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Jim Lamoureux  
Senior Attorney  
Law and Government Affairs  
Southern Region  
jlamoureux@att.com

Promenade 1  
1200 Peachtree Street N.E.  
Atlanta, GA 30309  
404 810 4196  
FAX: 404 877 7648

September 7, 2001

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

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COMMISSION  
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Dear Mrs. Bayo:

RE: Docket No. 960786-TL

Enclosed please find the original and 15 copies of AT&T Communications of the Southern States, Inc.'s Responses to Staff's Recommendation Concerning BellSouth's Motion to Strike. Please stamp the extra copy provided and return for our files.

Thank you and please contact the undersigned if there are any questions regarding this matter.

Sincerely,

James P. Lamoureux

Enclosures

cc: Parties of Record

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 5
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- ECR \_\_\_\_\_
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Consideration of BellSouth Telecommunications, )  
Inc.'s entry into interLATA services pursuant to ) Docket No. 960786-TL  
Section 271 of the Federal Telecommunications )  
Act of 1996. ) Filed: September 7, 2001

**AT&T'S RESPONSE TO STAFF'S RECOMMENDATION  
CONCERNING BELLSOUTH'S MOTION TO STRIKE**

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AT&T Communications of the Southern States, Inc., AT&T Broadband Phone of Florida, LLC, and TCG South Florida, Inc., (collectively, "AT&T") hereby submit this Response to Staff's Recommendation Concerning BellSouth's Motion to Strike.

Based on prior decisions of the Hearing Officer in this proceeding, AT&T understood that Operational Support System ("OSS") issues would be addressed in the non-hearing track portion of this docket, which includes the ongoing third party testing of BellSouth's OSS. Accordingly, Intervenors' Response to BellSouth's Motion to Strike explained that the references to OSS in the testimony of AT&T and other ALECs does not address the functionality of BellSouth's OSS, but addresses the experience of ALECs in the marketplace as they attempt to obtain nondiscriminatory access from BellSouth to the various items in the fourteen point checklist in section 271 of the Act. Thus, the testimony BellSouth has proposed to strike is not OSS testimony subject to the limitation established by the Hearing Officer.

AT&T and other ALECs have now learned that Staff's interpretation of the term "OSS", and thus the sweep of what Staff believes should not be considered in the 271 hearing, is far broader than initially understood. Indeed, AT&T now understands that Staff, based on its restricted view of the scope of the hearing, supports striking not only the testimony that

BellSouth moved to strike, but also additional testimony submitted by intervenors as well as testimony submitted by BellSouth.<sup>1</sup>

Specifically, Staff believes that the hearing in this matter and thus the pre-filed testimony should be limited to: (1) what checklist items BellSouth offers to ALECs; (2) how BellSouth proposes to offer those checklist items; and (3) the terms and conditions on which BellSouth offers those items. All other matters, including actual real-world efforts by ALECs in the marketplace to obtain nondiscriminatory access to checklist items from BellSouth would be excluded from the hearing. Thus, in its Memorandum, Staff proposes to strike testimony that is clearly not OSS testimony. Under Staff's restricted view, for example, BellSouth's actual ability to provide "hot cuts" to AT&T in Florida would be excluded. AT&T respectfully requests that the Hearing Officer reject this overly narrow interpretation of what is included in the hearing track of this proceeding. Not only is it inconsistent with the Hearing Officer's prior decisions, which excluded only discussion of OSS from the hearing, but it also unduly restricts the Commission's ability to hear crucial evidence of BellSouth's ability to provide ALECs the nondiscriminatory access required by the Act.

Indeed, the hearing in this matter should not be truncated as Staff suggests, and the ALECs should not be prevented from offering testimony about their experience in the marketplace and the difficulties they are having in obtaining checklist items from BellSouth. Further, ALECs should not be precluded from cross-examining BellSouth's witnesses as to their assertions about BellSouth's performance in the marketplace. While Staff suggests that ALECS

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<sup>1</sup> In its August 31, 2001, Memorandum, Staff proposes to strike most of the remaining testimony not already addressed by BellSouth in its own Motion to Strike. In effect, Staff has submitted a supplemental Motion to Strike in addition to what BellSouth had already filed.

should be permitted to submit such information as “comments” in the non-hearing track of this docket, such submissions will not be as effective as a full evidentiary hearing in helping the Commission get to the truth as to BellSouth’s compliance with the 14 point checklist. Even if the third-party test, when complete, establishes that BellSouth’s *systems* are *capable* of providing nondiscriminatory access, evidence—and the review of such evidence in a hearing—may reveal that BellSouth nonetheless *uses* those systems (or fails to use those systems) in a manner so as to deny that access to ALECs or that BellSouth’s performance with respect to the 14 point checklist is nonetheless inadequate and discriminatory.

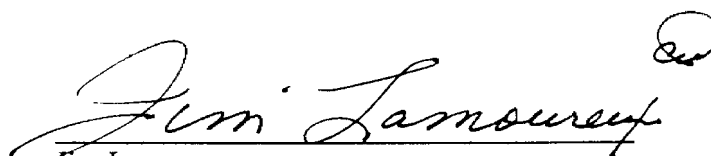
The structure of the docket as Staff interprets the Prehearing Officer’s Order would result in a hearing only on BellSouth’s “paper promises”—BellSouth’s public statements about what it will offer and how it will offer it. Although, BellSouth’s paper promises are a piece of determining whether BellSouth complies with Section 271, such evidence is only a part of what the Commission must consider. What BellSouth actually provides also must be reviewed.

