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August 26, 1996

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

RE: Docket No. 960916-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to ACSI's Motion for Consolidation. Please file these documents 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,

*Nancy B. White*  
Nancy B. White

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU** \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 3 \_\_\_\_\_
- LIN 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Enclosures

cc: All Parties of Record  
A. M. Lombardo  
R. G. Beatty  
W. J. Ellenberg

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DOCUMENT NUMBER-DATE

09095 AUG 26 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of )  
 )  
Petition by American )  
Communications Services, Inc. )  
and American Communications )  
Services of Jacksonville, Inc.)  
for Arbitration with BellSouth )  
Telecommunications, Inc. )  
pursuant to the )  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

Docket No. 960916-TP

Filed: August 26, 1996

BELLSOUTH TELECOMMUNICATIONS, INC.'S  
RESPONSE TO ACSI'S MOTION FOR CONSOLIDATION

BellSouth Telecommunications, Inc. ("BellSouth" or "Company"), hereby responds, pursuant to Rule 25-22.037(b), Florida Administrative Code, to the Motion for Consolidation filed by American Communication Services, Inc. and American Communications Services of Jacksonville, Inc. ("ACSI") and states as grounds in support thereof the following:

1. On August 13, 1996, ACSI filed its Petition for Arbitration. This filing included the testimony of three witnesses. On August 19, 1996, ACSI filed the instant motion seeking consolidation with the MCI and AT&T arbitration proceedings currently scheduled for hearing on October 9-11, 1996. As support for its Motion, ACSI asserts that there are issues that are common to the three proceedings, as well as issues that are unique to the three proceedings and that it would be more "efficient" for the Commission to conduct a single comprehensive proceeding.

2. The Federal Act allows, but does not require, consolidation of proceedings brought pursuant to the Act. Section 252(1)(g). Under the pertinent Commission rule,

22.035(2), Florida Administrative Code, the standard for consolidation of cases is as follows:

If there are separate matters before the presiding officer which involves similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

3. Given this standard, ACSI's Motion should be denied for three reasons: (1) if granted, the resulting truncated schedule would unduly prejudice BellSouth; (2) the requirements for consolidation have not been met; (3) the motion, if granted, would accomplish the same result as intervention, which has already been denied.

4. First, consolidation would unquestionably prejudice the rights of BellSouth, in that it would be virtually impossible for BellSouth to adequately prepare for a consolidated proceeding to begin on October 9. The motion has at its substantive core the unreasonable request that ACSI be guaranteed a hearing date approximately six weeks from the filing of its petition.

5. At the same time BellSouth would also have to prepare for the AT&T and MCI arbitrations. While certainly the timeframe to comply with the federal requirements is short, it is not so short as to warrant placing an untenable burden upon BellSouth. AT&T filed the testimony of nine direct witnesses, and eight rebuttal witnesses. Thus far, MCI has filed the testimony of six witnesses. Moreover, MCI has filed motions to extend the time in which it may file its testimony and has sought a "Mediation Plus"

procedure. ACSI has filed the direct testimony of three witnesses.

6. It is equally inappropriate to structure the hearings on these separate petitions so that the burden of the time constraints is placed disproportionately upon BellSouth. The burden of this limited timeframe would unquestionably fall most heavily on BellSouth. Additional consolidation would complicate an already complex proceeding and further truncate (for BellSouth) an already dangerously compressed proceeding.

7. Second, the Joint Motion to Consolidate should also be denied because, even if there were no prejudice to BellSouth, the standard for consolidation has not been met. In many cases, consolidation is deemed appropriate when the parties are identical, a requirement clearly not met in this case. The reason for this was discussed in the administrative context in City of Palm Bay v. Department of Transportation, 588 So. 2d 624 (Fla. 1st D.C.A. 1991). After stating the general rule for consolidation in administrative proceedings (which is the same as Rule 25-22.035(2)), the Court in Palm Bay stated:

Generally, the administration of justice is best served by consolidation of actions between the same parties involving common questions of law or fact. Consolidation is favored in such situations in the interest of judicial economy, and to avoid the possibility of inconsistent verdicts.

