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January 20, 2004

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


Re: **Docket No. 000121A-TP (OSS)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth's Response in Opposition to CLECS' Motion to Strike BellSouth's Amended Motion to Modify SEEM Plan, 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 *eph*

Enclosures

cc: All parties of record
Marshall M. Criser, III
Nancy B. White
R. Douglas Lackey

DOCUMENT NUMBER - DATE

00826 JAN 20 04

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 000121A-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

First Class U. S. Mail this 20th day of January, 2004 to the following:

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**(+) Signed Protective
Agreement**

#237366

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re:)	
)	
Performance Measurements for)	Docket No. 000121A-TP
Telecommunications Interconnection,)	
Unbundling and Resale)	
_____)	Filed: January 20, 2004

BELLSOUTH'S RESPONSE IN OPPOSITION TO CLECS' MOTION TO STRIKE BELLSOUTH'S AMENDED MOTION TO MODIFY SEEM PLAN

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files its Response in Opposition to the Motion of DIECA Communications, Inc. d/b/a Covad Communications Company, AT&T Communications of the Southern States, and MCImetro Access Transmission Services, LLC ("CLECs"), and states its grounds in support thereof the following:

1. The CLECs' attempt to strike BellSouth's Amended Motion to Modify the SEEM Plan is completely unsupported by the Rules of this Commission and the Rules of Civil Procedure, and it should be rejected. BellSouth filed its Motion because, under the clear directives of the FCC's Triennial Review Order ("TRO"), line sharing is no longer a Section 251 UNE. Accordingly, BellSouth asserts that the provision of line sharing should no longer be subject to penalties under the SEEM Plan. Somewhat surprisingly, the CLECs filed a response in which they, at least implicitly, conceded that line sharing is no longer required to be offered on an unbundled basis under Section 251. The CLECs, instead, responded with the exceedingly strained argument that line sharing is required by Section 271, even though it is no longer required by 251.
2. Thus, the Commission was faced with a situation in which one party filed a Motion based upon a particular point of law, and opposing parties responded with a completely different

legal argument that had little to do with the original basis of the Motion. Accordingly, BellSouth withdrew its Motion and refiled a new motion, in which it discussed both the law, and specifically the TRO, as it related to both Sections 251 and 271.

3. To begin with the obvious, there is no prohibition in the Rules of this Commission or the Florida Rules of Civil Procedure against withdrawing a motion, and there is, likewise, no prohibition against filing a new motion, even one that argues additional facts or law beyond that contained in the original Motion. Despite this, however, the CLECs have filed a Motion claiming that BellSouth's amendment should be viewed as if it were a reply and that it should be stricken. In other words, the CLECs argue that the Motion should be treated as a Reply, even though it is clearly not a Reply, but rather a Motion that argues (in part) in anticipation of how the other side will respond. Again, the CLECs' argument enjoys no support under the Rules of this Commission or the Florida Rules of Civil Procedure.

4. In essence, the CLECs are arguing that BellSouth should not be allowed to file a Motion in which it anticipates new matters that will be raised by the opposition, or attempts to address these matters prospectively. In other states, however, the CLECs have made the same sort of anticipatory responses. For example, in Tennessee, BellSouth filed a Motion to remove line sharing from the SEEM Plan. The CLECs filed a Response in which they argued at length to rebut a position that, in their words, "BellSouth has argued in other states." (Response of CompSouth to BellSouth's Motion to Modify SEEM Plan, filed in Tennessee Docket No. 03-00597, December 10, 2003, p. 7). The CLECs cited specifically to numerous replies that BellSouth has filed to the CLECs' response in other states. Thus, when the procedural rules of a State Commission have allowed BellSouth to file a reply after the CLEC response, the CLECs have argued in their response in anticipation of what BellSouth will raise, based on prior filings.

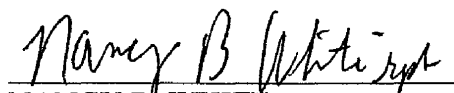
In other words, when the respective procedural rules have allowed BellSouth the last word, the CLECs have done precisely what they complain that BellSouth should not be allowed to do in this case: argue in anticipation of the opposition's position.

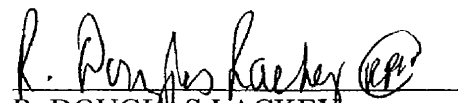
5. The real question raised by the CLECs' Motion to Strike is why they would take this tact to attempt to prevent BellSouth from having a single opportunity to rebut their position regarding Section 271. Put differently, why would the CLECs wish to deprive the Commission of the opportunity to hear both sides of the argument? The answer is that the CLECs know that their argument is so weak that it cannot withstand careful scrutiny.

6. The CLECs' argument that line sharing continues to be required by 271 is based on the absurd proposition that, despite the great lengths to which the FCC went in the TRO to distinguish line sharing from the loop, these distinctions apply exclusively to UNEs in the context of 251, and the line sharing and loop UNEs are defined entirely differently in the context of 271. Of course, there is nothing in the TRO that states this explicitly, or that is susceptible to this interpretation by any reasonable inference. Beyond this, the CLECs attempt to support their Motion by ignoring changes in the law brought about by the TRO. Instead, they rely on 271 applications, Orders and other filings that were issued or filed prior to the TRO, and they do so despite the specific language in the TRO that states that the standards that apply to 271 applications will change in order to be consistent with current law. (TRO, ¶ 665). Finally, the CLECs attempt to buttress their Motion by claiming that other jurisdictions have sustained their position. However, the CLECs only cite to two Commissions (Alabama and Kentucky) in which Orders have actually been rendered by the respective Commission, and neither of these Commissions based their ruling on the 271 argument that the CLECs advance here.

7. In light of the above, there can be no doubt that the CLECs' position regarding Section 271 is exceedingly weak. Apparently, the CLECs are well aware of this, and have filed their Motion to Strike to prevent the Commission from considering all of the well-founded reasons that their argument should be rejected. This stratagem should not succeed. Instead, the CLECs' Motion to Strike BellSouth's Amended Motion should be denied in its entirety.

Respectfully submitted this 20th day of January, 2004.


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