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September 23, 1997

BY HAND DELIVERY

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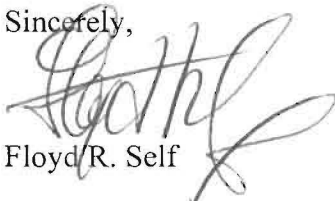
Re: Docket No. 960786-TL

Dear Ms. Bayo:

Enclosed are an original and fifteen copies of WorldCom, Inc. and Metropolitan Fiber System of Florida, Inc.'s Posthearing Brief in the above referenced docket. Also enclosed is a 3 1/2" diskette with the document on it.


Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,

Floyd R. Self

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of BellSouth)
Telecommunications, Inc.'s entry into)
InterLATA services pursuant to Section)
271 of the Federal Telecommunications)
Act of 1996.)
_____)

Docket No. 960786-TL
Filed: September 23, 1997

**POSTHEARING BRIEF OF
WORLD COM, INC. AND
METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.**

WorldCom, Inc. and its subsidiary Metropolitan Fiber Systems of Florida, Inc. ("WorldCom"), through undersigned counsel, pursuant to Rule 25-22.056, Florida Administrative Code, respectfully submits the following Posthearing Brief to the Florida Public Service Commission ("Commission") in the above captioned docket. On the basis of the evidence in the record in this proceeding, this Commission should find that BellSouth has not fulfilled its obligations under section 271 of the Telecommunications Act of 1996 under Track A or Track B. Accordingly, BellSouth's SGAT should be denied and the Commission should recommend to the Federal Communications Commission that BellSouth should be denied interLATA authority.

I. BASIC POSITION

BellSouth has not demonstrated that it has met each requirement of section 271 of the Telecommunications Act of 1996 ("Act"), either under Track A or Track B. Accordingly, BellSouth's SGAT should be denied and the Commission should recommend that BellSouth's section 271 application be denied.

II. ISSUES AND POSITIONS

ISSUE 1.A.: Has BellSouth met the requirements of section 271(c)(1)(A) of the Telecommunications Act of 1996?

SUMMARY OF POSITION: *No. While BellSouth has entered into numerous interconnection agreements that have been approved by this Commission under the Act, BellSouth has failed to fulfill all of the requirements of Track A due to the failure to meet all of the requirements of the 14-point competitive checklist (Issues 2-15).*

ANALYSIS AND ARGUMENT: BellSouth bears the burden of proving that it has met each and every one of the conditions that Congress has established before interLATA authority may be granted. Gillan, Tr. 1768; Wood, Tr.1938; Ball, Tr.3395-98; In the Matter of Application of Ameritech Michigan, Memorandum Opinion and Order, FCC 97-298 ("Ameritech Order"), ¶43. It is this Commission's duty in this process to compile the evidentiary record that reflects whether BellSouth has complied with the statutory prerequisites to interLATA entry. The necessity for BellSouth's compliance with each and every condition has been established to ensure that ALECs have the ability to use the preexisting network to provide services in the same manner as BellSouth. Gillan, Tr. 1846-48. On this record, BellSouth has repeatedly failed its burden as Mr. Ball concluded:

In summary, BellSouth's application is nothing more than a paper promise to improve its current deficient performance and to provide nondiscriminatory access to its systems. In the Ameritech order, the FCC said paper promises do not and cannot satisfy a BOC's burden of proof. Based upon WorldCom's real world experience with the paper promise of BellSouth's interconnection agreements, we urge the Commission to adopt the same position.

Ball, Tr. 3398; Ameritech Order, ¶55.

The requirements of section 271(c)(1)(A) ("Track A") are designed to apply when (1) BellSouth has entered into one or more binding agreements approved by this Commission under the Act whereby BellSouth is providing access and interconnection to its facilities to one or more competitors that are providing telephone exchange service to residential and business customers and (2) and that the access and interconnection BellSouth is providing meets the requirements of the Act's 14-point checklist (Section 271(c)(1)(B)). As WorldCom discusses more fully under Issues 1(A)(b), 1(A)(c), and 2-15, BellSouth has not yet fully complied with these two requirements of the Act. Accordingly, BellSouth has not met the requirements of Track A.

This Commission should compel BellSouth to diligently fulfill each and every one of the requirements of the Act, for only from such complete compliance will Florida truly begin to experience meaningful local service competition. Given the fact that only 18 months have passed since the Act took effect, it is not reasonable to expect that all of the underlying systems and procedures have been put into effect - - and this is exactly what the record here shows.

The need for those systems and procedures to be in place is necessitated by BellSouth's advantages at the time it enters the market. When BellSouth is allowed into the interLATA market, its entry will be immediate and ubiquitous. Gillan, Tr. 1792. Quite simply, BellSouth will be able to offer interLATA service to every one of its customers, it will be able to quickly move customers to its service (because all of the long distance OSS is in place and fully functional), and it will have the ability to buy long distance network elements in a competitive marketplace at cost-based rates

free of restrictions. Gillan, Tr. 1830-31. See also Ameritech Order, ¶ 17.

While BellSouth entry can be immediate and relatively easy, on the other hand, an ALEC's ability to enter the local market is vastly different without full section 271 compliance. Gillan, Tr. 1840. Only with full and complete section 271 compliance will there be a parallel universe for local service entry that coincides with what is available to BellSouth in the interLATA arena. Gillan, Tr. 1847. As is demonstrated by the evidence presented at Issues 2-15, we are still a long way from such equal opportunities.

To the extent that the Commission harbors any concern that the ALECs may be holding back to keep BellSouth out of the interLATA market, this simply is not true. As Mr. Gillan explained, and the GTE experience demonstrates, the first carrier to offer one stop shopping has a tremendous market advantage. Gillan, Tr. 1832-37. Given the evidence of the variety of business plans and the extensive involvement of so many carriers in attempting to begin service in Florida, there is no basis for believing or concluding that the Florida ALECs are holding back from the market. The ALECs want the opportunity to compete, and section 271 is their ticket to entry.

