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September 11, 1996

Ms. Blanca S. Bayo  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Consolidated Docket Nos. ~~960833~~-TP/960846-TP

Dear Ms. Bayo:

On behalf of BellSouth Advertising & Publishing Corporation, enclosed for filing in the above docket is the original and 15 copies of the Notice of Request For Clarification of Issue Preclusion, or, In the Alternative, Notice of Substantial Interest.

If you have any questions, please give me a call.

Sincerely,

  
MARK HERRON  
E. GARY EARLY

cc: Parties of Record

MH/EGE/lcr  
Enclosures

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP \_\_\_\_\_

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.

DOCKET NO. 960833-TP

In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.

DOCKET NO. 960846-TP

Filed: September 11, 1996

NOTICE OF REQUEST FOR CLARIFICATION OF ISSUE PRECLUSION,  
OR, IN THE ALTERNATIVE, NOTICE OF SUBSTANTIAL INTEREST

I. INTRODUCTION AND SUMMARY

BellSouth Advertising & Publishing Corporation ("BAPCO"), through undersigned counsel, submits this Notice of Request for Clarification of Issue Preclusion, or, in the alternative, a Notice of Substantial Interest in this proceeding. BAPCO provides directory publication and other services to local exchange companies in Florida and in other areas.

The parties to this proceeding seek to compel arbitration of certain issues under Pub.L. 104-104, "the Telecommunications Act of 1996" ("Federal Act"). This proceeding was initiated by the petition (AT&T Petition) of AT&T Communications of the Southern States, Inc. (AT&T), submitted July 17, 1996, to arbitrate, pursuant to Section 252(b) of the Federal Act, certain terms and conditions of a proposed agreement between BellSouth Telecommunications, Inc. (BST) and AT&T. In connection with the AT&T Petition the Public Service Commission (Commission) issued an Initial Order Establishing Procedure (Order No. PSC-96-0933-PCO-PTP, issued July 17, 1996.) In that Order, the Commission stated as follows:

Section 252(b)(4) requires this Commission to limit its consideration to the issues raised by the petition and the response. None of these statutory provisions provides for

intervenor participation. Accordingly, only [BST] and AT&T shall be granted full party status for purposes of arbitration of the issues set forth in AT&T's Petition. It follows, therefore, that only AT&T and [BST] shall be bound by the agreement resulting from the AT&T Petition filed in this proceeding.

(Order, p.2)

On July 30, 1996, AT&T and MCI Telecommunications Corporation (MCI) filed a Joint Motion for Consolidation to consolidate the arbitration proceeding involving BST filed by AT&T with the arbitration proceeding which MCI intended to file. By order dated August 9, 1996, the Joint Motion for Consolidation was granted. See, Order on Consolidation and Procedure (Order No. PSC-96-1039-PCO-TP, issued August 9, 1996). That Order supplemented the Initial Order Establishing Procedure and continued to prohibit intervenors in the joint proceeding. On August 15, 1996, MCI filed its petition (MCI Petition) to arbitrate certain terms and conditions of a proposed agreement between MCI and BST.

Both AT&T and MCI seek to compel arbitration of a series of directory publication issues (Directory Demands)<sup>1</sup>. Although the arbitration provisions of the Federal Act apply to BST, BAPCO is not subject to the compulsory arbitration provisions of the Federal Act. BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Section 251 or Section 252 of the Federal Act. Accordingly, BAPCO cannot be

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<sup>1</sup>In its Petition, AT&T seeks orders from this Commission which would (1) require that BAPCO include the AT&T name and logos in all directory publications, See footnote 34 in AT&T Petition ; (2) govern the manner in which BAPCO interacts with its actual or potential customers who also happen to be AT&T's subscribers, See footnote 34 in AT&T Petition; and (3) require BST to force BAPCO (erroneously referenced as a wholly-owned subsidiary of BST) to execute a directory publication agreement which contained many terms and conditions to which BAPCO has not agreed in the already executed agreement, See Section 20 of Attachment 3 to AT&T Petition.

