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To: Filings@psc.state.fl.us  
Subject: Electronic Filing - Docket Number 040520-TP  
Importance: High

1. Individual Responsible for Filing:

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2. In Re: Emergency Petition of FCCA, AT&T, and MCI to Require ILEC's to Continue to Honor Existing Interconnection Obligations.

3. Docket No.: 040520-TP

4. Parties on Whose Behalf the Pleading is Being Filed: AT&T, MCI and FCCA

5. Document Description: Cover Letter and Response of AT&T, MCI, and FCCA to BellSouth's Motion to Dismiss

6. Number of Pages: 6

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June 24, 2004

**VIA ELECTRONIC FILING**

Blanca S. Bayo, Director  
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Re: Docket No.: 040520-TP

Dear Ms. Bayo:

The Florida Competitive Carriers Association (FCCA), AT&T Communications of the Southern States, L.L.C., MCI Metro Access Transmission Services, L.L.C. and MCI Worldcom Communications, Inc., hereby submit, for electronic filing, their response to BellSouth Telecommunications, Inc.'s Motion to Dismiss in the above docket.

Thank you for your assistance.

Yours truly,  
s/ Joseph A. McGlothlin

Enclosures

**MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A.**

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Petition of FCCA,  
AT&T, and MCI To Require ILECs To  
Continue to Honor Existing  
Interconnection Obligations

DOCKET No. 040520-TP

Filed: June 24, 2004

RESPONSE OF AT&T, MCI AND FCCA TO  
BELLSOUTH'S MOTION TO DISMISS

The Florida Competitive Carriers Association (FCCA)<sup>1</sup>, AT&T Communications of the Southern States, LLC, (AT&T), and MCI metro Access Transmission Services, LLC and MCI WORLDCOM Communications, Inc. (collectively "MCI"), pursuant to Rule 25-22.106.204, Florida Administrative Code, hereby respond to the "Motion to Dismiss the Petition of FCCA, AT&T and MCI for Emergency Declaratory Ruling"<sup>2</sup> filed by BellSouth Telecommunications, Inc. (BellSouth) June 17, 2004. For the reasons set forth below, BellSouth's Motion should be denied. However, FCCA, AT&T and MCI agree that the CLECs' Petition should be held in abeyance pending further proceedings.

1. In its Motion, BellSouth makes essentially two arguments. First, BellSouth argues that there is no emergency requiring the Commission to act because BellSouth has "clearly, consistently, and without exception stated that it will honor its

<sup>1</sup> The members of FCCA include (in addition to AT&T and MCI) Access Integrated Networks, Inc., ICG Communications, Inc., IDS Telecom LLC, ITC DeltaCom, Inc., KMC Telecom, Network Telephone Corporation, NewSouth Communications, Inc., Supra Telecommunications and Information Systems, Inc., and Z-Tel Communications, Inc. With the exceptions of Supra and ICG, each of these members, is also a member of the Competitive Carriers of the South, Inc. (CompSouth).

<sup>2</sup> It should be noted that AT&T, MCI and the FCCA filed an "Emergency Petition to Require BellSouth and Verizon to Continue to Honor Existing Interconnection Obligations." Petitioners did not file a Petition for Declaratory Ruling.

existing interconnection agreements.”<sup>3</sup> Second, BellSouth asserts the CLECs' request for an order requiring BellSouth to abide by the “change of laws” provisions in its interconnection agreements with CLECs is moot because BellSouth has committed to utilize these provisions.<sup>4</sup> Neither argument supports the Motion to Dismiss.

2. In an effort to downplay the concerns expressed by CLECs, BellSouth points to statements in its May 7<sup>th</sup> and May 24<sup>th</sup> Carrier Notification Letters. However, *BellSouth created* these concerns by playing coy as to the course it intends to follow regarding its interconnection obligations after June 15, 2004. In the Carrier Notification Letters cited in BellSouth’s Motion, BellSouth spoke loudest by - - not what it said - - but what it did *not* say. For example, as BellSouth noted in its Motion, in the May 24<sup>th</sup> letter BellSouth did say that “BellSouth will not . . . unilaterally disconnect services being provided to any CLEC under the CLEC’s Interconnection Agreement.”<sup>5</sup> In this letter BellSouth did *not* commit to continue charging existing prices. The assurance that service would not be “disconnected” is small comfort to a CLEC if BellSouth unilaterally converts the price of its services to resale or to tariffed services, thereby economically forcing the CLEC from the market. BellSouth’s subsequent statements to the effect that it will abide by the change of laws provisions and will not act unilaterally as to anything in its existing interconnection agreements have, to a certain extent, reassured CLECs that there may be no near term emergency.

3. As to BellSouth’s mootness argument, the CLECs' fears of unilateral action on the part of BellSouth are not rendered “moot” simply by BellSouth’s

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<sup>3</sup> BellSouth Motion at p.4.

<sup>4</sup> *Id.* at p.5.

<sup>5</sup> *Id.* at p. 2.

statements, which over time (contrary to BellSouth's contention) have been neither clear nor consistent. The CLECs' concerns will become moot only when BellSouth actually follows through with its commitments to honor its existing interconnection agreements.

4. BellSouth's claims of "trust me" do not obviate the allegations in the CLECs' Petition. **As a result, BellSouth's motion should be denied.** BellSouth's commitments to honor its interconnection agreements do ameliorate the nature of the emergency. Accordingly, the FCCA, AT&T and MCI agree that the CLECs' Emergency Petition should be held in abeyance and the docket should be held open pending further proceedings.

**WHEREFORE**, based on the foregoing, the FCCA, AT&T, and MCI submit that BellSouth's Motion to Dismiss should be denied. The Emergency Petition of FCCA, AT&T and MCI should be held in abeyance and the instant docket should be held open pending any further proceedings.

s/ Joseph A. McGlothlin  
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Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Response of AT&T, MCI and FCCA to BellSouth's Motion to Dismiss has been furnished by U.S.

Mail on this 24<sup>th</sup> day of June, 2004, to:

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