There also is no basis for fearing that denial of BellSouth entry at this time will place it at an unfair disadvantage. As is reflected elsewhere under Issues 1-15, BellSouth simply has not put in place all of the systems, procedures, tools, and services that would enable a competitor to meaningfully compete, let alone compete at all, for local service customers. But even if the market were miraculously made competitive today, the real issue is not prematurely letting BellSouth out of the starting blocks. Since the Act's enactment, BellSouth has been free to enter the long distance market outside its nine-state region, but it has not. Varner, Tr. 314. Rather, the issue is BellSouth

noncompliance - - there is no basis for fearing that BellSouth may be unreasonably withheld from competing with ALECs. Gillan, Tr. 1837-42.

In the final analysis, the real problem with BellSouth's request in this docket was reflected by Mr. Varner's own testimony:

In seven of our states, we don't believe we've yet met the requirements that allow us to enter. In two of the states we believe we have.

Varner, TR. 314. Given the fact that BellSouth has asked at least four states to bless its interLATA request, BellSouth's request here is highly suspect. Given the fact that Louisiana and South Carolina have already approved BellSouth's request only further casts into doubt the propriety of this request. As this record establishes, BellSouth is not only not ready to fairly compete, but it appears that it is not being honest with this Commission about its lack of compliance.

ISSUE 1.A.(a): Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?

SUMMARY OF POSITION: *Yes.*

ANALYSIS AND ARGUMENT: Yes. BellSouth has entered into one or more binding agreements with unaffiliated competing providers of telephone exchange service that have been approved under Section 252. Hearing Exh. 8, at 152-57, 178.

ISSUE 1.A.(b): Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?

SUMMARY OF POSITION: *No. As is reflected by the evidence associated with the individual checklist items (Issues 2-15), BellSouth has failed to provide to competing carriers the access and interconnection to its network facilities that is required by the Act.*

ANALYSIS AND ARGUMENT: No, BellSouth is not providing access and interconnection as is required by the Act to WorldCom or any other carrier due to BellSouth's failure to fulfill each of the checklist items separately addressed in Issues 2-15 below. Besides the overwhelming evidence of noncompliance on each individual checklist item, the record contains other tangible evidence of the lack of access and interconnection in Table 1 of Mr. Gillan's testimony. Gillan, Tr. 1771. If BellSouth were truly in compliance with each and every one of the requirements of the 14-point checklist, BellSouth would be irreversibly committed to competition and competing carriers would have a tremendous incentive to enter the market and actively seek customers. Gillan, Tr. 1834-36. Thus, the data in Table 1 only reinforces the conclusion drawn from an analysis of each of the checklist items: BellSouth has not met the requirements of Track A.

ISSUE 1.A.(c): Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

SUMMARY OF POSITION: *No, WorldCom is not providing telephone exchange service to residential or business customers at this time. Other carriers have taken limited market entry steps that do not meet this statutory requirement.*

ANALYSIS AND ARGUMENT: No, WorldCom is not providing telephone exchange service to residential or business customers at this time. Ball, Tr. 3411-12.

As for other carriers in this proceeding, the evidence indicates that many carriers have started, or are attempting to start, specific market tests or may actually have some few "real" customers. But such limited market entry cannot be deemed compliant with this statutory requirement because all of the 14-point checklist has not been fully and completely implemented. (See WorldCom's analysis and argument for each of Issues 2-15.) This is not to say that there is a minimum number of business and residence customers that must be activated. Hearing Exh. 62, 5 n.8. Rather, only when there is full compliance with the checklist will BellSouth have irreversibly committed itself to opening its markets, thus providing competing carriers with the opportunity to meaningfully compete for business and residence customers. Hearing Exh. 62, at 5. n.9. In essence, this requirement for business and residence subscribers can only be fulfilled after the 14-point checklist has been fulfilled. The fact that some few business and residence customers are today being served, must be seen for what they are - - limited implementation testing. this is not the business and residential service contemplated by the Act.

ISSUE 1.B.: Has BellSouth met the requirements of section 271(c)(1)(B) of the Telecommunications Act of 1996?

SUMMARY OF POSITION: *No. BellSouth Telecommunications has received at least one request for access and interconnection, thus Track B entry is not available.*

ANALYSIS AND ARGUMENT: The FCC has stated that a BOC must show that it satisfies the requirements of *either* Track A (Section 271(c)(1)(A)) or Track B (Section

(271(c)(1)(B)) in order to provide certain in-region interLATA services. In the Matter of Application by SBC Communications Inc., Memorandum and Order, FCC 97-228 (“SBC Order”), ¶ 4 (emphasis added). In creating Track B, Congress intended to ensure that a BOC was not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria of Track A has sought to enter the market. House Conf. Rep. No. 104-458, Pub. L. No. 104-104, 1996 U.S.C.C.A.N., p. 161. Thus, Track A applies when a competitor has sought market entry, and Track B applies when no competitor has requested interconnection. See 47 U.S.C. section 271(c)(1)(B). The FCC has found that Congress intended to preclude a BOC from proceeding under Track B upon its receipt of a request for access and interconnection from a prospective competing provider of the type of telephone exchange service described in section 271(c)(1)(A). SBC Order, ¶ 34. The FCC has concluded that a BOC is precluded from pursuing in-region interLATA entry under Track B where qualifying requests for access and interconnection possibly qualified under Track A. Id. In other words, a good faith request for application potentially qualifying under Track A would prevent a BOC from pursuing qualification under Track B. SBC Order, ¶ 27.

The record here establishes that BellSouth has not only received at least one good faith request for access and interconnection within the window of time identified discussed in Section 271(c)(1)(B), but that it has negotiated, arbitrated, and completed numerous interconnection agreements. Ball, Tr. 3367-68. BellSouth, therefore, may not pursue Track B, and must meet the qualifications under Track A.