In its Petition, MCI included as Part VIII of Exhibit 3, an exhaustive listing of its compulsory arbitration demands relating to "White/Yellow Page Directory Listings", which listing is attached to this Notice as Attachment 1.

MFS Communications Company, Inc. (MFS) acting in reliance upon the Federal Act filed a similar petition to compel arbitration of interconnection rates, terms and conditions with the Commission. See, Docket No. 96-757-TP. In its petition, MFS likewise improperly raised directory issues. In the course of negotiations conducted during the pendency of that proceeding, MFS and BST have agreed to eliminate from arbitration the directory issues raised in the MFS petition.

made to arbitrate any of the Directory Demands. Specifically, the Federal Act does not grant the Commission jurisdiction to arbitrate any of the Directory Demands.

BAPCO is a company separate and distinct from BST. BAPCO is not under the control or ownership of BST. BAPCO is not a "Bell operating company" within the meaning of the Federal Act. BAPCO, not BST, publishes directories. Both AT&T and MCI are fully aware of these facts.

Both AT&T and MCI have been involved in separate negotiations with BAPCO, which negotiations have resulted in the execution of complete directory publication agreements with BAPCO. With the directory publication agreements, many of the Directory Demands have been resolved. Notwithstanding the execution of these agreements, it appears that AT&T and MCI now desire to pursue Commission arbitration of some, if not all, of the Directory Demands.

Compulsory arbitration under Section 252 of the Federal Act is confined to those subjects and matters identified in Section 251 of the Federal Act. Section 251 addresses three general subject areas: interconnection; resale of telecommunication services; and unbundling of the network elements. It does not address matters of directory publication. Through recent order, the Federal Communications Commission (the FCC) has recognized that the scope of Section 251 does not include matters of directory publication. Thus, the request to arbitrate the Directory Demands is supported neither by Section 251 of the Federal Act, which governs the scope of arbitration under Section 252, nor by the FCC Order.

Section 271 of the Federal Act does contain one narrow directory publication provision. As one of several preconditions to BST's right to enter into the in-region interLATA business, Section 271 requires that the customers of a competing local exchange carrier receive a listing in the alphabetical directory (white pages). The requirements of Section 271 are not subject to compulsory arbitration under Section 252 of the Federal Act. In any event, AT&T and MCI have been assured that their customers will receive the listing referenced in Section 271 pursuant to the separate directory publication agreements already

executed with BAPCO. Thus, inclusion of any of the broad range of Directory Demands is not supported by Section 271, because the Section 271 directory publication condition is not subject to arbitration and, in any event, has already been satisfied.

The interconnection, resale and unbundling requirements of Section 251 and the compulsory arbitration provision of Section 252 of the Federal Act are applicable only to a telecommunications carrier and/or a local exchange carrier. BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Sections 251 and/or 252 of the Federal Act. Thus, BAPCO can not be made to arbitrate issues related to its publication of directories. In particular, the Federal Act does not grant this Commission jurisdiction regarding directory advertising (Yellow Pages).

Despite the fact that: (1) arbitration of the Directory Demands is beyond the scope of the matters to be arbitrated pursuant to Section 252; (2) BAPCO, and not BST, is responsible for directory publication; and (3) BAPCO is not a party to this proceeding, there has been no clear statement by the Commission that the Directory Demands are not included in the arbitration proceedings. To the contrary, it appears that AT&T and MCI are actively seeking arbitration of these issues. Therefore, BAPCO seeks clarification of whether the Directory Demands will be the subject of arbitration by the Commission within these proceedings or whether arbitration will be precluded on the basis that these issues are not within the scope of matters to be arbitrated as contemplated in Section 251 and Section 252 of the Federal Act. BAPCO further seeks confirmation that only the signatories to the final interconnection agreement shall be bound by the arbitration.

