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/m

December 11, 1995

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

Re: Docket No. 920260-TL

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Memorandum in Opposition to Motion of MCI Telecommunications Corporation to Reopen Record and for Rehearing, which we ask that you file in the captioned docket.

ACK A copy of this letter is enclosed. Please mark it to
AFR 3 indicate that the original was filed and return the copy to me.
APP _____ Copies have been served to the parties shown on the attached
Certificate of Service.

DIS _____
Norton

Sincerely,
J. Phillip Carver
J. Phillip Carver

ENC 1 Enclosures
cc: All Parties of Record
R. G. Beatty
A. M. Lombardo
R. Douglas Lackey

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WTH _____

J. J.
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Comprehensive review of)
revenue requirements and rate)
stabilization plan of Southern)
Bell.)

Docket No. 920260-TL

Filed: December 11, 1995

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MEMORANDUM IN OPPOSITION TO MOTION OF
MCI TELECOMMUNICATIONS CORPORATION
TO REOPEN RECORD AND FOR REHEARING**

BellSouth Telecommunications, Inc., ("Southern Bell", "BellSouth", or "Company"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Memorandum in Opposition to the Motion of MCI Telecommunications Corporation ("MCI") to Reopen Record and for Rehearing, and states the following:

MCI requests in its motion that the Florida Public Service Commission ("Commission") reopen the record in this docket and conduct a rehearing because it claims that it "has learned that technical issues will not permit all of the dialing options that were discussed by BellSouth's witness at the hearing." (MCI Motion, p. 4) Specifically, MCI contends that customers who presubscribe to an IXC to carry their intraLATA toll will be unable to utilize BellSouth's ECS service. MCI states in its motion the following:

We now learn that in order for customers to get the full benefit of ECS calling, they must presubscribe to Southern Bell for all of their intraLATA 1+ calls. Customers give up the benefit of the ECS pricing if they choose

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to presubscribe to a competitive long distance carrier. This is blatantly anti-competitive.

(MCI Motion at p. 5)

The simple response to this contention by MCI is that it is just not true. It is true that BellSouth has determined that at the time presubscription is implemented (assuming that this Commission's Order No. PSC-95-0918-FOF-TP, in Docket No. 930330-TL is upheld on appeal) BellSouth's network switches will be unable to distinguish between ten-digit ECS calls and 1+ ten-digit presubscribed calls that go to the same location. Accordingly, it is necessary at some time prior to the implementation of presubscription to deal with this technical problem. BellSouth, however, has never suggested to the Commission Staff (or to anyone else for that matter) that as a result of this technical problem, customers who presubscribe to IXCs would be prevented from utilizing BellSouth's ECS service.

It is likely that once presubscription is initiated, customers who have presubscribed to an IXC for intraLATA toll who wish to utilize BellSouth's ECS service will need to dial 1, 0, xxx. In other words, customers who presubscribe to an IXC will be able to obtain access to BellSouth by "dialing around" in the same manner that BellSouth subscribers currently do to place

intraLATA toll calls through IXCs. Thus, MCI is simply wrong as to the nature and extent of the "technical problem."

In support of its Motion, MCI cites to a forty-year old case (Davis v. Combination Awning & Shutter Co., 62 So.2d 742, 745) for the proposition that final orders and judgments that are obtained through "fraud, collusion, deceit, or mistake may be opened, vacated, or modified at any time, on the proper showing made by the parties injured." MCI, however, has failed to make an adequate showing even to obtain a hearing on its motion. Rule 1.540(b) of the Florida Rules of Civil Procedure relates to setting aside final orders or judgments. Under this rule, an unsworn motion for relief from a judgment, which is not supported by evidence already in the record, is facially insufficient to justify setting aside the final order. Blimplie Capital Venture v. Palms Plaza, 636 So.2d 838 (Fla. 2nd DCA 1994). Further, the sworn allegations of the motion must be such that, if proven, they would entitle the movant to the relief sought. "If a motion on its face does not set forth a basis for relief, then an evidentiary hearing is unnecessary." Flemenbaum v. Flemenbaum, 636 So.2d 579, 580 (Fla. 4th DCA 1994). MCI's motion fails to meet the standard under Rule 1.540. Instead, MCI has set forth an unsworn, and totally unfounded, allegation that IXCs will be

damaged as the result of what it "understands" regarding the subject technical problem.

For the reasons set forth above, MCI's motion is insufficient, and its contentions are simply wrong on the facts. Even if MCI's motion did not suffer from these two infirmities, however, there is still no basis for granting MCI the extraordinary relief requested. The gravamen of MCI's allegations are that there will be some technical difficulties that will disadvantage it after presubscription becomes effective. Of course, this Commission's final order on presubscription, (Order No. PSC-95-0203-FOF-TP), is on appeal, and the Florida Supreme Court has stayed the implementation of that order. (Order entered in Case No. 86,387, on November 17, 1995) Thus, any technical problem that may result from presubscription will not occur unless the Supreme Court upholds this Commission's decision regarding presubscription, and, even then, the problem will not be manifest for many months. There is absolutely no reason to delay the immediate implementation of the ECS plan because of a problem that may exist at some point in the future.

Moreover, there are currently many factors that are complicating dialing patterns, such as NPA relief, the instant ECS implementation and presubscription. For this reason, the

Commission may wish to open a generic docket to address any dialing problems that may occur. If so, that docket would certainly be an appropriate forum to address the subject technical issue. The present docket, however, is not the appropriate place to do so.

MCI should not be allowed to utilize a technical issue that will not become a problem (if at all) until some point in the future to delay the immediate implementation of the previously approved ECS plan. For this reason, this Commission should summarily deny MCI's motion.

Respectfully submitted this 11th day of December, 1995.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

Docket No. 920260-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States Mail this 11th day of DECEMBER, 1995 to:

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