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October 4, 1996

HAND DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Fl 32399-0850

Re: Docket Nos. ~~960658-TP~~ and 930330-TP

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of Joint Complainants Response to BellSouth's Motion to Strike in the above dockets.

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

- ACK _____
- AFA _____
- APP _____
- CAP _____
- CMU _____
- CTR _____
- EAG _____ JAM/jei
- LEI 1 _____
- LIV 5 _____ Enclosure
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10650 OCT-4 96

FPSC-RECORDS/REPORTING

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Florida)
Interexchange Carriers Association,)
MCI Telecommunications Corporation,)
and AT&T Communications of the)
Southern States, Inc., against)
BellSouth Telecommunications,)
Inc.)
_____)

DOCKET NO. 960658-TP

FILED: October 4, 1996

**JOINT COMPLAINANTS' RESPONSE
TO BELLSOUTH'S MOTION TO STRIKE**

MCI Telecommunications Corporation, AT&T Communications of the Southern States, Inc., and the Florida Interexchange Carriers Association (Joint Complainants) respond in opposition to the Motion to Strike filed on September 30, 1996, by BellSouth Telecommunications, Inc. (BellSouth). For the following reasons, the Commission should deny the motion.

1. In its Motion, BellSouth asks the Commission to Strike three issues in Joint Complainants' Prehearing Statement and a portion of the rebuttal testimony of Complainants' witness, Ms. Sandra Seay. BellSouth bases its motion on the argument that the issues attached to the Order Establishing Procedure, Order No. PSC-96-1044-PCO-TP, dated August 13, 1996, delimit the "scope of the proceeding." The argument is preposterous on its face. The Order Establishing Procedure explicitly states the list of issues attached to the Order is "tentative." The Order also explicitly permits parties to raise additional issues until the Prehearing Order has been issued. By the express terms of the Order, it is after the date of the Prehearing Order -- not the date of the Order Establishing Procedure issued early in the proceeding -- that a

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party must show good cause before adding an issue. In this respect, the Order Establishing Procedure simply tracks procedural Rule 25-17.038(b)2, Florida Administrative Code. BellSouth's argument that a party's right to identify additional issues becomes restricted after the "tentative" list has been circulated early in the case is a pure invention that flies in the face of the very Order Establishing Procedure that BellSouth cites in its Motion.

2. Typically, the Order Establishing Procedure is issued well prior to the completion of discovery. Obviously, no list of issues can be regarded as complete until the results of discovery have been incorporated in a party's position. In this case, one of the issues that BellSouth seeks to "strike" in its Motion is Complainants' Issue 8, which states:

ISSUE:

When an existing customer contacts BellSouth in its capacity as LEC for the purpose of changing to an intraLATA carrier other than BellSouth, should BellSouth be permitted to initiate marketing efforts designed to prevent the change?

POSITION:

FIXCA, MCI, AT&T:

No. At that point the Commission's intent that customer decisions be based on competing marketing efforts has been achieved, and BellSouth's only legitimate role is to execute the customer's instructions. Its plan to attempt to reverse the customer's decision is an abuse of its role as dominant LEC, and vividly demonstrates the need for the Commission to prohibit BellSouth from utilizing LEC-related contacts as marketing opportunities. (Seay)

3. Joint Complainants did not know of the practice to which Issue 8 refers

until they received and reviewed discovery documents provided by BellSouth shortly prior to the filing of the direct testimony. Complainants effectively and timely raised this issue in the prefiled direct testimony of Ms. Seay, which was filed on September 3, 1996. At pages 15-17, Ms. Seay states:

Even more egregious procedures are planned for existing customers. If the customer calls with the affirmative request to change intraLATA carriers, the BellSouth representative must "attempt to save the service." This is another example of how BellSouth intends to take advantage of its gateway position to persuade the customer to change his mind. The description of "Attempt to Save the Service" demonstrates it is a sales pitch:

- ** Save attempt should highlight the advantages of BellSouth local long distance service. (Ex. BellSouth has expertise is [sic] servicing the needs of Small Business customers in your area, BellSouth is local!) We will use this type of positive approach rather than comparing ourselves with our competitors.**

Exhibit 7 at Bates stamp page 000549.

This issue is of particular concern given the Commission's decision that no balloting be done; instead, carriers will obtain new customers through their own marketing efforts. This was a consensus opinion expressed by the industry taking into account a number of factors, including local exchange company fears that balloting would result in the loss of many customers, the expense of balloting, and possible customer confusion. The success of the approach depends upon fair, neutral business office practices by the local exchange companies...