In the event that the Commission either refuses to provide the requested clarification or indicates that the Directory Demands are to be included in the arbitration, BAPCO respectfully gives notice that its "substantial interests" are affected by the Commission's arbitration of the Directory Demands. BAPCO is a publisher of white pages and Yellow Pages directories. AT&T and MCI have raised issues regarding the form, style, content and branding of directories in their petitions for arbitration before the Commission.

Additionally, in its filings, AT&T has included materials provided to it by BAPCO which materials BAPCO maintains are proprietary and confidential. BAPCO's interests are further affected by this disclosure. The respondent party to the proceeding, BST, is not engaged in any aspect of directory publication, and therefore its interest in the outcome of any Commission action regarding the Directory Demands is insufficient to warrant BST's representation of the Directory Demands before the Commission. BAPCO, as the only entity that would sustain injury in fact to its business operations as a result of arbitration of the Directory Demands, is substantially affected by any Commission action regarding those issues. As such, the Commission may not preclude BAPCO's participation as a party to this proceeding, or otherwise restrict a point of entry, unless the Commission has determined that the Directory Demands are precluded from arbitration. Fairbanks, Inc. v. State Department of Transportation, 635 So.2d 58, 59 (Fla 1st DCA 1994); Phibro Resources Corporation v. State Department of Environmental Regulation, 579 So.2d 118 (Fla. 1st DCA 1991).

II. THE FEDERAL ACT DOES NOT PROVIDE A BASIS FOR COMPULSORY ARBITRATION OF DIRECTORY PUBLICATION PROVIDED BY BAPCO

- A. The scope of compulsory arbitration under Section 252 is limited to the requirements of interconnection, resale of services or unbundling of elements defined in Section 251.

The demand for compulsory arbitration of the Directory Demands must fail because it is not supported by Section 251 and 252 of the Federal Act. Section 252 of the Federal Act provides procedures for negotiating and arbitrating interconnection agreements. The scope of those procedures is instructive:

**Voluntary Negotiations.** - Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier ... without regard to the standards set forth in subsections (b) and (c) of section 251. Section 252(a)(1)(emphasis supplied).

**Agreements Arrived at Through Compulsory Arbitration.** - During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues. Section 252(b)(emphasis supplied).

**Standards for Arbitration.** - In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall-

(1)ensure that such resolution and conditions meet the requirements of section 251 ...; Section 252(c)(1)(emphasis supplied).

On August 8, 1996, the FCC released its First Report and Order, which is designed to address matters raised by implementation of Sections 251 and 252 of the Federal Act.<sup>2</sup> While certain aspects of the FCC's First Report and Order exceed the FCC's authority under or are inconsistent with the Federal Act,<sup>3</sup> the FCC's First Report and Order does clearly indicate that the intended scope of arbitration under Section 252 is limited to interconnection to the local exchange carrier's network, access to unbundled network elements, and resale of telecommunications services as identified in Section 251. For example, the FCC's First Report and Order provides as follows:

133. ... We believe the negotiation/arbitration process pursuant to section 252 is likely to proceed as follows. Initially, the requesting carrier and incumbent LEC will seek to negotiate mutually agreeable rates, terms, and conditions governing the competing carrier's interconnection to the incumbent's network, access to the incumbent's unbundled network elements, or the provision of services at wholesale rates for resale by the requesting carrier. ...

...

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<sup>2</sup> See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, First Report and Order, FCC 96-325 (rel. August 8, 1996) (hereinafter "FCC's First Report and Order").

<sup>3</sup> See Petition For Review, Bell Atlantic Corporation, BellSouth Corporation and Pacific Telesis Group v. Federal Communications Commission and United States of America, Case No. 96-1318, D.C.Cir. (filed Friday, September 6, 1996); Motion For Expedited Consideration and For A Briefing Schedule, Bell Atlantic Corporation, BellSouth Corporation and Pacific Telesis Group v. Federal Communications Commission and United States of America, Case No. 96-1318, D.C.Cir. (filed Friday, September 6, 1996); See also, Joint Motion of GTE Corporation and Southern New England Telephone Company, for Stay Pending Judicial Review, CC Docket No. 96-98, (filed August 28, 1996).

