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September 27, 2001

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
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Re: 960786-TL (Section 271)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Motion for Commission Reconsideration of Pre-hearing Officer's September 11, 2001 order which we ask that you file in the above-referenced docket.

A copy 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 by Federal Express and E-Mail as shown on the attached Certificate of Service.

Sincerely,

Lisa S. Foshee
Lisa S. Foshee (LA)

Enclosures

cc: All Parties of Record
Marshall M. Criser III
Fred J. McCallum
Nancy B. White

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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 E-Mail (#) and Federal Express this 27th day of September, 2001 to the following:

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(+) Signed Protective Agreement

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 27, 2001

**RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC. TO MOTION
FOR COMMISSION RECONSIDERATION OF PRE-HEARING OFFICER'S
SEPTEMBER 11, 2001 ORDER**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Response to the Motion for Commission Reconsideration of Pre-Hearing Officer's September 11, 2001, Order on Motions To Strike And Remove Certain Testimony From Hearing Track and states as follows:

The purpose of a motion for reconsideration is to bring to the Commission's attention some material and relevant point of fact that it overlooked or failed to consider when the order was issued, a mistake of law or fact, or an abuse of discretion. *Diamond Cab Co. v. King*, 146 So.2d 889, 891 (Fla. 1962). While reconsideration is not intended as a procedure for re-arguing a case merely because the losing party disagrees with the judgment or the order, *id.*, the ALECs are attempting, through their motion, to do just that. The ALECs' motion is made all the more egregious in that they are not just re-arguing the Hearing Officer's decision on the Motion to Strike, they are attempting to reargue the underlying *Order Regarding Issues To Be Addressed At Hearing* (Order No. PSC-01-1025-PCO-TL). For this reason, the Hearing Officer should deny the Motion for Reconsideration.

In Order No. PSC-01-1025-PCO-TL, dated April 25, 2001, the Hearing Officer made the following findings:

- "[T]hird-party testing of BellSouth's provisioning of its OSS systems should allow us to fulfill our consultative role under Section 271, and may, as noted in our Order, 'provide better, more accurate information about the status of BellSouth's systems than might be obtained through further administrative proceedings on this issue.'" (Order, at 4; *see also* Order No. PSC-99-1568-PAA-TP, at 10).
- "[W]e required KPMG to address, in addition to the specific test results, a description of '...any differences between the access to OSS functions BellSouth provides itself and that which it provides to ALECs,' with an analysis of the differences ... This type of analysis, by its very nature, requires an analysis of commercial data. That analysis is being conducted within the third-party OSS testing portion of this proceeding." Order, at 4-5.
- "[T]he appropriate performance measures for rendering our determination on BellSouth's compliance with checklist item 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv) have also already been determined within the third-party OSS testing phase of this proceeding." Order, at 5.

In addition, in Order No. PSC-97-1459-FOF-TL, the Commission concluded that the 271 proceeding is not the proper venue for handling complaints. *Order*, at 14.

These two decisions explicitly define the parameters of the hearing in the above-referenced docket. They are final, non-appealable orders and thus constitute the law of the case. All the Hearing Officer did in granting the Motions to Strike was implement the law of the case - no more, no less. The fact that the ALECs are still unhappy with the decision in the April 25, 2001, Order is not grounds for granting reconsideration of an order implementing those earlier, final decisions.

The ALECs make three main arguments, each of which is governed by the findings cited above. First, the ALECs argue that the Commission must consider "real world experiences" in the 271 docket. To the contrary, the previous decisions in this case dictate that so-called "real world experience" will be handled in two ways - through the performance data filed in the third party test docket, and through comments on that performance data (including the filing of individual ALEC performance data). The original 271 Order confirms that the 271 case is not the place to raise, nor address, individual CLEC complaints. What the ALECs want is two bites at the apple - they want the ability to argue about BellSouth's performance as evidenced by performance data in the third party test docket, and BellSouth's performance as demonstrated by "anecdotal" evidence in the 271 docket. For example, the ALECs argue that Ms. Berger's anecdotal testimony on BellSouth's provision of hot cuts should remain in the 271 case. Notably, however, the ALECs did not argue that performance data regarding hot cuts should concurrently be removed from the OSS docket. Simply, the ALECs want the same issue considered in both dockets. This duplication is precisely what the Commission sought to avoid in establishing the parameters of this proceeding. The Commission should not now expand the proceeding in violation of its earlier orders.

Second, the ALECs argue that if the decision on the motion to strike stands, "the Commission will be faced with the highly unusual prospect of having a hearing only on what BellSouth has promised on paper." (Motion, at 6). Again, the ALECs are mischaracterizing the parameters of this proceeding as established by the Commission's earlier orders. The purpose of the 271 hearing is to establish whether BellSouth's policies, methods and procedures meet the requirements of the competitive checklist. The purpose of the OSS docket is to determine whether BellSouth is providing nondiscriminatory access to its OSS, and whether its performance demonstrates that it is fulfilling its obligations in practice. Both CLECs and BellSouth will have the opportunity to file comments relevant to BellSouth's compliance in this docket. BellSouth's agrees that these comments are important in that evidence of commercial usage is considered by the FCC to be the highest and best evidence of compliance. When viewed in total, the Commission will have an extensive, thorough, and well-documented record upon which to make its decision on BellSouth's application. The fact that the issues have been bifurcated into separate proceedings will in no way hinder the Commission's ability to make a well-informed decision in this matter.

Third, the ALECs argue that the Hearing Officer incorrectly removed testimony regarding the reliability of BellSouth's performance data. Again, the Hearing Officer correctly implemented the previously established law of the case which explicitly states that BellSouth's performance data will be evaluated in the OSS proceeding. Both ALECs and BellSouth will have the opportunity to file comments on the performance data for consideration in that proceeding. Thus, contrary the ALECs' assertions, the Commission will have the opportunity to review and consider the ALECs' purported concerns.

The issue before the Commission is a simple one - in granting the Motions to Strike, did the Hearing Officer correctly implement the law of the case as established in Order Nos. PSC-01-1025-PCO-TL and PSC-97-1459-FOF-TL? The answer is unequivocally in the affirmative. The Hearing Officer followed the precedent for the case, and followed it correctly. It is the ALECs who have made the mistake of law in filing their Motion. For these reasons, the Motion for Reconsideration should be denied.

This 27th day of September, 2001.

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