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May 15, 1997

Mrs. Blanca S. Bayó  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket Nos. 970281-TL and 970172-TP

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth's Response to MCI's Petition on Proposed Agency Action and Motion for Expedited Resolution, which we ask that you file in the captioned matter.

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,

J. Phillip Carver *(initials)*

J. Phillip Carver

Enclosures

cc: All parties of record  
A. M. Lombardo  
R. G. Beatty  
William J. Ellenberg II

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FPSC-RECORDS/REPORTING

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of )  
intrastate implementation )  
requirements governing federally ) Docket No. 970281-TL  
mandated deregulation of local )  
exchange company payphones )

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In re: Petition by MCI )  
Telecommunications Corporation )  
for an order requiring BellSouth )  
Telecommunications, Inc. to )  
remove its deregulated payphone ) Docket No. 970172-TP  
investment and associated )  
expenses from its intrastate )  
operations and reduce the )  
Carrier Common Line Rate Element )  
of its intrastate switched access )  
charges )

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In re: Petition by MCI )  
Telecommunications Corporation )  
for an order requiring GTE )  
Florida, Incorporated to )  
remove its deregulated payphone ) Docket No. 970173-TP  
investment and associated )  
expenses from its intrastate )  
operations and reduce the )  
Carrier Common Line Rate Element )  
of its intrastate switched access )  
charges )

**BELLSOUTH'S RESPONSE TO MCI'S PETITION ON PROPOSED  
AGENCY ACTION AND MOTION FOR EXPEDITED RESOLUTION**

BellSouth Telecommunications, Inc. ("BellSouth"), hereby  
files its Response to the Petition On Proposed Agency Action of

MCI and further moves for an expedited resolution of all issues in the above-captioned dockets and states the following:

1. Two of the three above-captioned dockets were initiated by the filing of Petitions by MCI on February 7, 1997 in which it contended that the federally mandated removal of the intrastate subsidies associated with the respective payphone operations of BellSouth and GTE be accomplished by reducing the intrastate carrier common line ("CCL") charge of each LEC. The Florida Public Service Commission ("Commission") disposed of these Petitions in the Order entitled Notice of Proposed Agency Action Order Denying Petitions and Establishing Intrastate Implementation Requirements Governing Federally Mandated Deregulation of Local Exchange Company Payphones. (Order No. PSC-97-0358-FOF-TP). In this Order, the Commission ruled that it is incumbent upon all LECs, including BellSouth, to file revised intrastate rates that reflect the removal of the subject subsidies to be effective no later than April 15, 1997 and that it is ". . . our [the Commission's] responsibility to determine what actions are necessary to eliminate any intrastate subsidies . . ." (Order, p. 4). In reaching this result, the Commission quoted the FCC's Report and Order 96-388 (entered in CC Docket No. 96-128) for the controlling proposition that "States must

determine the intrastate elements that must be removed to eliminate any intrastate subsidies within this time frame".

(Order, p. 2).

2. Applying this standard, the Commission rejected, after careful analysis, MCI's contention that it had some entitlement to have the reduction taken from the intrastate CCL charge. The Commission then applied the plain language of the FCC Order quoted above to reach the conclusion that this Commission has the task of determining the amount of the reduction and stated that "since intrastate rates are not set based on allocated costs, there is no way of determining which intrastate rate elements are contributing to any payphone subsidy". (Order, p. 5). Thus, this Commission determined that the intrastate rate element reduction proposed by BellSouth should be approved, denied staff's recommendation to the contrary and allowed BellSouth's tariff changes to become effective April 15, 1997. The Commission also kept open Docket No. 970281-TL for the purpose of determining the appropriate amount of the reduction.

3. In response to this Order, MCI filed on April 21, 1997 its protest. Put bluntly, this Petition is, at best, a waste of this Commission's time. At worst, it would appear to be part of

an orchestrated effort to delay or avoid the implementation of the FCC Order.

4. In its protest, MCI raises three issues: 1) it disagrees with this Commission's interpretation of the above-quoted, operative language of the FCC Order; 2) it states that there may be a dispute as to the amount of the subsidy, and 3) most tellingly, it requests that the Commission suspend the implementation of BellSouth's tariff. The MCI Petition, however, sets forth no disputed issue of fact that would entitle MCI to a formal evidentiary hearing under Section 120.57(1). At most, MCI might be entitled to an informal hearing pursuant to Section 120.57(2).

5. Again, MCI identifies as an issue of fact, law or policy "that appear[s] to be in dispute" the question of whether the Commission must select the rate element from which the reduction is taken. (MCI Protest, page 4). Even if MCI has raised in this fashion a legitimate issue in need of resolution, it is in no way a factual issue. Instead, the Commission has made a legal ruling based upon the plain language of the FCC's order. Thus, to resolve this legal issue would require, at most, an informal hearing pursuant to § 120.57(1), not an evidentiary hearing. As set forth below, MCI's claim on this point amounts to

nothing more than a weak rehashing of a legal issue that has already been considered and resolved by this Commission. For this reason, it would certainly be legally supportable for the Commission to simply dismiss this portion of the claim.