135. Under the statutory scheme in sections 251 and 252, state commissions may be asked by parties to define specific terms and conditions governing access to unbundled elements, interconnection, and resale of services beyond the rules the Commission established in this Report and Order. ...

...

137. ... State commissions will make critical decisions concerning a host of issues involving rates, terms, and conditions of interconnection and unbundling arrangements, and exemptions, suspension, or modification of the requirements in section 251. ...<sup>4</sup>

It is plain from the language of the relevant provisions of the Federal Act and the FCC's First Report and Order that the scope of a request for a voluntary agreement is limited to interconnection, resale of services or unbundling of network elements as identified in Section 251 of the Federal Act. Likewise, the issues to be resolved by compulsory arbitration are those matters of interconnection, resale of services or unbundling of network elements that are identified in Section 251. Not surprisingly, therefore, the standard for arbitration expressly stated in the Federal Act is for this Commission to ensure that the requirements of Section 251 are met. The scope of compulsory arbitration is therefore limited to the unresolved aspects of the interconnection, resale of services or unbundling of network elements as identified in Section 251 of the Federal Act.

B. No directory publication matters are identified in Section 251; the matters of interconnection, resale of services and unbundling of network elements identified in Section 251 do not encompass directory publication provided by BAPCO.

Directory publication matters are nowhere mentioned in Section 251 of the Federal Act. Section 251 describes in detail multiple obligations of telecommunications carriers and local exchange carriers, but none of those descriptions include directory publication matters. Careful attention to the definition of the matters that are included in Section 251, namely, interconnection, resale of services and unbundling of network elements, reinforces that directory publication is not a subject addressed anywhere in Section 251.

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<sup>4</sup>FCC's First Report and Order, ¶¶ 133-137 (emphasis supplied).



### Resale of Services

Sections 251(b)(1) and 251(c)(4) describe the obligations of a local exchange carrier with respect to resale. Services to be resold are telecommunications services.<sup>5</sup> The term telecommunications service is defined by the Federal Act as "the offering of telecommunications for a fee directly to the public...".<sup>6</sup> Telecommunications is defined as

the transmission, between or among points specified by the users, of information of the user's choosing, without change in the form or content of the information as sent and received.<sup>7</sup>

BAPCO provides no telecommunications services within the meaning of the Federal Act and therefore the resale duties of a local exchange carrier as described in Section 251 do not describe the activities of and are not applicable to BAPCO.

### Interconnection

Section 251(c)(2) describes the duty of an incumbent local exchange carrier with respect to interconnection. That duty is to provide

interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access.

Telephone exchange service and exchange access do not constitute or include directory publication and are not services otherwise provided by BAPCO.<sup>8</sup> It is plain that the interconnection requirements of Section 251 do not encompass directory publication.

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<sup>5</sup>Section 251(b)(1) describes the duty of a local exchange carrier "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services."

Section 251(c)(4)(A) describes the duty of an incumbent local exchange carrier "to offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers."

Section 251(c)(4)(B) describes the duty of a local exchange carrier "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service... ."

<sup>6</sup>47 U.S.C. §153(51).

<sup>7</sup>47 U.S.C. §153(48).

<sup>8</sup>Telephone exchange service and exchange access are defined respectively by 47 U.S.C. §153(18) and 47 U.S.C. §153(40).

## Unbundled Access

Section 251(c)(3) defines the duty of an incumbent local exchange carrier with regard to unbundled access. That duty is to provide

nondiscriminatory access to network elements on an unbundled basis at any technically feasible point ... in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

As already shown, BAPCO neither owns nor possesses any network that is a component of the provision of telecommunications service, as that term is defined by the Federal Act. The definition of network elements as used in the Federal Act reinforces that conclusion.<sup>9</sup> BAPCO possesses no network elements and its directory publication is not a network element within the meaning of the Federal Act.

