Similarly, BellSouth's "request for relief" contains no arguments that could not properly be made in its post-hearing brief. To the extent that the Notice simply urges the Commission to dispose of certain issues in the manner advocated by BellSouth, it should be stricken as duplicative of BellSouth's post-hearing brief. To the extent it asks the Commission to grant relief through some mechanism other than a decision on the merits in the pending proceeding, it should be stricken as inconsistent with the requirements of the Administrative Procedure Act.

WHEREFORE, MCI urges the Commission to strike BellSouth's Notice, except to the limited extent that it can be construed as a request for the Commission to take official recognition of the Stay Order entered by the Eight Circuit Court of Appeals.

RESPECTFULLY SUBMITTED this 23rd day of October, 1996.

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and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 23rd day of October, 1996.

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