The need to avoid inconsistent results is obvious when the parties are identical. To the extent, however, that each of the instant proceedings arises from negotiations that are distinct, separate and involve different parties, there is no need to make

the result of each arbitration exactly like every other. Further, given the fact that each proceeding is to resolve the specific issues raised in arbitration between two specific parties, it is doubtful that it is appropriate, or even possible, to create results that are exactly the same in every instance. All of which leads to another reason that the motion is not well taken.

8. The entire notion of "common" issues in three dockets of this sort is at odds with the nature of an arbitration proceeding. This is not a generic hearing in which a number of parties intervene to state their respective positions, after which the Commission makes a decision that applies to all. Instead, each arbitration is a defined, limited process whereby the Commission attempts to choose a method to best handle the specific issues that the two parties to the arbitration have been unable to resolve on their own.

9. Even if one were to accept the movants' definition of a common issue, it is simply impossible at this juncture to know whether any common questions of law and fact outweigh the dissimilar questions that would militate against consolidation. A tribunal has a great deal of discretion in determining whether a consolidation will serve judicial economy. For example in the previously-cited Palm Bay case, the decision of an administrative agency not to consolidate was upheld even though "the controversy between the parties ... satisfie[d] the criteria for consolidation." Palm Bay at 629. This discretion is typically

exercised to weigh the benefits and detriments of consolidation.

10. The movant states that there are a large number of common issues anticipated and it asserts (seemingly with little justification) that judicial economy will be served by consolidation. However, there is no credible argument that the parties can know at this point what the ultimate issues between BellSouth and ACSI will be because negotiations between these parties continue. Although general areas of disagreement may have been identified, it is simply unknown at this point which issues will ultimately need to be arbitrated.

11. BellSouth submits that it would be inappropriate to order consolidation based on the self-serving "assumption" of the movant that there will be predominant common issues. Moreover, if consolidation were granted at this juncture based on this conjection, then the cases would be heard together on October 9 through 11, even if it becomes clear that there are so many factual dissimilarities between the three cases that hearing them together proves cumbersome and wasteful of judicial economy.

12. The movant's proposal is unworkable in one respect. AT&T and MCI have filed the testimony of numerous witnesses, as has BellSouth. It will likely be difficult to conclude the hearing as currently structured within the three days that have been provided. The addition of witnesses for ACSI, and its participation generally, will make the hearing of this matter within the time provided much more difficult.

13. Third, even if the movants are correct that the common

issues will outweigh the dissimilar issues, this does not militate in favor of consolidation in the instant circumstances. Instead, this provides yet another reason that consolidation is inappropriate. As stated previously, the Commission has already ruled that each arbitration is to occur between the two parties involved in a single negotiation. There is to be no intervention. The movant's proposal for consolidation would entail allowing it to address all aspects of each and every issue that would (through some process) be determined to be "common" to MCI, AT&T, and ACSI. If, as ACSI asserts, all or most of the issues will be common, then the result would be a proceeding that is indistinguishable from one in which limited intervention is allowed.

14. Based on the foregoing, it is clear that there should be no consolidation. As it stands now, it is impossible to know whether the disputed issues raised by AT&T, those raised by MCI and those raised by ACSI, are mostly common or mostly dissimilar (although for the reasons stated above the former seems highly unlikely). If the issues are mostly dissimilar, then consolidation is obviously not proper. If the issues are mostly common, then consolidation cannot be ordered without effectively allowing these parties the functional equivalent of the intervention that has already been denied them. Either way, compacting the joint proceeding into an extremely tight time schedule so that ACSI's Petition would go to hearing in little more than six weeks from now is not only patently unworkable, it

is obviously prejudicial to BellSouth.

WHEREFORE, based on the foregoing, BellSouth respectfully requests that the Commission deny the ACSI's Motion for Consolidation. BellSouth further requests that the Commission reconsider its consolidation of the AT&T and MCI arbitrations and, upon reconsideration, to sever those proceedings.

Respectfully submitted this 26th day of August, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 960916-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 26th day of August, 1996 to the following:

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