It is indisputable that although Section 251 identifies many duties and obligations of telecommunications carriers and local exchange carriers, none of the duties of interconnection, resale of services or unbundled access to network elements described in Section 251 include a duty to provide any aspect of directory publication.<sup>10</sup>

C. BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Sections 251 and 252 of the Federal Act and therefore BAPCO cannot be compelled to arbitrate publication of directories.

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<sup>9</sup>A network is defined as a "facility or equipment used in the provision of a telecommunications service [including] features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C. §153(45).

<sup>10</sup>The scope and structure of Section 271 of the Federal Act also supports the conclusion that Section 251 does not include directory publication within its scope. Section 271 identifies certain interconnection requirements that must be met by a Bell Operating Company in order for it to be authorized to provide certain in-region interLATA services. There is precisely one directory publication issue identified in Section 271 -- the requirement that a competing carrier's local exchange customers receive white pages directory listings. See Part III of Title I of the Telecommunications Act of 1996, designated as Section 151 thereof, to be codified in the Communications Act of 1934 at 47 U.S.C. §271(c)(2)(B)(viii). The significant point here is that the one directory publication requirement contained in the Federal Act is contained in Section 271, not Section 251. The interconnection requirements of Section 271 are not subject to compulsory arbitration under Section 252(b). Moreover, BAPCO is not a Bell Operating Company within the meaning of the Federal Act. See 47 U.S.C. §153(35) (defining Bell Operating Company).

The requirements of Section 251 respecting interconnection, resale of services and unbundling of network elements are the obligations of a telecommunications carrier and/or a local exchange carrier. The voluntary negotiations to be undertaken pursuant to Section 252(a)(1) and the compulsory arbitration procedure established by Section 252(b) are processes directed to a local exchange carrier. Only a cursory review of the Federal Act is needed to establish that BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of the Federal Act.

A telecommunications carrier is "any provider of telecommunications services." 47 U.S.C. §153(49)<sup>11</sup>. BAPCO does not provide telecommunications within the meaning of the Federal Act and therefore is not a telecommunications carrier within the meaning of the Federal Act.

The Federal Act defines a local exchange carrier as

any person that is engaged in the provision of telephone exchange service or exchange access.<sup>12</sup>

Telephone exchange and exchange access are defined respectively as

(A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.<sup>13</sup>

and

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<sup>11</sup>See Resale of Services section, page 8

<sup>12</sup>47 U.S.C. § 153(44).

<sup>13</sup>47 U.S.C. §153(18).

the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.<sup>14</sup>

BAPCO provides neither telephone exchange services nor exchange access. It therefore is not a local exchange carrier within the meaning of Sections 251 and 252 of the Federal Act.

Inasmuch as BAPCO is neither a telecommunications carrier nor a local exchange carrier, the requirements of Section 251 do not apply to it and the compulsory arbitration provisions of Section 252 do not apply to it. A corollary to this conclusion is that the Directory Demands cannot be arbitrated in a Section 252 proceeding between BST and AT&T and between BST and MCI.

### III. SUBSTANTIAL INTERESTS OF BAPCO

If the Commission arbitrates the Directory Demands, BAPCO will be substantially affected by any decision rendered in such proceeding, and will be entitled to notice and the opportunity to intervene as a party to this proceeding.

Section 120.57, F.S. sets forth the procedure which must be followed when "...the substantial interests of a party are determined by an agency... ." Those procedures include, at a minimum, notice of the proposed action and an opportunity for the party to participate in the proceeding and present evidence in support of its interest. Sections 120.57(1)(b) and 120.57(2)(a), F.S. An entity can attain status as a party by, among other things, being a named party, having a statutory right to participate, or by having its substantial interests affected by the proposed agency action. Section 120.52(12), F.S.; Gregory v. Indian River County, 610 So.2d 547, 553-554 (Fla. 1st DCA 1992). Under the test first established in Agrico Chemical Company v. State Department of Environmental Regulation, 406 So.2d 478 (Fla. 2nd DCA 1981), rev.den. Freeport Sulphur Company v. Agrico Chemical Company, 415 So.2d 1359 (Fla. 1982) and rev.den., Sulphur Terminals Company v. Agrico Chemical Company, 415 So.2d 1361 (Fla. 1982), and consistently applied since, persons may demonstrate that their substantial interests are affected if they can demonstrate:

<sup>14</sup>47 U.S.C. §153(41).