In the event the Commission believes that Track B is available to BellSouth, the record here

also establishes noncompliance with Track B as well. The Act provides that in order to be compliant with Track B, BellSouth must both meet the prerequisites of section 271(c)(1)(B) as well as “generally offering” each and every bit of the access and interconnection required by the 14-point competitive checklist . Sections 271(c)(2)(A)(ii) and 271(c)(2)(B); Wood, Tr. 1938-40. As is more fully discussed in WorldCom’s Analysis and Argument under Issues 1.B(a)-(c) and 2-15, since BellSouth is not able to furnish the checklist items as is required by the Act, BellSouth similarly cannot be said to be in a position to generally offer such items. Thus, BellSouth has not complied with Track B either.

ISSUE 1.B.(a): Has an unaffiliated competing provider of telephone exchange service requested access and interconnection with BellSouth?

SUMMARY OF POSITION: *Yes.*

ANALYSIS AND ARGUMENT: WorldCom and a number of other carriers have requested access and interconnection with BellSouth and, ultimately, executed interconnection agreements with BellSouth. Ball, Tr. 3367, 3376-77; Hearing Exh. 8, at 152-57, 178.

ISSUE 1.B.(b): Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?

SUMMARY OF POSITION: *No. BellSouth does not have an SGAT that has been approved or permitted to take effect. The “final” SGAT filed after the close of the record should not

be approved because it does not comply with the Act.*

ANALYSIS AND ARGUMENT: At the time of the close of the evidentiary record in this case, BellSouth had not yet filed a final statement of generally available terms ("SGAT"). Thus, there is no SGAT that has been approved or permitted to take effect.

With respect to the SGATs filed on September 11, 1997, and September 18, 1997, neither of these documents should be approved or permitted to take effect; indeed, the "final" SGAT should be explicitly rejected by the Commission on multiple grounds.

First, all of the prices in the SGAT do not meet the cost requirements of section 252(d)(1)-(2). In the "filed" and "draft" versions of the SGAT, BellSouth failed to provide any cost support. While BellSouth claims all of the prices are based on cost, they appear to be based upon different definitions of cost, which is not what the Act requires. Wood, Tr. 1974. To the extent the SGAT contains arbitrated interim prices, these prices do not comply with the Act since they were set at preexisting tariff rates that admittedly did not meet the requirements of the Act. Wood, Tr. 1952-53, 1956-64, 1974-75. Finally, to the extent the SGAT relies upon some of the arbitrated permanent rates, such rates also fail to comply the pricing requirement of the Act. Wood, Tr. 1964-69. Thus, the SGAT does not comply with the pricing requirements of the Act.

Second, because BellSouth has failed to meet each and every item on the competitive checklist, it cannot be found to be in a position to "generally offer" access and interconnection as is required by section 271(c)(2)(B). WorldCom more fully addresses these failings under its Analysis and Argument for each of the 14-point checklist items contained in Issues 2-15 below. thus, on the basis of the evidence addressed therein, the SGAT cannot be found to generally offer

access and interconnection within the meaning of the Act.

In conclusion, the SGAT does not contain the required cost-based rates that comply with the Act nor can BellSouth fulfill all of the items on the competitive checklist, including OSS. Therefore, the filed version of the SGAT should not be approved.

ISSUE 1.C.: Can BellSouth meet the requirements of section 271(c)(1) through a combination of Track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B))? If so, has BellSouth met all of the requirements of those sections?

SUMMARY OF POSITION: *No, BellSouth may not combine the requirements of Track A and Track B to claim compliance. Because BellSouth has received interconnection requests under Track A, it may not use Track B. BellSouth has met neither the requirement of Track A nor Track B.*

ANALYSIS AND ARGUMENT: The 1996 Act states:

(1) Agreement or statement.- A Bell operating company meets the requirements of this paragraph if it meets the requirements of subparagraph (A) *or* subparagraph (B) of this paragraph for each State for which the authorization is sought. Section 271(c)(1) (emphasis added).

The text uses the disjunctive “or”, and ordinarily the words “and” and “or” are not interchangeable. Sutherland Statutory Construction, Sec. 21.14 (5th ed. 1992). The use of the word “or” separates words or phrases in the alternate relationship. *Id.* The FCC in the SBC Order answered the question of whether the “or” in section 271(c)(1) was used in the disjunctive or the conjunctive, given that the FCC did not require both Track A *and* Track B to be met. SBC Order, ¶ 4. The use of the word

“or” means that either Track A or Track B may be followed, but not both. Thus, Track A and Track B provide alternative means for BellSouth entry.

As for mixing Track A and Track B, the FCC has ruled that a timely, good faith application for access and interconnection under Track A forestalls entry under Track B. SBC Order, ¶ 27. Simply put, the use of Track A prevents the use of Track B, and vice versa. That being the case, a BOC could *not* meet the requirements by applying *a combination of both* Track A and Track B. See SBC Order, ¶ 4. (“As a preliminary matter, a BOC must show that it satisfies the requirements of *either* section 271(c)(1)(A) or 271(c)(1)(B)”)(emphasis added). To allow BellSouth to mix Track A and B would to say that BellSouth both *did* and *did not* have a timely, good faith application for access and interconnection. This is simply not a plausible or legally correct reading of the Act.

Because BellSouth has received at least one request for interconnection, qualification under Track B is completely foreclosed and may not be used to fulfill any gaps in Track A. Thus, BellSouth cannot meet the requirements of section 271 through a combination of Track A and Track B.

ISSUE 2: Has BellSouth provided interconnection in accordance with the requirements of section 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *BellSouth has failed to provide interconnection with WorldCom and other carriers as is required by the Act, FCC Rules, and the applicable interconnection agreements.*

ANALYSIS AND ARGUMENT: Checklist Item 1 requires BellSouth to provide equal and nondiscriminatory interconnection so that BellSouth's and each ALEC's network can work together. "This includes joint engineering practices, administrative procedures, specific timelines for implementation of the various arrangements, joint testing procedures to verify interconnection, joint practices for resolution of issues related to interconnection, and performance measurements for each party to meet the provisioning of these arrangements." Hamman, Tr. 2640-41. BellSouth has not met this requirement either with respect to the interconnection of networks or the operational support systems ("OSS") identified by the FCC in the Ameritech order.

