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December 15, 1997

VIA HAND DELIVERY

Ms. 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

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association, AT&T Communications of the Southern States, Inc. and MCI Telecommunications Corporation (Intervenors), this letter is written in response to the letter of BellSouth Telecommunications, Inc., sent to you on December 4, 1997. While the ostensible purpose of BellSouth's letter is to inform you that BellSouth does not intend to file a motion for reconsideration of Order No. PSC-97-1459-FOF-TL in the above docket, the letter goes far beyond that purpose and inappropriately deals substantively with the Commission's final order in anticipation of a future § 271 proceeding.

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As a preface to its response, Intervenors note that the Commission's order in this case is final. BellSouth cannot suggest that the Commission change its findings due to extra-record correspondence. Nonetheless, Intervenors feel it necessary to respond to the erroneous assertions made in BellSouth's letter.

BellSouth first complains that the Commission's requirement that BellSouth provide a pre-ordering interface that is integrated with EDI is not required by the Telecommunications Act of 1996. However, as the Commission noted in its Final Order, the Act requires BellSouth to provide competitors with nondiscriminatory access to OSS. As the Commission recognized, while BellSouth's internal processes permit its own orders to flow through downstream systems and generate a mechanized order, orders placed by competitors drop out of the system and must be processed manually. As the Commission found, this is not parity.

Similarly, BellSouth criticizes the Commission's finding that BellSouth must offer TAFI in a way that allows an ALEC to integrate it with their own OSS. Again, since BellSouth already has this ability, as the Commission found, BellSouth must provide such capability to competitors. It has not done so. Additionally, despite BellSouth's claims that it is "undisputed" that competitors have access to TAFI as BellSouth does, this claim is very much in dispute. As the Commission found, BellSouth has not complied with the Act in this area.

BellSouth also complains about the Commission's findings in the area of performance measures and takes issue with the requirement that BellSouth must provide statistically valid commercial usage data for many of the measurements. First, in charging that ALECs are attempting to gain in § 271 proceedings performance measures they have not received in federal rulemaking, BellSouth is attempting to ignore the record of Docket No. 960786-TL and to revise history. It was precisely because BellSouth and other RBOCs were unwilling or unable to provide meaningful performance data that ALECs were compelled to undertake initiatives designed to develop standards and measurements capable of gauging parity. As recognized by the Commission, citing the FCC Ameritech order, BellSouth has the burden to demonstrate the nondiscriminatory provision of UNEs, resale and access to OSS through commercial empirical data. The performance measures suggested by competitors go a long way toward an analysis of whether the nondiscrimination standards of the Act are met.

Twice in its letter, BellSouth alludes to its plan to refile its Statement of Generally Available Terms and Conditions (SGAT) in a manner that implies it sees a nexus between the SGAT to be refiled and its desire to enter the interLATA market. The implications require two responses.

The first implication is that if and when the Commission approves a refiled SGAT, BellSouth will be able to enter the interLATA market. So that it is clear that they do not acquiesce to this portion of the order, Intervenors believe, and will assert at the appropriate time, that the Commission's preliminary conclusion that BellSouth may show the availability of an item by means of an approved SGAT conflicts with its separate conclusion that Tracks A and B are mutually exclusive as a matter of law. More importantly, however, is the Commission's statement that -- even if an approved SGAT is allowed to play a role in BellSouth's § 271 requests -- the analysis of BellSouth's compliance would not end there. BellSouth must show that each item is functionally available in any event. To make such a showing, BellSouth would have to offer appropriate evidence that goes beyond producing an approved SGAT.

The second SGAT-related implication in the letter is that BellSouth may again refile its SGAT with, or following, the filing of a petition for a determination that it has satisfied the § 271 Checklist. Even if the Commission determines that the SGAT is related to BellSouth's next § 271 request, the Commission should insist that BellSouth file and process its proposed SGAT in a separate § 252 proceeding prior to the filing of the § 271 case. Section 252(g) (Consolidation of State Proceedings) makes it clear that a § 271 proceeding may not be consolidated with an SGAT proceeding.

In Docket No. 960786-TL, the Commission allowed BellSouth to place the cart before the horse. This reversal created a cumbersome and unwieldy procedure, as parties were forced to litigate against "drafts" and the Commission ultimately tacked a PAA onto its final order to deal with the procedural snarl. There is no reason -- other than BellSouth's haste -- to depart from the logical and orderly sequence contemplated by the Act.

Finally, BellSouth correctly states in its letter that it cannot supplement the hearing record in this proceeding. However, it then goes on to "report" certain "developments" to the Commission which directly contravene record evidence. As to those points, Intervenors will simply state that in any future proceeding, BellSouth has the burden to prove that it has met all the requirements necessary for § 271 relief. It cannot do that through unproven, extra-record correspondence to the Commission.

Sincerely,

Joseph A. McGlothlin
Vicki Gordon Kaufman
Florida Competitive Carriers Association

Marsha Rule
AT&T of the Southern States, Inc.

Thomas K. Bond
Richard D. Melson
MCI Telecommunications Corporation

VGK/pw
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cc: All Parties of Record