1) that [they] will suffer injury in fact which is of sufficient immediacy to entitle [them] to a Section 120.57 hearing, and 2) that [their] substantial injury is of the type or nature which the proceeding is designed to protect.

Agrico at 482; See also Gregory, supra at 554; Florida Society of Ophthalmology v. State Board of Optometry, 532 So.2d 1279 (Fla. 1st DCA 1988).

If the Commission chooses to arbitrate any of the Directory Demands in this proceeding, BAPCO will suffer injury to its current and future contractual obligations, and its right to editorial control over its publications will be improperly limited. No other party has a corresponding potential for injury. BAPCO is a legal entity separate and distinct from BST, and as such is entitled to the opportunity to protect its legal interests before administrative and judicial tribunals, including the Commission. See, e.g. 111 Properties, Inc. v. Lassiter, 605 So.2d 123 (Fla. App. 4th DCA 1992). BAPCO and BST share no common officers and directors, and have no common employees. Each company adheres to the corporate requirements of incorporation and record keeping required in Florida. Each company is fully capitalized and has separate fiduciary responsibilities to their shareholders. Florida law does not permit any entity to disregard the separate legal status of a corporation unless there are aggravating circumstances such as a showing that one corporation is a mere instrumentality of the other and that the subsidiary corporation is a device or sham to mislead creditors or exists for fraudulent purposes. In re Holywell Corporation, 118 B.R. 876 (S. D. Fla 1990); see also, NCR Credit Corp. v. Repton Electronics, Inc., 863 F. Sup. 156 (M. D. Fla 1994). Such circumstances do not exist between BAPCO and BST. If the Commission chooses to assert jurisdiction over any of these Directory Demands, then BAPCO's substantial injury resulting from that decision is wholly separate and distinct from any injury that would be suffered by BST or any other party, and is of the type and nature that the Chapter 120, F.S. process was designed to protect.

Pursuant to Commission Rule 25-22.026(2), F.A.C.,

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may, upon motion of a party, or upon his or her own initiative enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

In this case, the prehearing officer has entered orders specifically excluding the ability of BAPCO to join as a party to this proceeding. Therefore, based upon the provisions of the Federal Act discussed above and upon the provisions of Sections 120.52 and 120.57, F.S., and Rule 25-22.026, F.A.C., BAPCO can only conclude that the Commission will not allow the arbitration of the Directory Demands raised by AT&T and MCI. However, in the event that the Commission does intend to allow the arbitration of the Directory Demands, BAPCO hereby advises the Commission that BAPCO's substantial interests are affected by any decision affecting directory form, style or content, and provides notice of its right to limited participation to enable it to further protect its interests in any such proceeding.

BAPCO's participation in any proceeding before the Commission, including such participation as is necessary to file and be heard on this Notice, is based on Chapter 120, F.S., and does not otherwise confer jurisdiction on the Commission or waive any defense or claim BAPCO may have to the exercise of such jurisdiction.

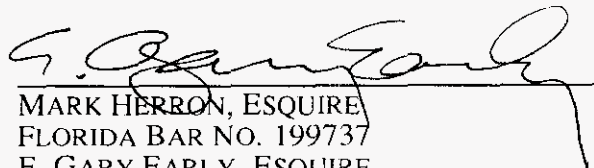
IV. CONCLUSION AND REQUEST FOR CLARIFICATION

Based on the foregoing, it is clear that arbitration of directory publication matters is beyond the scope of arbitration provided by Section 252 of the Federal Act. Directory publication is not a duty of interconnection, resale of telecommunications services, or unbundled access to network services as defined in Section 251 of the Federal Act. Directory publication matters, whether or not included in separate agreements between AT&T and BAPCO and MCI and BAPCO, are outside the scope of a Section 252 arbitration between AT&T and BST and MCI and BST.