Extensive evidence has been presented in this case reflecting individual problems and difficulties with this and many of the other checklist items. While some of these problems have now been fixed or are promised to be fixed in the future, the Commission must recognize the correction of individual problems combined with paper promises do not result in checklist compliance. Ameritech Order, ¶55. Rather, the Commission should closely examine the nature of each actual problem and determine whether such problems reflect systematic and embedded conditions that do not or would not reflect checklist compliance. The record demonstrates that the limited actions taken do not reflect checklist compliance.

WorldCom completed its interconnection agreement with BellSouth one year ago. During this time, WorldCom has been attempting to implement its agreement, but WorldCom has not been able to complete testing, let alone real market entry, due to continuing problems from BellSouth. Indeed, WorldCom's only attempt in Florida, implementing collocation arrangements in Miami, has been replete with delays, missed dates, surprise changes, and more delays. Hearing Exh. 116, at 48;

Hearing Exh. 117, at 163A. WorldCom has been significantly hindered in its ability to startup in Florida due to BellSouth problems in Georgia with implementing remote call forwarding, firm order commitments, coordinated cutovers, and reciprocal compensation. Ball, Tr. 3376-85, 3390-92.

These WorldCom experiences with BellSouth do not reflect mere mistakes and miscues by BellSouth, but rather, ongoing internal incapability to respond, coordinate, and accomplish interconnection in a timely and efficient manner. Until such systematic problems are corrected, compliance with checklist Item 1 will be incomplete. WorldCom's experiences are entirely consistent and reflective of the experiences of the other carriers that presented evidence. Hamman, Tr. 2641-47; Strow, Tr. 2374-79; Gulino, Tr. 3128-35, 3151-55.

Finally, in addition to BellSouth failure to provide interconnection in accordance with the requirements of the Act, the Commission should also examine OSS as it relates to interconnection. As the FCC stated in the Ameritech Order, OSS provisioning is embedded in all checklist items. Ameritech Order, ¶¶ 131-132. While OSS was not identified as a subissue here, BellSouth also has not complied with its OSS obligations for interconnection. WorldCom will address all of BellSouth's OSS failings in its Analysis and Argument under Issue 3(a) below.

ISSUE 3: Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No. BellSouth has not provided nondiscriminatory access to network elements primarily due to its failure to provision the "platform" and its failure to

properly price the elements.*

ANALYSIS AND ARGUMENT: Checklist Item 2 requires BellSouth to provide nondiscriminatory access to unbundled network elements (“UNEs”) at any technically feasible point. Gulino, Tr. 3136. This requirement “includes the ability to order any one or a combination of all of the elements, to specify features, functions, and capabilities of the unbundled network elements; to be assured that billing methods are in place for each unbundled network element; and to know that BellSouth provides a means to test the elements and ensure that they work together as expected.” Hamman, Tr. 2648. BellSouth has not met this requirement.

WorldCom has not ordered UNEs from BellSouth. Ball, Tr. 3376-77. However, the experience of the other carriers, and WorldCom’s experience in Georgia and Florida, demonstrates that BellSouth has continued, systematic problems that reflect an inability to fully provision UNEs in a manner required by the Act. These problems occur primarily from BellSouth’s failure to provide the network “platform” and to properly price individual elements. Gillan, Tr. 1776-91, 1824-27, 1840-49; Wood, Tr. 1950-72; Gulino, Tr. 3137-3140; Strow, Tr. 2379-82; Falvey, Tr. 2287-89; Hamman, Tr. 2647-2655; Ball, Tr. 3392; Ameritech Order, ¶160. BellSouth’s assertions that it can provision or will be able to provision UNEs cannot overcome these real-world ongoing problems. Hamman, Tr. 2688-2692; Ameritech Order, ¶¶55, 160.

ISSUE 3(a): Has BellSouth developed performance standards and measurements? If so, are they being met?

SUMMARY OF POSITION: *No. BellSouth has not developed or produced any statistically valid performance measurements that demonstrate that the proposed operational support

systems (“OSS”) meet the requirements of the Act.*

ANALYSIS AND ARGUMENT: BellSouth’s OSS may be the single most important issue in its section 271 request. For even if BellSouth can make available every item on the checklist in the manner required by the Act, if ALECs do not have the ability to conduct timely and efficient preordering, ordering, maintenance, testing, and repair in the same manner as BellSouth, then customers will be frustrated and defeated in their efforts to try or switch local carriers. Ball, Tr. 3366-67. As Mr. Ball testified, “unless WorldCom and [BellSouth] get the process working correctly, WorldCom will be out of the marketplace before we can even start.” Ball, Tr. 3375. Quite simply, BellSouth’s OSS must work as well for the ALECs as it works for BellSouth. Ameritech Order, ¶130.

OSS involves two issues: the systems themselves and the empirical performance and measurement standards to ensure that BellSouth’s OSS complies with the requirements in the Act. The FCC has determined that it is not necessary for BellSouth to furnish each checklist item. Ameritech Order ¶¶111-15. However, until OSS is fully operational and compliant, there can not be compliance with any checklist item. Ameritech Order, ¶113, 132. And such OSS provisioning must sufficiently support all three modes of competitive entry established by the Act: interconnection, UNEs, and resale. Ameritech Order, ¶133.

A. OSS

BellSouth has proposed several different systems for preordering and ordering that are both different from the BellSouth systems and do not provide the same functionality and ease of use as the BellSouth systems.

