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July 2, 2003

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Joint Motion of Verizon Florida, Inc. and Sprint Florida, Inc. To Strike The Revised Rebuttal Testimony of Stephen E. Turner and the Surrebuttal Testimony of Jeffrey A. King, 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,

J. Phillip Carver (KA)

J. Phillip Carver

AUS ___
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GCL ___
OPC ___
MMS ___
SEC 1
OTH ___

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

CERTIFICATE OF SERVICE
Docket No. 981834-TP and 990321-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Hand Delivery (#), First Class U.S. Mail and Electronic Mail this 2nd day of July, 2003 to the following:

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(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission Action To Support Local Competition In BellSouth's Service Territory	)	Docket No. 981834-TP
In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for Generic Investigation into Terms and Conditions of Physical Collocation	)	Docket No. 990321-TP
	)	Filed: July 2, 2003

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO JOINT MOTION OF VERIZON FLORIDA, INC. AND SPRINT FLORIDA, INC. TO STRIKE THE REVISED REBUTTAL TESTIMONY OF STEPHEN E. TURNER AND THE SURREBUTTAL TESTIMONY OF JEFFREY A. KING

BellSouth Telecommunications, Inc. ("BellSouth"), hereby submits its Response to the Joint Motion of Verizon Florida, Inc. and Sprint Florida, Inc. to Strike The Revised Rebuttal Testimony of Stephen E. Turner and the Surrebuttal Testimony of Jeffrey A. King, and states the following:

1. In general, BellSouth agrees with Verizon-Florida, Inc. and Sprint Florida, Inc. (hereinafter collectively "Movants"), both in their assessment of AT&T's behavior as improper, and in their request that the pertinent testimony of Misters Turner and King be stricken. BellSouth, however, takes a slightly different view than the Movants on two issues: 1) the Movants appear to view AT&T's actions as an attempt to have Mr. Turner testify at the hearing on technical issues in August rather than (or perhaps in addition to) the hearing in October on cost issues. BellSouth does not interpret AT&T's actions in this way. 2) BellSouth believes that the Movants have been overly generous in labeling AT&T's justification for its improper actions as "disingenuous" (Motion to Strike, p. 6), or in suggesting that AT&T's misconduct can be adequately addressed by

merely striking testimony. To the contrary, AT&T has engaged in a continuing pattern of procedural impropriety that, at this juncture, can only be viewed as deliberate. Again, BellSouth agrees with the Movants that AT&T's actions effectively prejudices all parties in this proceeding whose interests are adverse to AT&T, and that AT&T's efforts to sandbag the opposition should fail. However, given the flagrant and ongoing nature of AT&T's improper actions, a stronger response from the Commission than simply striking testimony is required.

2. As to the first point, AT&T originally filed testimony of a technical nature by Mr. King regarding Issue 6 (specifically, endorsing the use of List 1 Drain as a suitable proxy for actual power usage) on December 19, 2002 (Direct Testimony) and January 21, 2003 (Rebuttal Testimony). Mr. Turner echoed Mr. King's position on this point in his Rebuttal Testimony (filed April 18, 2003), and used it as the basis for his testimony regarding costs. In this regard, AT&T did nothing different than any other party to this proceeding. In other words, the cost to perform a particular function is obviously dependant upon the manner in which that function is performed. Thus, each party necessarily provides testimony to support its view of the best way to perform a task or provide a service that has been identified as technical, and their conclusion as to the resulting cost is based upon that testimony. Given this, BellSouth believes that AT&T's cost witness, Mr. Turner, would testify only in the second hearing, which is to be confined to cost issues. BellSouth does not read AT&T's filing of Mr. Turner's testimony, or its attempt to "revise" this testimony, as an effort to improperly interject Mr. Turner into the August proceeding. Thus, BellSouth interprets AT&T's actions somewhat differently than Verizon and Sprint in this regard.

3. As to the second point, BellSouth's interpretation of AT&T's intentions does nothing to mitigate the gross impropriety of AT&T's actions. AT&T's actions can only be viewed, in light of the surrounding circumstances, as deliberate violations of the Commission's Orders and a calculated effort to gain an unfair advantage over adverse parties (i.e., BellSouth, Verizon and Sprint). What has occurred in this case is plain: AT&T has belatedly decided that it would prefer to take a different position on the technical, power issue than what is reflected in the testimony it timely filed. Of course, when, for whatever reason, a party wishes to change its testimony after the filing date, the appropriate approach is to file with the Commission a motion to request leave to do so. At a minimum, this motion should contain some justification for the request, and provide some basis to conclude that granting the request would not prejudice other parties to the proceeding.

4. In this instance, AT&T cannot provide any such justification because the complete reversal of its position on issue 6A (which as the Movants properly noted, appeared to be resolved before this latest round of improper filings by AT&T)[1] has occurred so late in the case that it is impossible for parties to address it through further testimony, prior to the August 12, 2003 hearing. Perhaps in recognition of this fact, AT&T did not file an appropriate motion, but simply filed the testimony in violation of the Order Establishing Procedure, and then concocted two separate transparent ruses in an effort to justify its actions.

5. The deadline for the filing of Rebuttal Testimony in this matter was April 18, 2003. By filing the "revised" Rebuttal Testimony of Mr. Turner on June 6, 2003,

[1] Joint Motion to Strike, p. 3.

