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BellSouth Telecommunications, Inc.
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November 18, 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 No. 971399-TP Lifting of Marketing Restrictions
Imposed by Order No. PSC-96-1569-FOF-TP**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response and Opposition to Joint Motion to Dismiss, which we ask that you file in the above-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,

Nancy B. White (ke)

Nancy B. White

ACK _____

AFA _____

APP _____

CAF _____

CMU _____

CTR _____

EAG _____

LEG _____

1 NBW/vf

STP _____

cc: All parties of record

A. M. Lombardo

R. G. Beatty

1 William J. Ellenberg II

WAS _____

OTH _____

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CERTIFICATE OF SERVICE
Docket No. 971399-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
by U.S. Mail this 18th day of November, 1997 to the following:

Staff Counsel
Florida Public Service Commission
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Atty. for MCI

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Attys. for FCCA
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Marsha Rule
AT&T Communications of the
Southern States, Inc.
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Brian Sulmonetti, President
Florida Competitive Carriers Assoc.
1515 South Federal Highway
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Nancy B. White (kr)
Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth) Docket No.: 971399-TP
Telecommunications, Inc. to Lift)
Marketing Restrictions Imposed)
By Order No. PSC-96-1569-FOF-TP)
_____) Filed: November 18, 1997

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE AND OPPOSITION TO
JOINT MOTION TO DISMISS**

BellSouth Telecommunications, Inc., ("BellSouth"), pursuant to 25-22.033, Florida Administrative Code, hereby files its Response and Opposition to the Joint Motion to Dismiss filed by the Florida Competitive Carriers Association ("FCCA"), MCI Telecommunications Corporation ("MCI"), and AT&T Communications of the Southern States ("AT&T"). In support thereof, BellSouth states the following:

1. On October 21, 1997, BellSouth filed its Petition to Lift the Marketing Restrictions Imposed by Order No. PSC-96-1569-FOF-TP. On November 10, 1997, the Joint Movants filed a Motion to Dismiss BellSouth's Petition, alleging the BellSouth was merely seeking reconsideration of the Florida Public Service Commission's ("Commission") original Orders No. PSC-96-1569-FOF-TP and No. PSC-97-0518-FOF-TP. This contention of the Joint Movants is wholly without merit and should be denied.

2. The standard of review to be applied in considering the Joint Motion to Dismiss is to review BellSouth's Petition in the light most favorable to BellSouth. As stated by the Court in Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993), "the function of a motion to dismiss is to raise as a question of law the sufficiency of the facts alleged to state a cause of action." The issue becomes, whether, with all

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allegations in the petition assumed to be true, the petition states a cause of action for which relief may be granted. Id.

3. The purpose of the restrictions was to increase customer awareness regarding the availability of various intraLATA toll carriers, as well as to allow time for the major interexchange carriers to establish themselves in the intraLATA market. (Order No. PSC-96-1569-FOF-TP, pgs. 6, 8, and 9). BellSouth's Petition states facts that show this purpose has been served and that circumstances have changed.

4. Joint Movants reliance on the doctrine of "administrative finality" is misplaced. BellSouth is not seeking reconsideration of the Commission's original Order; BellSouth is making a factual showing that the situation has changed earlier than the Commission originally anticipated. Even the case relied upon by the Joint Movants, Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 339 (Fla. 1966) acknowledges that modification of an earlier order may be made after proper notice and hearing, "upon a specific finding based on adequate proof that such modification . . . is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified." BellSouth is certainly not asking this Commission to life the restrictions arbitrarily, but rather is prepared to prove its case at hearing.

5. BellSouth has cited data in its Petition to support the lifting of the restrictions. In the Motion, Joint Movants apparently criticize the use of recent data.

This is quite bewildering to BellSouth. BellSouth believes that this data will be useful to the Commission in this docket. BellSouth has tracked over fifteen months of data on existing customers and eight months of data on new customers. BellSouth is not seeking to prove the market shares of interexchange carriers or local carriers. BellSouth is seeking to show that the goal of the Commission in rendering the original Order has been met; intraLATA toll competition is thriving in Florida.

6. Curiously, the Joint Movants in a footnote, threaten that, if their Motion is not granted, they should receive a de novo review of the issues. No authority is cited for this contention. If such a review is granted, then truly the doctrine of administrative finality is turned on its head. The Joint Movants are free to argue that the restrictions should not be lifted, but have absolutely no basis upon which to argue that the original 18 month imposition of those restrictions was inadequate, People's Gas System v. Mason, 187 So. 2d 335 (Fla. 1966).

WHEREFORE, BellSouth requests that the Joint Motion to Dismiss be denied.

Respectfully submitted this 18th day of November, 1997.

Robert G. Beatty (kr)

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