Preordering. BellSouth is proposing its LENS system for ALECs, when BellSouth uses for itself RNS (for residential) and DOE (for business). Problems with LENS include:

1. LENS is a preordering-only system for ALECs. BellSouth's RNS and DOE combine preordering and ordering into a seamless ordering process. Calhoun, Tr. 1220, 1231.
2. Some services can be ordered through LENS, but they require manual entry in the comments fields. BellSouth, on the other hand, does not have this limitation. Calhoun, Tr. 1244.
3. With LENS, a telephone number must be ordered even with an unbundled loop. BellSouth does not have this requirement. Calhoun, Tr. 1241.
4. LENS does not retrieve all information from the BellSouth database, such as credit history or detailed billing, although such information is available to BellSouth service representatives; and the PSC specifically ordered BellSouth to provide such information to the ALECs. Calhoun, Tr. 1272.
5. The PIC codes on LENS cannot be easily or directly accessed if the customer requests a specific carrier. BellSouth does not have this problem. Calhoun, Tr. 1290-91.
6. Each service on the LENS service list cannot be ordered on EDI. Calhoun, Tr. 1295-96.
7. None of the information obtained from LENS can be electronically transferred to an EDI -- it must be manually written down then retyped into an EDI order. Calhoun, Tr. 1293.
8. LENS must validate the customer's address for each function. BellSouth does not have these extra steps. Calhoun, Tr. 1287-88, 1300.

9. The installation schedule screen on LENS does not list the days not available in chronological order nor does it list the first available day, as does RNS for BellSouth. Calhoun, Tr. 1310.

10. A LENS user cannot view a completed order before sending. Calhoun, Tr. 1319-20.

11. A LENS user cannot view a pending order. Calhoun, Tr. 1320.

12. A LENS user cannot make changes to a pending order. Calhoun, Tr. 1320.

13. A LENS user cannot make a change to an existing ALEC service. Calhoun, Tr. 1320.

14. The LENS users guide has not been updated with each update to the LENS system. Calhoun, Tr. 1333.

15. LENS is limited to reserving 6 numbers at a time, whereas BellSouth can reserve up to 100 numbers. Calhoun, Tr. 1351-53.

16. LENS does not support the ordering of any complex services, which must be done manually. Calhoun, Tr. 1232, 1244-45.

17. There is no automatic entry or data check with LENS as there is with RNS/DOE. Calhoun, Tr. 1267-70.

Ordering. BellSouth is proposing EDI as the ordering interface for ALECs, when BellSouth uses for itself RNS (for residential) and DOE (for business). While BellSouth constantly recited that EDI was the industry standard interface for ordering, it nevertheless fails to meet the standards in the Act. Problems with EDI include:

1. EDI permits the ordering of an unbundled loop or an unbundled port, but EDI won't allow these two to be combined. Calhoun, Tr. 1234-35.
2. EDI permits the mechanized ordering of only 30 services; all others must be ordered manually. Calhoun, Tr. 1233, 1236.
3. More services are available through RNS than are available to be ordered by ALECs through EDI. Calhoun, Tr. 1247-48; Exh. 43, at 382R, 384-386.
4. EDI does not support the ordering of complex services, they must be done manually. Calhoun, Tr. 1236.
5. An EDI due date must first be obtained from the separate LENS system for orders requiring a premises visit. BellSouth does not have this problem for itself. Calhoun, Tr. 1328-29.
6. There is no automatic entry or data checking with EDI as there is with RNS/DOE. Calhoun, Tr. 1265-67.
7. Order rejections are done manually, whereas such notifications is given electronically for BellSouth. Calhoun, Tr. 1267-70.

Conclusion

The process of establishing a workable OSS has begun, but it is still far from being in compliance with the Act. Until BellSouth's OSS works as seamlessly and effortlessly as BellSouth's own interfaces, BellSouth's OSS for ALECs will not be in compliance with the Act.

B. Performance and Measurement Standards

BellSouth's witness Mr. Stacy acknowledged during his summary that BellSouth's

performance measures are “just a starting point.” Stacy, Tr. 1537. However, BellSouth cannot justify the lack of empirical, tested, and fully implemented standards merely by claiming that BellSouth measures are part of an evolving and changing process. Stacy, Tr. 1537-38. Actual, real world, commercial experience is necessary or at least working carrier-to-carrier testing. Ameritech Order ¶161.

As Mr. Ball testified:

Statistically-valid empirical measurement data such as those that I describe are necessary for BellSouth to demonstrate compliance with the requirement that it provide nondiscriminatory access to competing carriers. It is simply not possible for BellSouth or any other ILEC to demonstrate compliance without such empirical data.

Ball, Tr. 3382-83.

While the standards may indeed evolve over time, a snapshot of those standards at any one point in time should reflect empirical, quantifiable measures that are valid for that point in time. The measures BellSouth has proposed at this time do not meet such standards. Accordingly, the Commission should approve those proposed by the Local Competition Users Group (“LCUG”). Pfau, Tr. 2154-96; Ball, Tr. 3381-84. Exh. 115 (RWM-2); Exh. 116, at 18-21, 69-70.

ISSUE 4: Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No. BellSouth has not provided nondiscriminatory access due to its failure to have methods and procedures in place that permit access to these items.*

ANALYSIS AND ARGUMENT: Checklist Item 3 requires BellSouth to provide nondiscriminatory access to poles, ducts, conduits, and right-of-ways owned or controlled by BellSouth. While WorldCom has not yet obtained such access pursuant to the Act, the record establishes that BellSouth has not yet implemented the access required by this item. Hamman, Tr. 2650. Thus, until the required methods and procedures can be tested and implemented, BellSouth has not demonstrated compliance with this checklist item.

ISSUE 5: Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No. BellSouth has not yet provided unbundled local loop transmission due to continued provisioning and conversion problems. In addition, the unbundled loop prices do not meet the requirements of the Act.*

ANALYSIS AND ARGUMENT: This checklist item requires the provisioning of unbundled local loops separate from local switching or other services. Hamman, Tr. 2659. As several parties testified, BellSouth has not provided, and is nowhere near fulfilling, the requirements of the Act for this item.

