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August 1, 1997

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

RE: Docket No. 960786-TL (Section 271 Docket)

Dear Mrs. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response and Opposition to Time Warner's Motion to Dismiss or in the Alternative for Abatement of BellSouth's Application for InterLATA Relief. 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.

Sincerely,

Nancy B. White (KR)

Nancy B. White

- ACK
- AFA Enclosures
- APP
- CAF
- CMU
- CTR
- EAG
- ESG
- 1
- 2
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- 1

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

RECEIVED & FILED

FPSC-SUPRA 1 OF RECORDS

DOCUMENT NUMBER-DATE

07822 AUG-16

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth)
Telecommunications, Inc. entry)
into InterLATA Services pursuant) Docket No. 960786-TL
to Section 271 of the Federal)
Telecommunications Act of 1996) Filed: August 1, 1997
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE AND OPPOSITION
TO TIME WARNER'S MOTION TO DISMISS OR IN THE
ALTERNATIVE FOR ABATEMENT OF BELLSOUTH'S
APPLICATION FOR INTERLATA RELIEF**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Rule 25-22.037(b), Florida Administrative Code, its Response and Opposition to Time Warner AXS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partner's ("Time Warner") Motion to Dismiss or in the Alternative Abatement of BellSouth's Application of InterLATA Relief ("Motion"). In support thereof, BellSouth states the following:

1. Time Warner cites as grounds for its Motion that this proceeding is premature and a waste of time. (Motion, p. 2). Specifically, Time Warner lists complaints with the implementation of items contained in the Interconnection Agreement ("Agreement") between Time Warner and BellSouth.

2. Essentially, Time Warner is arguing its position in this docket through this Motion rather than through testimony given under oath. This should not be allowed. Time Warner is seeking adjudication of BellSouth's entire case not on the merits, after hearing and cross-examination, but rather solely on the strength of Time Warner's pleading. This is not appropriate. As will be shown herein, BellSouth will contest and rebut the specific allegations made

by Time Warner in its Motion. The Commission cannot grant Time Warner's motion when the facts have not been heard.

3. Moreover, Time Warner had the same opportunity available to every party to file direct testimony in this case. This they did not do. Time Warner also has the same opportunity available to every party to file rebuttal testimony. The allegations made in their Motion should be made under oath in testimony with the right of cross examination and the right of BellSouth's witnesses to address the allegations, not in a pleading.

4. In addition, Time Warner complains that it should not have to expend further resources on this case. There is a solution to Time Warner's problem; Time Warner can withdraw from this docket.

5. In response to the specific factual allegations made by Time Warner in its Motion, BellSouth submits the following: Time Warner first complains that Firm Order Commitments ("FOC") are not being supplied with facilities verification and that this violates Time Warner's Agreement with BellSouth. It should first be noted that BellSouth's Agreement with Time Warner does not require the FOC to contain a facilities verification. Second, as noted in Exhibit A to the Motion, BellSouth does not provide facilities verification on any FOC with regard to BellSouth's own end users. Pursuant to the recent Eighth Circuit Opinion in Docket No. 96-3321, issued on July 18, 1997, the incumbent LEC is not required by the Telecommunications Act of 1996 ("Act") to provide its competitors with superior quality interconnection. Therefore, BellSouth is not required to provide facilities verification with FOCs to Time Warner either under the Agreement or the Act.

6. Despite Time Warner's contention, BellSouth is not in violation of Section 11.02 of the Agreement. This provision states that BellSouth will provide an FOC and a Data Layout Record ("DLR") within 5 business days of the receipt of the Access Service Request ("ASR"). This provision applies to mechanized transmittal of the DLR. BellSouth requires ALECs to provide an 800 number, a modem and a printer to which BellSouth can directly print the DLR. Time Warner continues to request that the DLR be handled in a manual fashion in which BellSouth mails the DLR to Time Warner.

7. Time Warner states that BellSouth inquired as to whether or not Time Warner wanted a "good" FOC or a "fast" FOC and further states that Section 11.02 of the Agreement requires that BellSouth provide both a good and fast FOC. BellSouth does not interpret the contract language as such. The contract language simply states that BellSouth will provide a FOC and a DLR within five business days of the receipt of the ASR. There are no specifics as to what type of information is to be included on the FOC.

8. At no time did BellSouth state to Time Warner that it would not be able to comply with the Agreement until the end of the year at the earliest. BellSouth stated that it was currently looking into providing facilities verifications for ASR FOCs, but that such information would not be available until the end of the year. As stated earlier, the Agreement does not specify that facilities verification must be included on the FOC, and therefore BellSouth is not in violation of the Agreement as Time Warner would have this Commission believe.

9. The performance measures initially offered to Time Warner and subsequently negotiated with Time Warner did include measurements for Local Service Request ("LSR") FOCs. In fact, as mentioned in Exhibit A to the Motion, the FOC intervals included in the performance measures are specific to LSRs.

10. As noted herein, there are definitely factual issues in dispute between Time Warner and BellSouth, such that Time Warner's Motion should be rejected.

WHEREFORE, BellSouth respectfully requests that this Commission deny the Motion filed by Time Warner for the reasons set forth herein.

Respectfully submitted this 1st day of August, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE
DOCKET NO. 960786-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 1st day of August, 1997 to the following:

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