Under Staff’s view, however, such evidence will be relegated to “comments” in the non-hearing track. Thus, no evidentiary record will ever be developed as to some of the most critical issues concerning BellSouth’s compliance with the 14 point checklist, and the ALECs will have no opportunity to challenge the evidence regarding BellSouth’s actual performance in the marketplace. This means that the Commission will end up with a severely limited evidentiary record without any evidence on how well BellSouth is actually complying with its obligations under the 14 point checklist. It also means that the Commission will end up with an evidentiary record substantially less developed, less robust, and less meaningful than the record from several other states, including South Carolina, Alabama, and North Carolina, all of which have had, are having, or will have hearings addressing BellSouth’s actual performance and provisioning of

service to ALECs in those states covering not only BellSouth's paper promises but also the actual experience ALECs face in the market as they attempt to compete with BellSouth.

This result clearly must be avoided. On the important issue of whether BellSouth meets the 14 point checklist, the Commission should hear testimony from the ALECs that are attempting to obtain nondiscriminatory access to BellSouth's network and should allow the ALECs to cross examine BellSouth's witnesses as to BellSouth's assertions about its compliance. Accordingly, the Hearing Officer should not strike any of the testimony in BellSouth's Motion to Strike or in the Staff's August 31, 2001, Memorandum. The Hearing Officer also should reject the overly narrow interpretation of Staff as to what will be considered in the hearing track of this proceeding and should not restrict the Commission's ability to obtain a full and complete record to review BellSouth's Section 271 compliance. Intervenors should be permitted to present to the Commission through testimony and cross examination their experiences in attempting to obtain the nondiscriminatory access to BellSouth's network required by the Act. Such evidence is a key element of whether BellSouth complies with the Section 271 checklist and deserves full Commission review.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jim Lamoureux". To the right of the signature is a small circular mark, possibly a stamp or initials.

Jim Lamoureux  
AT&T  
1200 Peachtree St., N.E.  
Atlanta, GA 30306  
(404) 810 4196

Attorney for AT&T Communications of the  
Southern States, Inc., AT&T Broadband  
Phone of Florida, LLC, and TCG South  
Florida, Inc.

**CERTIFICATE OF SERVICE**

**DOCKET NO. 960786-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via U.S.

Mail this day 7<sup>th</sup> of September, 2001, to the following parties of record:

Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications  
150 S. Monroe Street, Suite 400  
Tallahassee, Florida 32301

Kenneth Hoffman  
Rutledge, Ecenia, et. al.  
Post Office Box 551  
Tallahassee, Florida 32302

Floyd Self/Norman Horton  
Messer, Caparello and Self, P.A.  
Post Office Box 1876  
Tallahassee, Florida 32302

Richard D. Melson  
Hopping, Green, Sams & Smith  
Post Office Box 6526  
Tallahassee, Florida 32314

Donna McNulty  
WorldCom, Inc.  
325 John Knox Road, Ste. 105  
Tallahassee, FL 32303

Vicki Gordon Kaufman  
FCCA  
117 South Gadsden Street  
Tallahassee, Florida 32301

Beth Keating  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Scott Sapperstein  
Intermedia Communications  
One Intermedia Way  
MC FLT-HQ3  
Tampa, Florida 33647-1752

Peter Dunbar  
Pennington, Moore, Wilkinson &  
Dunbar  
Post Office Box 10095  
Tallahassee, Florida 32302-2095

Michael Gross  
FCTA  
310 North Monroe Street  
Tallahassee, Florida 32301

Jeremy Marcus  
Blumenfeld & Cohen  
1625 Massachusetts Ave., NW  
Suite 300  
Washington, DC 20036

Angela Green  
Florida Public Telecommunications  
125 S. Gadsden Street, Suite 200  
Tallahassee, FL 32301-1525

Marilyn Ash  
MGC Communications  
3301 North Buffalo Drive  
Las Vegas, NV 89129

Ms. Susan Masterton  
Sprint  
P.O. Box 2214  
Tallahassee, FL 32316-2214

Shook, Hardy & Bacon LLP  
Rodney L. Joyce  
600 14<sup>th</sup> Street, N.W. Suite 800  
Washington, DC 20005-2004

Katz, Kutter Law Firm  
Charles Pellegrini/Patrick Wiggins  
12th floor  
106 East College Avenue  
Tallahassee, FL 32301

ITC^DeltaCom  
Ms. Nanette Edwards  
4092 S. Memorial Parkway  
Huntsville, AL 35802

CWA (Orl)  
Kenneth Ruth  
2180 West State Road 434  
Longwood, FL 32779

Henry C. Campen, Jr.  
Parker, Poe, Adams & Bernstein, LLP  
P.O. Box 389  
First Union Capital Center  
150 Fayetteville Street Mall  
Suite 1400  
Raleigh, NC 27602-0389

Brian Sulmonetti  
WorldCom, Inc.  
ITCSuite 3200  
6 Concourse Parkway  
Atlanta, GA 30323

Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Ave.  
Suite 2000  
Orlando, FL 32801

Michael Sloan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, D.C. 20007-5116

Lori Reese  
Vice President of Governmental Affairs  
New South Communications  
Two Main Street  
Greenville, South Carolina 29609

Suzanne F. Summerlin, Esq.  
1311-B Paul Russell Road  
Suite 201  
Tallahassee, Florida 32301

Catherine F. Boone  
Covad Communications Company  
10 Glenlake Parkway, Suite 650  
Atlanta, Georgia 30328-3495