WorldCom has been attempting to start up a local loop pilot test in Miami that has been delayed for numerous months. Ball, Tr. 3411-12; Exh. 117, at 7, 43-46. Moreover, in Georgia

BellSouth has had numerous problems with the provisioning of unbundled local loops that still continue. Ball, Tr. 3377-79; Exh. 116, at 8-11, 48-50. WorldCom's experiences are shared by those other carriers that have attempted to utilize unbundled local loops. Falvey, Tr. 2260-67, 2289 - 90; Strow, Tr. 2384-85; Hamman, Tr. 2656-62; Gulino, Tr. 3140-41. Without coordinated cutovers and full, timely compliance with scheduled conversions by BellSouth, conversions will be missed or delayed, all at the expense of WorldCom or the other affected carrier and not to BellSouth. Ball, Tr. 3378-79.

Finally, the unbundled local loop prices set in the arbitrations do not comply with the Act even though they were set as permanent rates. Here, the problem is the lack of geographic deaveraged rates and prices based upon the wrong cost study methodology. Wood, Tr. 1964-69. Accordingly, the price for the unbundled local loop must be reset before there can be full compliance with the Act.

ISSUE 6: Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No. BellSouth has not yet provided unbundled local transport as required by the Act and applicable rules.*

ANALYSIS AND ARGUMENT: This checklist item requires that BellSouth make available to carriers the means to transport calls throughout the local calling area on a dedicated or common transport basis. Hamman, Tr. 2662. BellSouth has not yet provided unbundled local

transport as required by the Act and applicable rules. BellSouth's compliance with this checklist item remains incomplete. Falvey, Tr. 2289; Hamman, Tr. 2662-64; Gulino, Tr. 3141-44.

ISSUE 7: Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No. BellSouth has not yet provided unbundled local loop transmission as required by the Act and applicable rules.*

ANALYSIS AND ARGUMENT: This checklist item requires BellSouth to provide nondiscriminatory access to local switching on an unbundled network element. Hamman, Tr. 2665. BellSouth's compliance with this checklist item remains incomplete. Hamman, Tr. 2664-67; Gulino, Tr. 3144-45.

ISSUE 8: Has BellSouth provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:

ISSUE 8(a): 911 and E911 services;

SUMMARY OF POSITION: *No, BellSouth has not yet provided nondiscriminatory access to 911 and E911 as required by the Act.*

ANALYSIS AND ARGUMENT: As WorldCom testified, one of the most important aspects of network interconnection is ensuring that 911 service is properly configured and operational. In some cases, BellSouth's historic monopoly provider relationship to the PSAPs has led to unique *BellSouth-PSAP interconnection arrangements* that are not always the most efficient

for new entrant local providers who also attempt to interconnect with the PSAPs. In such cases, close cooperation between BellSouth, the new entrant, and the PSAP administrators is critical. Unfortunately, in South Florida, where WorldCom has needed an extra measure of BellSouth cooperation, BellSouth has not provided all of the assistance WorldCom needs to complete its WorldCom's connections to the PSAPs. Ball, Tr. 3376-77, 3404-05, Exh. 117, at 29-34. Until BellSouth has fully and cooperatively worked through such issues with WorldCom, BellSouth has not complied with the nondiscriminatory provisions of this checklist item.

ISSUE 8(b): directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and,

SUMMARY OF POSITION: *No, BellSouth has not yet provided nondiscriminatory access to directory assistance services as required by the Act due to its failure to properly brand calls.*

ANALYSIS AND ARGUMENT: This checklist item requires BellSouth to provide nondiscriminatory access to directory assistance services on terms and conditions that are offered equally to all requesting carriers and, where applicable, they must be equal to the terms and conditions under which BellSouth provisions directory assistance service to itself. Hamman, Tr. 2668.

The primary problem today is BellSouth's continued failure to brand directory assistance calls originating calls on ALEC lines with the name of the ALEC carrier, either because the call is branded with BellSouth or no carrier at all. Hamman, Tr. 2669. Until BellSouth properly brands ALEC calls or stops branding its own calls, it cannot meet this checklist item.

ISSUE 8(c): operator call completion services?

SUMMARY OF POSITION: *No, BellSouth has not yet provided nondiscriminatory access to operator call completion services as required by the Act due to its failure to properly brand calls.

ANALYSIS AND ARGUMENT: This checklist item requires BellSouth to provide nondiscriminatory access to operator call completion services on terms and conditions that are offered equally to all requesting carriers and, where applicable, they must be equal to the terms and conditions under which BellSouth provisions operator call completion service to itself. Hamman, Tr. 2668.

The primary problem today is BellSouth's continued failure to brand operator call completion calls originating calls on ALEC lines with the name of the ALEC carrier, either because the call is branded with BellSouth or no carrier at all. Hamman, Tr. 2669. Until BellSouth properly brands ALEC calls or stops branding its own calls, it cannot meet this checklist item.

ISSUE 9: Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to section 271(c)(2)(B)(viii) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No, BellSouth has not met its burden of proof.*

ANALYSIS AND ARGUMENT: None of the ALECs provided any testimony or other evidence about BellSouth's compliance with this checklist item. Since BellSouth has the burden of proof on each and every checklist item, resolution of this issue appears premature at this time due

to the lack of experience or evidence.

ISSUE 10: Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No, BellSouth has not provided nondiscriminatory access to telephone numbers as required by the Act due to the failure of BellSouth's electronic interfaces used for telephone number assignment.*

ANALYSIS AND ARGUMENT: This checklist item requires BellSouth to provide nondiscriminatory access to telephone numbers for assignment to ALEC customers until telecommunications numbering administration guidelines, plans, or rules are established, after which date BellSouth must comply with such guidelines. Hamman, Tr. 2670.

