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June 19, 2003

Mrs. Blanca S. Bayó
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Florida Public Service Commission
2540 Shumard Oak Boulevard
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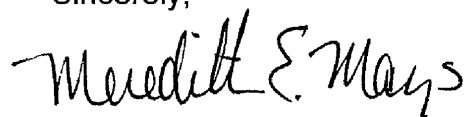
Re: Docket No. 020507-TL (FCCA Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response in Opposition to Motion to Strike, which we ask that you file in the captioned docket.

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,


Meredith E. Mays (KAD)

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 020507-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 19th day of June 2003 to the following:

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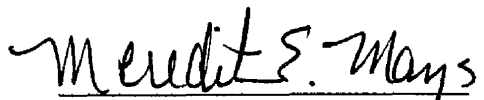
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Meredith E. Mays
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(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida)
Competitive Carriers Association) Docket No. 020507-TL
Against BellSouth Telecommunications, Inc.)
And Request for Expedited Relief) Filed: June 19, 2003
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE IN OPPOSITION TO MOTION TO STRIKE**

I. INTRODUCTION

Almost five months after this Commission issued its January 29, 2003 Prehearing Order (“Order”), which included Mr. Milner’s rebuttal testimony and his exhibits, AT&T, MCI, AIN, and ITC^DeltaCom (collectively “ALECs”) have requested that certain portions of that testimony as well as certain exhibits be stricken from the record. This motion should be summarily denied. Mr. Milner’s rebuttal testimony and exhibits are directly responsive and relevant to matters raised by Witness Gillan and should be admitted in full into the record at the hearing.

II. BACKGROUND

This docket involves the ALECs attempt to dictate BellSouth’s business plans and force BellSouth to provide to ALEC voice customers a missing piece in the ALECs’ puzzle of services. To bolster their claims, Witness Gillan suggested that it would be “prohibitively expensive if not impossible” for ALECs to duplicate BellSouth’s DSL network. To illustrate the ludicrously of Mr. Gillan’s unsupported testimony, Mr. Milner illustrated how, using publicly available documents, ALECs could successfully enter the DSL market (which market ALECs AT&T and MCI have already entered). Mr. Milner’s rebuttal testimony responds directly to Mr. Gillan’s direct testimony. Mr. Milner’s rebuttal testimony is also relevant to BellSouth’s defense, in that ALECs are fully capable of utilizing “self-help” instead of regulatory fiat to

remedy their self-created problem of choosing not to use broadband services of their own to serve customers. Mr. Milner's testimony is clearly relevant under the Florida Evidence Code, in that it may prove or disprove a material fact. *See Fla. Stat. § 90.401.*

III. DISCUSSION

The ALECs' claim that Mr. Milner's rebuttal should be stricken under certain provisions of the Florida law, conveniently disregards other controlling provisions. In relevant part, Fla. Stat. § 120.569 (g), *selectively* quoted to by the ALECs provides, in full, that:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, *whether or not such evidence would be admissible in a trial in the courts of Florida.*

Stated simply, whether or not a trial court in Florida would or would not exclude Mr. Milner's testimony under standards applicable either to lay or to expert witnesses has no bearing.¹ The Florida Administrative Procedures Act provides this Commission with the discretion to admit evidence that might not be otherwise admissible in a Florida trial court. Accordingly, the entire basis for the ALECs' Motion – which Motion suggests certain provisions in the Florida Evidence Code requires the striking of Mr. Milner's rebuttal testimony – is unfounded and should be disregarded by the Commission.

The Florida Administrative Procedures Act also states that:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

¹ To the extent that the Commission is inclined to strictly review the "evidentiary foundation" underlying the testimony of witnesses, then the Commission should strike the testimony of Mr. Gillan, who provided no personal knowledge, underlying facts, or data to support his view that "no provider is capable of creating a DSL-footprint" comparable to BellSouth's and that it was "prohibitively expensive if not impossible" for ALECs to duplicate BellSouth's DSL footprint. Mr. Milner's rebuttal testimony simply responds to Mr. Gillan's, however, in contrast to Mr. Gillan, Mr. Milner fully disclosed the basis for his conclusions.

Fla. Stat. § 120.57 (1)(c). Mr. Milner's testimony, which refers to matters of public record before other state commissions, might be construed by some as hearsay. Even if Mr. Milner's rebuttal testimony was deemed to constitute hearsay (which BellSouth does not concede), it is still admissible in an administrative proceeding. Because Mr. Milner's rebuttal testimony responds directly to Mr. Gillan's direct testimony, and is thus used to *explain* other evidence, it is entirely appropriate for this Commission to admit the rebuttal testimony, in its entirety, and weigh the evidence in its discretion. The ALECs are free to cross-examine Mr. Milner about the basis for his opinions at hearing.

It is also clear that this Commission has authority to admit into evidence matters of public record, filed with other state commissions. Fla. Stat. § 120.569 (i) allows this Commission to "officially recognize" material. "Official recognition" is analogous to judicial notice, and Florida law allows a court to take judicial notice of "records of any court of this state." Fla. Stat. § 90.202(6). Logically, applying the administrative equivalent of judicial notice means that this Commission can officially recognize the records of any other state commissions, which records include the contested portion of Mr. Milner's rebuttal testimony.

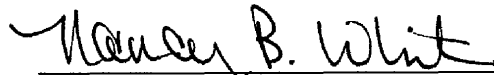
As a final matter, the ALECs' motion is untimely and presents additional grounds for denial. Significantly, Mr. Milner's rebuttal testimony, discovery questions that asked about Mr. Milner's rebuttal testimony, the pre-hearing conference, Mr. Milner's deposition, and, ultimately, the issuance of the prehearing order took place from December 23, 2002 through January 29, 2003. Neither counsel for the FCCA (currently counsel for AT&T) nor counsel for ITC^DeltaCom raised any concern whatsoever with Mr. Milner's rebuttal testimony. Counsel for MCI did not object to or contest identical rebuttal testimony filed with the Georgia Public Service Commission. If the ALECs had any serious objection to Mr. Milner's rebuttal

testimony, such objection should have been raised, at the very latest, shortly after the prehearing order was issued, and not in the month preceding the hearing.


III. CONCLUSION

For the foregoing reasons, BellSouth respectfully requests the Commission deny the ALECs' Motion to Strike.

Respectfully submitted this 19th day of June 2003.



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