AT&T violated the filing deadlines in the Order Establishing Procedure and the Order Granting Motion to Revise Order Establishing Procedure (Order No. PSC-03-0288-PCO-TP). AT&T attempted to justify this procedural impropriety by labeling the revision, which, again, constitutes a complete reversal of AT&T's prior position, as a "clarification" of its previous position. (Letter of Tracy Hatch, June 6, 2003). AT&T's tardy filing would be less egregious if it were truly a clarification on some minor point. To the contrary, AT&T has taken an issue on which (as Movants' noted) there appeared to be agreement, and created a dispute at a time when adverse parties are unable to respond to AT&T's new position.

6. By the above-described action, AT&T placed itself in the position of having its technical witness advocate one position on Issue 6, while its cost witness based his testimony on a different, inconsistent position. Shortly thereafter, the other shoe dropped, and AT&T again violated the Commission's Procedural Orders by filing unauthorized Surrebuttal Testimony by Mr. King on June 18, 2003. In this filing, Mr. King reversed his prior testimony on Issue 6. This time, AT&T attempted, albeit implausibly, to justify its improper filing of testimony by an exceedingly strained interpretation of the Commission's Order Approving Agreement. (Order No. PSC-03-0702-FOF-TP, issued June 11, 2003).

7. Previously, AT&T had attempted to deprive adverse parties of an opportunity to comment on its proposal by filing Mr. Turner's "one cost model" theory as part of his Rebuttal Testimony rather than as Direct Testimony. AT&T did not argue that it could not have filed this proposal as direct testimony. Instead, AT&T argued that, since the burden of proposing costs is on the incumbents, AT&T is, in essence, entitled

to sandbag the opposition by making its own affirmative proposal during the Rebuttal phase of testimony. (See, AT&T's Response to Emergency Motion To Strike, filed May 22, 2003, p. 3). Although AT&T was allowed to interject this issue into the case, it was not allowed to do so to the complete prejudice of the adverse parties. Instead, to mitigate the prejudice that might otherwise be caused by AT&T's approach, the Commission instructed the parties to negotiate an agreed procedure for accommodating this testimony. The parties agreed that there would be a date certain that Surrebuttal Testimony could be filed, approximately six to eight weeks before the cost hearing, which would be scheduled in late October or early November. (Order Approving Agreement, p. 4). This agreement among the parties, and its approval by the Commission, was obviously intended to allow parties an opportunity to respond to AT&T's "one cost model" theory, even though AT&T elected not to raise it until it filed Rebuttal Testimony.

8. Despite the clear intent of the agreement and Order, AT&T next attempted to cite to the Order as the pretext for subsequently filing the unauthorized Surrebuttal Testimony of Mr. King. In the letter accompanying Mr. King's latest testimony, AT&T stated that, although the surrebuttal testimony was to be filed by September 23, 2003, AT&T was filing it early since it wished to file surrebuttal on technical issues. (Tracy Hatch Letter of June 18, 2003). Thus, AT&T has taken an agreement designed to mitigate potential prejudice resulting from its approach to filing testimony on cost issues, and converted it into a whole new source of prejudice to its opponents. AT&T can not possibly believe that an order approving an agreement to allow testimony shortly before the hearing on costs (to respond to AT&T's testimony)

can properly be used as the basis for it to belatedly file testimony reversing its position on a technical issue, at a time when it is too late for other parties to respond.

9. BellSouth agrees with the Movant's that this latest round of testimony by Mr. King is clearly not authorized by the Procedural Orders in this docket, or by the recent Order Approving Agreement. The testimony should be stricken for this reason. What is most troubling, however, is that AT&T has attempted to interject this testimony into this proceeding at this late date, a date at which parties cannot respond to the testimony, by a patently implausible reading of the Order Approving Agreement. Further, this represents the third time in this proceeding that AT&T has simply ignored Commission Rules or Orders in a way that appears calculated to prejudice other parties.

10. In light of all of the above, BellSouth certainly agrees with Verizon and Sprint that the revised testimony of Mr. Turner and the surrebuttal testimony of Mr. King should be stricken. BellSouth, however, submits that striking this testimony is not enough. If AT&T's practice of violating Procedural Orders is not addressed, then one can only assume that it will continue. Likewise, if AT&T's violation of the Commission's Orders is met with nothing more than striking the belatedly-filed testimony, this will provide no real disincentive to AT&T to attempt this gambit again in the future. As stated previously, if AT&T wanted to re-write its testimony at this late date, then it knows perfectly well the correct procedure to follow. Still, if AT&T had properly requested leave to file the testimony, the request could not be granted at this late date because, to do so would prejudice other parties. Thus, if the Commission does no more than strike the testimony, AT&T will be no worse off than if it had elected to follow

the Commission's Orders rather than flagrantly violating them. Therefore, BellSouth requests that, in addition to striking the testimony, the Commission admonish AT&T in the strongest possible terms that it is to follow the Commission's Orders, and to further provide that if AT&T continues to fail to do so in the future, then the Commission will impose sanctions for AT&T's continuing violations. Given AT&T's recent actions, it would appear that nothing short of this type of clear warning will dissuade AT&T from its recent course of improper conduct.

WHEREFORE, BellSouth joins in the request of Sprint and Verizon that the above-described testimony be stricken, and also requests that the Commission admonish AT&T to refrain from any further procedural violations in this proceeding.

Respectfully submitted this 2nd day of July, 2003.

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