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PLEASE REPLY TO:
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June 25, 1996

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Blanca S. Bayo, Director
Division of Records and Reporting
101 E. Gaines Street
Tallahassee, Florida 32301

Re: Docket No. 960658-TP, In re: Complaint of Florida
Interexchange Carriers Association, MCI
Telecommunications Corporation, and AT&T
Communications of the Southern States, Inc.,
against BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and
sixteen copies of the Response of FIXCA, MCI, and AT&T in
Opposition to BellSouth Telecommunications, Inc.'s Motion to
Dismiss, in the above docket.

Please acknowledge receipt of the above on the extra copy
enclosed herein and return it to me. Thank you for your
assistance.

Sincerely,

Joseph A. McGlothlin
Joseph A. McGlothlin

- ACK
- AFA
- APP
- CAF
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DOCUMENT NUMBER-DATE

06844 JUN 25 96

FPSC-RECORDS/REPORTING

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Florida) DOCKET NO. 960658-TP
Interexchange Carriers Association,)
MCI Telecommunications Corporation,)
and AT&T Communications of the) FILED: June 25, 1996
Southern States, Inc., against)
BellSouth Telecommunications,)
Inc.)

RESPONSE OF FIXCA, MCI, AND AT&T IN OPPOSITION
TO BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO DISMISS

Pursuant to Rule 25-22.037(2) (b), Florida Administrative Code, Florida Interchange Carriers Association (FIXCA), MCI Telecommunications Corporation ("MCI"), and AT&T Communications of the Southern States, Inc. ("AT&T"), hereinafter Joint Complainants, hereby respond in opposition to the motion to dismiss filed by BellSouth Telecommunications, Inc., ("BellSouth") and state as follows:

1. In the Joint Complaint filed on May 24, 1996, Joint Complainants alleged that several practices and activities planned or proposed by BellSouth violate Order No. PSC-95-0203-FOF-TP and are anticompetitive within the meaning of Section 364.01(4)(f), Florida Statutes (1995). Joint Complainants allege that each activity would have the effect of frustrating or impeding the full, fair intraLATA competition ordered by the Commission in Order No. PSC-95-0203-FOF-TP. Two of the practices complained of relate to unreasonable, anticompetitive features of BellSouth's proposed intraLATA presubscription cost recovery tariff filing, which was submitted by BellSouth in Docket No. 930330-TP.

2. In its responsive pleading, BellSouth incorporates a

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motion to dismiss the portion of the Joint Complaint that relates to the BellSouth tariff provisions. BellSouth contends that the only appropriate forum in which to raise the issue of the proposed tariff is Docket No. 930330-TP.

3. As it happens, in order to preserve their procedural opportunities, Joint Complainants lodged a protest and request for hearing related to the tariff items in Docket No. 930330-TP on June 11, 1996. However, the matters were appropriately included in the Joint Complaint.

4. The Supreme Court of Florida articulated the standard governing a motion to dismiss in Hammonds v. Buckeye Cellulose Corp.: The Court stated:

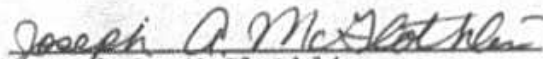
The purpose of a motion to dismiss is to determine whether the [complainant] has alleged a good cause of action, and for purposes of passing on a motion to dismiss a complaint, the court must assume that all facts alleged in the complaint are true.

Hammonds v. Buckeye Cellulose Corp., 285 So.2d 7 at 11 (Fla. 1973).

5. The allegations of the Joint Complaint that challenge BellSouth's practices and procedures relative to Order No. PSC-95-0203-FOF-TP, including those relating to tariff provisions, have been properly raised. Accepting the allegations as true, the tariff provisions impede the fair, reasonable, non-discriminatory implementation of the 1+ intraLATA dialing parity policy as envisioned by the Commission in Order No. PSC-95-0203-FOF-TP. As

such, they are properly included in the Joint Complaint, which targets all measures that would frustrate the intent of the Commission's decision to require 1+ intraLATA presubscription. Therefore, the motion to dismiss should be denied.

6. The important point is that the tariff items fall within the category of efforts to frustrate the intent of Order No. PSC-95-0205-FOF-TP. Therefore, wherever they are initially raised, they should be reviewed in the same evidentiary proceeding as the other allegedly anticompetitive practices. For that reason, Joint Complainants filed a Motion to Consolidate the Joint Complaint and the tariff protest on June 11, 1996. For the reasons stated in the Motion to Consolidate, the Commission should consolidate the docket opened to consider the Joint Complaint with the proceeding on BellSouth's tariff filing, so that all allegations of anticompetitive conduct relating to the Commission's decision concerning equal access 1+ intraLATA presubscription can be considered in the same hearing.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Response of FIXCA, MCI, and AT&T in Opposition to BellSouth Telecommunications, Inc.'s Motion to Dismiss, has been furnished by hand delivery* or by U.S. Mail to the following parties, this 25th day of June, 1996:

*Nancy B. White
c/o BellSouth
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150 S. Monroe Street,
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Tallahassee Fl 32301

*Noreen Davis, Esq.
FL Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


Joseph A. McGlothlin