Nevertheless, if this Commission is inclined to allow MCI to have an informal hearing to argue its legal analysis, BellSouth submits that, for the reasons set forth below, this hearing should be held on an expedited basis.

6. On its face, MCI's legal contention is badly flawed. The specific language of the FCC Order only requires that the Commission determine which elements must be reduced to eliminate the entire intrastate payphone subsidy. In other words, the requirement is that the Commission determine that the reductions taken from some combination of rate elements will be adequate to ensure that the subsidy is removed. MCI's effort to torture this simple language of the FCC Order to extract from it some issue (or some concomitant duty upon this Commission) that plainly is non-existent should not be allowed.

7. Moreover, this Commission has accomplished the requirement of the Order. Again, MCI requested that the reduction be taken from the CCL Charge. The Commission rejected this argument on the basis of an express analysis that supported

the conclusion that this was not appropriate. Likewise, the Commission considered a staff recommendation that the reduction be taken from toll, operator surcharges or switched access. The Commission also declined to accept this proposal. Thus, while this Commission stated that it did not take issue with the specific rate elements from which BellSouth proposed to take the reduction, this Commission also demonstrated by its actions that it would not have hesitated to do so if it had found BellSouth's proposal, for some reason, to be inappropriate. Thus, MCI's contention that the Commission has somehow "abdicated" its responsibility fails for this reason as well.<sup>1</sup>

8. Next, MCI lists as a disputed factual issue the question of the proper amount of the subsidy. MCI, however, states that it has no position as to whether BellSouth's calculation is correct or incorrect. (Protest, p. 4). It is noteworthy that when it filed its original petition, MCI contended that BellSouth's calculation was wrong. (Petition, pars. 14 & 15). Now, while taking the tact of requesting a hearing to resolve "disputed" factual issues, MCI avers only that

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<sup>1</sup> It is noteworthy that, although MCI raises the purely legal contention that this Commission has not discharged the purported responsibility to select the proper rate element for reduction, MCI offers nothing in its Petition (beyond that which has already been rejected by this Commission in response to its original petition) to support the notion that the reduction must come from the CCL charge.

it may dispute BellSouth's calculation, but cannot do so at this juncture. Instead, MCI attempts to prolong this docket, ostensibly to conduct discovery and determine at some future time whether there is a basis for dispute. On its face, this is a wholly unjustified waste of this Commission's time, especially in light of the fact that the Commission has left Docket No. 970281-TL open for the express purpose of determining the appropriate amount of the reduction. Further, BellSouth has already responded to discovery by MCI as well as the filing requirements of the Order.

9. Finally, in getting to what is likely the real purpose of the protest, MCI requests that this Commission prevent BellSouth's tariff from taking effect. What MCI neglects to mention in its protest is the fact that the removal of the payphone subsidy from BellSouth's intrastate operations is a prerequisite to the payment by carriers such as MCI of interim compensation to BellSouth. (See FCC Order 96-388, ¶ 125). The approach that this Commission has taken (i.e., allowing BellSouth's tariff to become effective subject to any necessary true-up at a subsequent time) enables BellSouth to meet the requirements of FCC Order 96-388 and to immediately qualify for interim compensation. By asking this Commission to suspend the



tariff, MCI is, in reality, asking this Commission to prevent BellSouth from timely making the Commission-approved reduction that it has been ordered by the FCC to make. The consequence of this would not only be that BellSouth would be forced into an involuntary violation of the FCC Order, but also that MCI would have a basis to argue that it is not required to pay the interim compensation as long as it manages to keep the instant protest alive. Thus, BellSouth will be financially damaged (and MCI will be unjustly benefited) by any delay in the resolution of MCI's "protest."

10. At the same time, BellSouth also requests that this Commission determine, as expeditiously as possible, in Docket 970172-TP the legitimate question of the correct amount of the subsidy. In the letter attached hereto as Exhibit 1, AT&T has informed BellSouth that, in its view, BellSouth has not complied with the requirements of the FCC Order. AT&T, therefore, refuses to pay interim compensation to BellSouth until BellSouth complies with a complex "certification" process that AT&T has created.