BAPCO is confident that the Commission could not have intended to conduct arbitrations under Section 252 of the Federal Act in a manner contrary to the clear intent of Congress in enacting the Federal Act. BAPCO likewise is confident that the Commission would not have intended to address BAPCO's substantial interests without permitting it to be heard on those issues.

BAPCO respectfully requests, therefore, an order which clarifies the previously issued procedural orders and which confirms that BAPCO cannot be bound, directly or indirectly, by the Commission's rulings on the arbitration petitions which are the subject to this proceeding and that accordingly, the Directory Demands are to be excluded from those arbitrations.

Respectfully submitted this 11<sup>th</sup> day of September, 1996, by:



MARK HERRON, ESQUIRE  
FLORIDA BAR NO. 199737  
E. GARY EARLY, ESQUIRE  
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(904)222-3471

Attorneys for BellSouth Advertising &  
Publishing Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties this 11<sup>th</sup> day of September, 1996:

By delivery to:

Donna Canzano  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

Nancy White  
c/o Nancy Sims  
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Tallahassee, Florida 32301

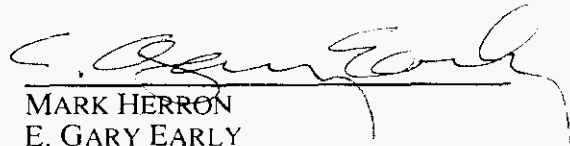
Tracy Hatch  
AT&T  
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Richard D. Melson  
Hopping Green Sames & Smith  
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and by Federal Express to:

Nancy White  
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Martha McMillin  
MCI Telecommunications  
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Atlanta, Georgia 30342

  
MARK HERRON  
E. GARY EARLY



VIII. WHITE/YELLOW PAGE DIRECTORY LISTINGS

**DEFINITION:** The ability of MCI's customers to be able to obtain printed directories that includes all customers on the public switched network (within a defined geographic area) regardless of their local service provider.

- REQUIREMENTS**
1. General Requirements
  2. Types of Directory Listings
  3. Business Processes
    - 3.1 Order Processing
    - 3.2 Provisioning/Distribution
    - 3.3 Trouble Resolution, Maintenance, Customer Care
    - 3.4 Billing
  4. Compensation
  5. Quality of Service
  6. Information

Business Area	Requirement
<p>1. General Requirements</p>	<p>1.1 The ILEC to include MCI specific information in the information pages of their directories.</p>
	<p><b>BellSouth Position:</b> We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.</p>
	<p>1.2 Publication of MCI subscriber listings in ILEC directories (main listing in White and Yellow pages).</p>
	<p><b>BellSouth Position:</b> We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.</p>
	<p>1.3 Distribution of directory to MCI subscribers on a non-discriminatory basis.</p>
<p><b>BellSouth Position:</b> We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.</p>	
<p>1.4 Customized cover for directories</p>	
<p><b>BellSouth Position:</b> Under consideration for additional charge.</p>	
<p>1.5 Use of ILEC recycling services</p>	
<p><b>BellSouth Position:</b> We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on</p>	

**2. Types of  
Directory  
Listings**

contractual language for this issue. Thus, we seek arbitration on this issue.

2.0 It is required that MCI subscribers can be included in the following types of directory listings:

2.1 **Primary White Page Listings**

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.2 **Primary Yellow Page Listings**

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.3 **Additional White Page Listings**

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.4 **Additional Yellow Page Listings**

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.5 **Non-Pub/Non-List**

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.6 **Foreign Listings**

**BellSouth Position:** Further definition required.

2.7 **Alternate Call Listings**

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.8 Information Listings

**BellSouth Position:** Will provide informational listings to the same extent that it provides to its end users. We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.9 Advertising

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

2.10 List Rentals

**BellSouth Position:** Do not currently provide list rentals but will provide to MCI if this is ever done. We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

3. Business Processes

3.1 Order Processing:

3.1.1 Order processing procedures need to be established to update directory database on a defined, regular basis with MCI customer information.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

3.1.2 Electronic format needs to be defined for exchange of customer data, to include the following types of data elements:

Transaction (new listing, change name, change address, disconnect, etc.)