WorldCom has not yet requested this service, although this is addressed by its interconnection agreement with BellSouth. However at this time, number assignments to other requesting carriers are not fully provided in a nondiscriminatory manner primarily because of the failure of BellSouth's electronic interfaces to assign telephone numbers in a nondiscriminatory manner. Hamman, Tr. 2670. See further WorldCom's discussion under Issue 3(a).

ISSUE 11: Has BellSouth provided nondiscriminatory access to databases and associated signaling necessary for call routing and completion, pursuant to section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No, BellSouth has not provided nondiscriminatory

access to databases and associated signaling because BellSouth has not provided the methods and procedures that show nondiscriminatory access.*

ANALYSIS AND ARGUMENT: Checklist Item 10 requires BellSouth to provide nondiscriminatory access to databases and associated signaling technologies that are necessary for call routing and completion. Hamman, Tr. 2670. This unbundled signaling and database access enables an ALEC to originate and complete calls between the BellSouth network and the ALEC network in the same fast, efficient manner as BellSouth would originate and terminate its own calls over the BellSouth network. As Mr. Hamman testified, BellSouth still has not provided the methods and procedures that show nondiscriminatory access. Hamman, Tr. 2671.

ISSUE 12: Has BellSouth provided number portability, pursuant to section 271(c)(2)(b)(xi) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No, BellSouth has not provided number portability as is required by the Act due to its reciprocal compensation problems for RCF calls and the inability to properly provision interim number portability.*

ANALYSIS AND ARGUMENT: The number portability required by Checklist Item 11 includes interim number portability (“INP”) solutions until permanent number portability is implemented. Since permanent number portability is not yet available, BellSouth “must provide interim number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functionality, quality, reliability, and convenience as possible.” Hamman, Tr. 2672.

While WorldCom has not yet implemented service in Florida pursuant to its interconnection

agreement with BellSouth, in other states BellSouth has not properly compensated WorldCom for toll calls. "This is because the call record that WorldCom ultimately receives on any call to an INP number [that is] associated with the forwarded local call from the ILEC end office rather than the record that reflects the actual origination point of the call — a record that is lost when the remote call forwarding occurs." Ball, Tr. 3379.

In addition to WorldCom's problems, other carriers have experienced additional difficulties with interim number portability. These problems include scheduling and postponement of cutovers, unnecessarily lengthy cutover times, the failure to provide needed interim number portability solutions that meet customer needs and better conserve number, and the lack of methods and procedures to provide INP. Gulino, Tr. 3155-58; Hamman, Tr. 2672-76. Until all of these problems are resolved, and INP works transparently and properly, this checklist item will not be met.

ISSUE 13: Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No, BellSouth has not provided nondiscriminatory access due to BellSouth's failure to timely, properly, and consistently implement numbers and codes.*

ANALYSIS AND ARGUMENT: Checklist Item 12 requires BellSouth to have fully

implemented the dialing parity requirements of the Act. As Mr. Gulino testified, BellSouth has not been able to consistently and timely implement numbers and NXX codes in a manner that permits true dialing parity for ALEC customers. Gulino, Tr. 3147-51. Until BellSouth can timely, properly, and consistently fulfill its dialing parity obligations, this checklist item will remain unfulfilled.

ISSUE 14: Has BellSouth provided reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No, BellSouth has not properly fulfilled its reciprocal compensation obligations due to its failure to compensate on toll calls where INP is involved and its unilateral decision to withhold compensation on local calls to ISPs.*

ANALYSIS AND ARGUMENT: Checklist Item 13 requires that BellSouth must provide reciprocal compensation arrangements that permit the mutual and reciprocal recovery of each carrier's costs associated for the transport and termination of calls on the basis of costs that are a reasonable approximation of the additional cost of terminating such calls. Hamman, Tr. 2676.

As Mr. Ball testified, WorldCom has an interconnection agreement with BellSouth that provides for reciprocal compensation, and yet BellSouth has failed to fulfill this obligation in two different ways.

First, BellSouth has not compensated WorldCom for interLATA calls that are terminated to WorldCom through BellSouth-provided interim number portability. Essentially, the call record BellSouth sends to WorldCom treats the originating point of the call as the end office where the

interim number portability occurs rather than the actual origination point of the call. Ball, Tr. 3379, 3397. There has been no information from BellSouth as to when this problem will be corrected.

The second problem is shared by WorldCom and all other ALECs: BellSouth has unilaterally announced that it will no longer reciprocally compensate ALECs for local dialed calls that terminate to an information services provider ("ISP"). Varner, Tr. 335-43; Milner, Tr. 949-52; Kouroupas, Tr. 3526-27; Ball, Tr. 3397, Hearing Exh. 17. This type of conduct by BellSouth and the manner in which it was done (a blanket memorandum to all carriers), suggests that BellSouth may well have breached every one of its interconnection agreements. Ball, Tr. 3397. Such action also seriously calls into question BellSouth's commitment to fulfilling its interconnection agreements. BellSouth's position on refusing to compensate for locally dialed telephone numbers plainly violates the express language of both its interconnection agreement with WorldCom and the language in the SGAT, which provide for reciprocal compensation for "Local Traffic." Exh. 117, at 68 (Section 1.41); Exh. 125, Section I.A; ; Milner, Tr. 949-52.¹

ISSUE 15: Has BellSouth provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

SUMMARY OF POSITION: *No. BellSouth has not provided services for resale in accordance with the Act.*

¹While not a part of the record, in its recent reciprocal compensation payment received last week BellSouth reduced the level of compensation paid to WorldCom on the basis of this letter.

ANALYSIS AND ARGUMENT: Checklist item 14 requires BellSouth to offer for resale non-carrier services without unreasonable or discriminatory conditions or limitations at prices that exclude marketing, billing, collection, and other avoided costs. BellSouth has placed a great deal of emphasis upon the ease with which it is permitting carriers to resell BellSouth's services. However, as the record makes clear, BellSouth's systems for resale must be fully and completely operational, and they are not. Moreover, the full availability of resale alone neither makes for a competitive market nor makes BellSouth completely checklist compliant.