11. Obviously, BellSouth believes that AT&T (to make the kindest possible interpretation of AT&T's actions) is mistaken in the belief that no interim compensation is due at this point. BellSouth believes that it has fully complied with the FCC Order,

and that AT&T is bound to pay the interim compensation immediately. Nevertheless, the actions of AT&T (as set forth in the attached letter) require that BellSouth request from this Commission immediate action. Again, BellSouth believes that it has complied fully with the FCC Order. AT&T, however, has stated that until the Commission approves the exact amount of the reduction, it will pay no interim compensation.<sup>2</sup>

12. BellSouth understands that some of the other local exchange companies to whom the FCC Order applies may not have yet provided the Commission with cost information, and that the Commission may be waiting to receive information from these companies. Given the circumstances, however, BellSouth requests that the Commission begin to immediately review the cost information submitted by BellSouth to make a determination of the correct amount of the subsidy as expeditiously as possible.

13. For the reasons set forth above, BellSouth requests that this Commission (1) dismiss the protest of MCI or, alternatively, deal with the single legal issue that has been raised by the petition through an informal hearing to be held at the earliest possible time; 2) reject MCI's request that the

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<sup>2</sup> At the same time, according to the May 5, 1997, issue of "Telecommunications Report," AT&T began on May 1, 1997, to charge its customers a higher rate for business and toll-free service to offset the payment of this compensation. Paradoxically, AT&T is refusing to make this payment.

Commission suspend the tariff and thereby render BellSouth noncompliant with the FCC Order; and 3) undertake expedited consideration as to the precise amount of the subsidy that must be reduced.

WHEREFORE, BellSouth respectfully requests the entry of an Order providing the relief set forth above.

Submitted this 15th day of May, 1997.

Robert G. Beatty (x2)

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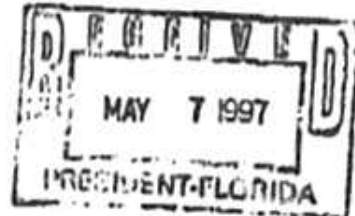


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May 5, 1997

Mr. Joseph P. Lacher  
President - Florida  
BellSouth Telecommunications, Inc.  
150 W. Flagler Street, Suite 1901  
Miami, FL 33130



Re: FCC CC Docket No. 96-128 Payphone Compensation

Dear Mr. Lacher:

This letter is to inform you regarding AT&T's position on BellSouth Telecommunications, Inc.'s ("BellSouth") entitlement to payphone compensation pursuant to the FCC's Orders in the above proceeding.<sup>1</sup>

Consistent with Sections 276(a) & (b)(1)(B) of the Telecommunications Act, the FCC's Report and Order (¶ 186) required LECs to remove all payphone subsidies from their rates for intrastate exchange and exchange access services before they are eligible to receive payphone compensation. Specifically, the FCC required "incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. . . . by April 15, 1997." Further, the FCC (id.) provided that "States must determine the intrastate rate elements that must be removed to eliminate any subsidies within this time frame" (emphasis added).

In the Reconsideration Order (¶ 131), the FCC reiterated that incumbent LECs must "have effective intrastate tariffs (by April 15, 1997) reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies." The Second Bureau Waiver Order (¶19), issued only last week, again makes clear that "states

<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, FCC 96-388, released September 20, 1996 ("Payphone Order"); Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order"); Order, DA 97-678 (Com. Car. Bur.), released April 2, 1997 ("Bureau Waiver Order"); Order, DA 97-805, released April 15, 1997 ("Second Bureau Waiver Order").

(must) determine" that all intrastate subsidies have been eliminated from BellSouth's intrastate rates (emphasis added).

The Second Bureau Waiver Order (§ 22) also provides that IXCs may "require from their LEC payees . . . certification that they have complied with each prerequisite" for receiving payphone compensation. Accordingly, AT&T hereby requires BellSouth to provide it with certification, by state, that:


1. the appropriate State Commission has reviewed BellSouth's intrastate rates for exchange and exchange access services; and
2. the State Commission has determined that BellSouth's intrastate rates contain no charges or rate elements which recover the costs of payphone CPE, or provide any other payphone subsidies; and
3. conforming rates are contained in an effective intrastate tariff.

Given the requirement for a "state" determination, a certification by BellSouth in the absence of proof of actual state action is insufficient. Moreover, because the FCC's Orders require that all three of the conditions stated above must be satisfied before BellSouth is eligible to receive payphone compensation, AT&T will not consider that BellSouth has complied with this requirement until the occurrence of these three events. Consequently, AT&T will not pay payphone compensation to BellSouth until certifications covering all three points are received.

In addition, AT&T requires BellSouth to provide a certification that payphone services, including both basic services and unbundled features, are offered at cost-based rates. Such certification should reference the state (and, if applicable federal) tariffs under which such services and features are offered and whether BellSouth is availing itself of the waivers recently granted by the Common Carrier Bureau in order to comply with this requirement.

Thank you for your attention to this matter.

Sincerely,

  
Michael W. Tye

**CERTIFICATE OF SERVICE  
DOCKET NO. 970281-TL and 970172-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail this 15th day of May, 1997 to the following:

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