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November 29, 1995

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

RE: Docket No. 920260-TL

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer to McCaw Communications of Florida, Inc.'s Petition on Proposed Agency Action. Please file this document 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 on the parties shown on the attached Certificate of Service.

Sincerely,

Thomas B. Alexander
Thomas B. Alexander (D2)

ACK /
AFA 3
APP Enclosures
CAF cc: All Parties of Record
CMU Norton A. M. Lombardo
CTR R. G. Beatty
EAG R. D. Lackey
LEG 1
LIN 5
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SEC 1
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FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE

11944 NOV 29 95

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive Review of)
the Revenue Requirements and Rate)
Stabilization Plan of Southern)
Bell Telephone and Telegraph)
Company)
_____)

Docket No. 920260-TL
Filed: November 29, 1995

BELLSOUTH TELECOMMUNICATIONS, INC.'S
ANSWER TO MCCAW COMMUNICATIONS OF FLORIDA, INC.'S
PETITION ON PROPOSED AGENCY ACTION

BellSouth Telecommunications, Inc. ("BellSouth" or "BST"), hereby Answers the Petition on Proposed Agency Action filed by McCaw Communications of Florida, Inc. ("McCaw") and states the following:

1. As to Paragraph No. 1 of the Petition, the allegations are admitted.
2. As to Paragraph No. 2 of the Petition, the allegations are admitted.
3. As to Paragraph No. 3 of the Petition, the allegations are admitted.
4. As to Paragraph No. 4 of the Petition, BellSouth is without knowledge as to when or how counsel for McCaw received a copy of Order No. PSC-95-1295-FOF-TL. Accordingly, this allegation is deemed to be denied. As to the remaining allegations of Paragraph No. 4, McCaw sets forth its legal conclusion or interpretation of the effects of Commission Order Nos. PSC-95-1295-FOF-TL, PSC-94-0172-FOF-TL, and Order No. 20475 as well as BellSouth's existing mobile interconnection tariff. Accordingly, these allegations do not require an answer, and are deemed to be denied.

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5. As to Paragraph No. 5 of the Petition, BellSouth denies that McCaw may limit its "protest" to only that part of Order No. PSC-95-1295-FOF-TL that denies the access charge flow through to the mobile interconnection rates while apparently approving of the rest of Order No. PSC-95-1295-FOF-TL. Accordingly, the allegations of Paragraph No. 5 are denied.

6. As to Paragraph No. 6 of the Petition, BellSouth admits only that McCaw is a customer who subscribes to BellSouth's tariffed mobile interconnection services. Accordingly, the allegations of Paragraph No. 6, except for the limited admission made hereinabove, are denied. Moreover, BellSouth affirmatively states that the ordering paragraph of the Commission's decision as reflected in Order No. PSC-95-1247-FOF-TL, clearly states that: "As to all mobile interconnection usage rates, the flow through requirement for switched access charges shall be eliminated." Thus, McCaw's assertion that the express terms of Order No. PSC-95-1247-FOF-TL did not break the link with access charges until new tariffs are filed is clearly contradictory to the express language used by the Commission in its Order.

7. As to Paragraph No. 7 of the Petition, BellSouth, for purposes of this proceeding, admits that there are not any disputed issues of material fact, but only legal issues raised by McCaw's Petition. BellSouth otherwise denies the allegations of this Paragraph. Moreover, BellSouth would affirmatively show, contrary to McCaw's allegations in this Paragraph, that the Florida Public Service Commission does have the legal authority

to make the policy decision set forth in Order No. PSC-95-1295-FOF-TL, which was based upon the record developed in connection with the Commission's decision in Order No. PSC-95-1247-FOF-TL.

8. As to Paragraph No. 8 of the Petition, BellSouth is without knowledge of McCaw's plans regarding any appeals it may take in connection with Order No. PSC-95-1247-FOF-TL. Further, the remaining allegations of this Paragraph set forth a legal conclusion based upon speculation and McCaw's interpretation as to the results of what may or may not occur depending upon McCaw's success in its intended appeal. Accordingly, the allegations of Paragraph 8 are denied.

9. As to the unnumbered paragraph which begins with "WHEREFORE", this paragraph does not set forth factual allegations, but rather is a plea for relief. Accordingly, it does not require a response. However, BellSouth denies that McCaw should receive the relief requested therein nor should McCaw receive any relief whatsoever in connection with its Petition.

AFFIRMATIVE DEFENSE

10. BellSouth would affirmatively show that although McCaw has filed a Petition on Proposed Agency Action in this proceeding, it has admitted that there are no disputed issues of material fact for the Commission to determine. Further, Section 120.57, Florida Statutes, only requires formal proceedings or hearings "whenever the proceeding involves a disputed issue of material fact." Since, by McCaw's own admission, there are no

disputed issues of material fact related to McCaw's Petition and since this Commission has already rendered its decision based upon a complete record, the Commission should simply deny McCaw's Petition.

11. BellSouth would further affirmatively show that since McCaw's Petition states that "[t]he subject of this protest is limited solely to that part of Order No. PSC-95-1295-FOF-TL that denied the access charge flow through to the mobile interconnection rates..." (emphasis added), then the Commission should deny McCaw's Petition since it is merely an attempt to have the Commission reconsider its decision in Order No. PSC-95-1295-FOF-TL and reverse itself, at least in part. McCaw's Petition has the look and substance of a Motion for Reconsideration rather than a Petition on Proposed Agency Action. McCaw has admitted that there are not any disputed issues of material fact for the Commission to resolve through hearings. Further, the Commission earlier voted to eliminate the flow through from mobile interconnection usage rates in connection with its decision in Docket No. 940235-TL (See Order No. PSC-95-1247-FOF-TL) and that in rendering its decision in Order No. PSC-95-1295-FOF-TL, the Commission was merely addressing a timing issue that might arise as a result of the Commission's decision in Docket No. 940235-TL. The Commission has fully considered the issues raised by McCaw in its Petition and has rejected them. Specifically, the Commission stated in Order No. PSC-95-1295-FOF-TL that: "In this case, however, the application of the formula

as reflected in the current tariff could be construed as requiring SBT to decrease mobile interconnection rates for the period from October 1, 1995 to December 31, 1995. We reject this anomalous result." Thus, in Order No. PSC-95-1295-FOF-TL the Commission specifically found that "the switched access rate reductions approved in this Order shall not be flowed through to the Mobile Interconnection Usage Rates." The Commission should deny McCaw's Petition on this basis as well. See Diamond Cab Company v. King, 146 So.2d 889, 891 (Fla. 1962) (a party seeking reconsideration can prevail only by showing that the order at issue is erroneous because there is "some point which [the Commission] overlooked or failed to consider when it rendered its order in the first instance.")

WHEREFORE, BellSouth respectfully requests the Commission to deny the Petition on Proposed Agency Action filed by McCaw in this docket.

Respectfully submitted this 29th day of November, 1995.

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CERTIFICATE OF SERVICE

Docket No. 920260-TL

Docket No. 900960-TL

Docket No. 910163-TL

Docket No. 910727-TL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 29th day of November, 1995

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