The Act establishes three different avenues for competitive entry and use of one's own facilities, the use of BellSouth's unbundled network elements, and the resale of BellSouth's network. Ameritech Order, ¶ 133. Entry via resale is considered by many to be the most immediate form of competitive entry, although the goals of the Act are to be more likely realized through entry using unbundled network elements and facilities competition as these two routes better mimic BellSouth's interLATA options and will more likely promote price competition. Gillan, Tr. 1774, 76, 1832-37, 1842-43. Nevertheless, the record proves that resale entry has been delayed by BellSouth's actions.

WorldCom has planned to use resale as one of its strategies for local competition. However, WorldCom's alpha test has been delayed from June to maybe September/October. Ball, Tr. 3402-03; Hearing Exh. 117, at 55. Thus, WorldCom's experiences with resale with BellSouth is not positive. Several of the other carriers have had similar problems in beginning even resale trials. Finally, the carrier that has had perhaps the most extensive experience with resale, ICI, reports numerous problems with BellSouth's resale offerings. Moreover, being able to offer complex services resale pose even greater hurdles. Strow, Tr. 2382-84; Chase, Tr. 3045-66, 3077-79.

ISSUE 15(a): Has BellSouth developed performance standards and measurements?

If so, are they being met?

SUMMARY OF POSITION: *No. BellSouth has not developed or produced any statistically valid performance measurements that demonstrate that the proposed operational support systems ("OSS") meet the requirements of the Act.*

ANALYSIS AND ARGUMENT: The performance standards and measurement issues associated with resale are the same as those associated with UNEs and all other checklist items. Accordingly, WorldCom incorporates and adopts the analysis and argument it presented at Issue 3(a) above.

ISSUE 16: By what date does BellSouth propose to provide intraLATA toll dialing parity throughout Florida pursuant to section 271(e)(2)(A) of the Telecommunications Act of 1996.

SUMMARY OF POSITION: *BellSouth must meet its burden of proof that intraLATA toll dialing parity will be implemented as required by the Act.*

ANALYSIS AND ARGUMENT: The Act requires intraLATA toll dialing parity no later than the date at which it is granted interLATA authority. BellSouth must meet its burden of proof on this issues.

ISSUE 17: If the answer to issues 2-15 is "yes", have those requirements been met in a single agreement or through a combination of agreements?

SUMMARY OF POSITION: *BellSouth has not met he requirements of each and every checklist item and each's OSS obligations, so resolution of this issue is unnecessary.

However, the evidence indicates that BellSouth has not met the requirements through a single agreement, but it may meet the requirements through a combination of agreements.*

ANALYSIS AND ARGUMENT: BellSouth has not met the requirements of the 14-point checklist, so resolution of this issue is unnecessary. However, to the extent this issue may be relevant, BellSouth may meet the checklist through more than one agreement. The portion of the 1996 Telecommunications Act relating to the competitive checklist states that access and interconnection provided by a Bell Operating Company (“BOC”) to other carriers meets the requirements of the subsection if “such access and interconnection includes each of the following [checklist items] . . .” 47 U.S.C. section 271(c)(2)(B). On its face, the language suggests that “such access and interconnection” suggests one agreement, and “each” reveals that every checklist item must be satisfied. However, a closer reading of the section suggests that access and interconnection refers to one or more agreements, and the FCC has determined that every checklist item need not be satisfied to meet the requirements of the section.

The FCC concluded that Congress did not intend to require a petitioning BOC to be furnishing each checklist item to satisfy the checklist requirements. The FCC reasoned that to require a BOC to furnish each item for qualification would provide an incentive for potential local exchange competitors to refrain from purchasing network elements to delay BOC entry into the market. *Id.* Further, a potential competitor may not want to purchase all the checklist items in every state. *Ameritech Order*, ¶ 111.

The FCC in the *Ameritech* defined the term “providing” liberally. Under certain circumstances, a BOC could be “providing” a checklist item without any competitor using that item.

To be "providing" a checklist item, a BOC must have a concrete and legal obligation to furnish the item upon request, and be prepared to furnish each item at acceptable levels of quantity and quality.

Ameritech Order, ¶ 110. In the case of unfurnished checklist items, the Commission must make a predictive judgment to determine whether a petitioning BOC would actually furnish the requested checklist item on demand. Ameritech Order, ¶ 113.

The Ameritech Order decision supports the notion that BellSouth need not meet every checklist item in a single agreement to meet the checklist requirements; some of the items need not be furnished at all. Thus, a single agreement without all the checklist items may be sufficient satisfy the requirements of the subsection, and additional agreements that might fill those gaps appear consistent so long as in the aggregate BellSouth is capable of providing each and every item. On the basis of this record, it is not.

ISSUE 18: Should this docket be closed?

SUMMARY OF POSITION: *The docket should be closed upon the conclusion of this proceeding. Any subsequent request for section 271 authority should be addressed in a new docket.*

ANALYSIS AND ARGUMENT: At the conclusion of this proceeding the docket should be closed. If the Commission finds, as WorldCom has presented in this brief, that BellSouth has not met the requirements of Track A and Track B, the docket should still be closed. If at a later date, BellSouth wishes to attempt to prove that it then complies with Track A and/or B, then a new docket should be opened for that investigation in which case BellSouth would submit the evidence it believes at that time supports its request. A new docket for a subsequent request is better than

continuing this docket in order to focus the evidentiary record on only those items presented in that new proceeding.

Dated this 23rd day of September, 1997.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of WorldCom, Inc. and Metropolitan Fiber Systems of Florida, Inc. Posthearing Brief in Docket No. 960786-TL have been served upon the following parties by U.S. Mail this 23rd day of September, 1997:

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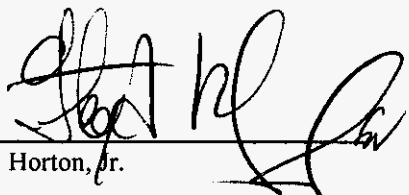
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