Service Provider

Order Number

Telephone Number

Completion Date

Bus/Res Indicator

**BellSouth Position:** Not applicable

Exchange

**BellSouth Position:** Not applicable

List Name

"Old" List Name (for changes)

List Rental Omission

**BellSouth Position:** Not applicable

List Address  
Zip Code  
Location/Service Address (for delivery)  
Billing Name, Address, Zip Code  
Billing Telephone Number  
List Type  
SIC Codes

**BellSouth Position:** Not applicable

Yellow Page Headings  
Record Type (Main/Additional Listings)  
Type of Accounting (Gov't affiliation)  
Previous Telephone Number (changes)  
Referral Telephone Number (changes)  
Delivery Quantity  
New Connect Delivery  
Format Instructions (indent, etc.)

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

- 3.1.3 The ILEC must provide the ability for MCI to electronically query the LEC listing system to view customer listings.

**BellSouth Position:** No plans to provide this capability. May reconsider if volumes increase substantially.

- 3.1.4 The ILEC must provide the ability for MCI to electronically transmit multi-line listing orders.

**BellSouth Position:** Enhancement under development. We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

- 3.1.5 A process for managing multi-owner captions is required.

**BellSouth Position:** Standards must be developed. We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

- 3.1.6 The ILEC must provide a complete report showing all listing appearances at least one month prior to book close.

**BellSouth Position:** Available upon request. Appearances at least one month prior to book close.

**3.2 Provisioning/Distribution:**

- 3.2.1 Initial and secondary distribution arrangements must be available.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

**3.3 Trouble Resolution, Maintenance & Customer Care:**

- 3.3.1 Intercompany procedures need to be established to prevent errors, and to correct them when they do occur.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

**3.4 Billing:**

- 3.4.1 This paragraph deleted or moved.

- 3.4.2 Invoice MCI subscribers directly for Yellow Pages advertising bills.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

- 3.4.3 Invoice MCI subscriber directly for advertising/white page bolding. Charges for additional and foreign White Pages listings should be billed to MCI and itemized at the ANI sub account level.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

- 3.4.4 Intercompany billing dependent on resolution of compensation.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

- 3.4.5 Need to determine proper form of administrative billing between billing carriers.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

**4. Compensation**

4.1 There should be no additional charge for distribution.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

4.2 There should be no charge for inclusion of MCI subscriber listings in ILEC directories.(White and Yellow Pages).

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

4.3 Any additional charges that are made to customers should be on a non-discriminatory basis.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

**5. Quality of Service**

5.1 The companies must agree on a mechanism for dealing with breaches of agreed Quality-of-Service standards.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

5.2 Listing update intervals must be the same as, those used by the ILEC for its own customers

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

**6. Information**

6.1 Publishing cycles and deadlines need to be provided to MCI to ensure timely delivery of MCI information.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

6.2 Service location information needs to be exchanged if directory publisher is to deliver books.

**BellSouth Position:** We believe we may have reached agreement in

principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

6.3 Description of calling areas covered by each directory.

**BellSouth Position:** We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.

6.4 The ILEC must provide regular updates of the following information:

- Yellow page heading codes
- Directory names and codes
- Directory product changes
- Listing format rules
- Listing alphabetizing rules
- Standard abbreviations
- Titles and Designations

**BellSouth Position:** Provided at a minimum quarterly. We believe we may have reached agreement in principle with BellSouth, however, we have not yet agreed on contractual language for this issue. Thus, we seek arbitration on this issue.