(Referring to Exhibit 7) Indeed its very language requires the customer service representative to become the customer's telecommunications consultant and then make a sales pitch to keep the customer with BellSouth, even if the customer requests to be changed to a specific carrier...

If the customer then indicates he wants to exercise his choice and wants to change carriers, the customer service representative

must then become a sales representative by making "an Attempt to Save the Service." Exhibit 7, Bates stamp page 000549. Similarly, if a customer calls with the specific request to change her intraLATA carrier from BellSouth to a specific carrier, the representative must "explain he/she has choices", then go into the sales mode to change the customer's mind and persuade him to stick with BellSouth despite his decision to switch.

Prefiled testimony of Sandra Seay, at pp. 15-17 (excerpts)

4. Thus, the substance of Issue 8 was timely treated in Complainants' direct testimony. BellSouth had the full opportunity to respond to the issue in its rebuttal testimony. However, despite Complainants' good faith participation in the development of a preliminary issue list, the issue had not been framed in the "tentative list." The issues in the preliminary or "tentative list" that addressed the treatment of existing customers dealt specifically with BellSouth's practice of attempting to refer existing customers who call to order a PIC change to their preferred carrier instead of processing the order (Issue 4); the separate consideration of whether BellSouth should be permitted to market its intraLATA service to existing customers who contact BellSouth in its capacity as LEC to discuss repairs, vertical services, etc. (Issue 2); and issues relating to the appropriateness of PIC change charges in certain situations (Issues 6, 7). There was no issue that addressed the separate and distinct business practice of intercepting an order from an existing BellSouth customer for a PIC change and attempting to change the mind of an existing customer who calls BellSouth for the specific purpose of switching from BellSouth's intraLATA service to that of another carrier. For that reason, Complainants added Issue 8 to their Prehearing Statement, which was timely filed on September 17.

If the Prehearing Order does not incorporate this Issue, the Order will fail to perform its function of apprising the Commissioners as to the substance of the controversy. It will also fail to provide a vehicle for the resolution and disposition of the issue. Complainants are entitled to present this important issue clearly and directly to the Commissioners for an express adjudication. This function is accomplished, in important part, by framing issues for decision in a Prehearing Order. To exclude Issue 8 would be to deny Complainants' right to fundamental due process.

5. BellSouth also contends that certain statements contained in the prefiled rebuttal testimony of Ms. Seay are not proper rebuttal. BellSouth says Ms. Seay's testimony does not rebut the testimony of any BellSouth witness. BellSouth is wrong. In their prefiled direct testimony, BellSouth witnesses Honeycutt (pp. 3-4) and Geer (pp. 6-8) contend that the Commission should determine BellSouth's treatment of existing customers to be reasonable, for the reasons they state. Ms. Seay rebuts the assertion that the practices regarding existing customers are fair and reasonable by pointing out the egregious practice of intercepting and attempting to reverse decisions to switch from BellSouth's service that BellSouth witnesses failed to mention. In rebutting BellSouth's assertion that the Commission should find the treatment of existing customers reasonable, Joint Complainants' witness is not limited to discussing only the reasons given by BellSouth. The statements contained in Ms. Seay's rebuttal testimony constitute appropriate rebuttal.

6. At pages 2-3 of its motion, BellSouth implies that Complainants' witness introduced Issue 8 for the first time in rebuttal testimony that "surprised" BellSouth

and denied BellSouth an opportunity to respond. As shown above, both claims are false. Issue 8 was raised and developed in Ms. Seay's prefiled direct testimony.

7. At page 4 of its motion, BellSouth says "...FIXCA appears to take the position that this testimony is outside the scope of this proceeding." This statement is a fantastic and silly mischaracterization of Ms. Seay's testimony and of Complainants' position. In rebuttal testimony, Ms. Seay simply rebutted BellSouth's contention that its business practices governing existing customers are reasonable by pointing out they failed to provide a complete picture of those practices. Ms. Seay had already placed the issue within the "proper scope of the proceeding" through her direct testimony.

8. Even if the Commission were to disallow these comments in Ms. Seay's rebuttal testimony, which for the reasons contained herein it should not do, the additional issue contained in the Prehearing Statement is proper and necessary because it was properly and timely raised in direct testimony.

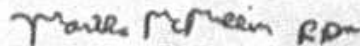
9. BellSouth also complains that Joint Complainants' Prehearing Statement identified two additional legal issues. The identification of legal issues is appropriate. In fact, both the Order Establishing Procedure (at p. 3) and Rule 25-22.038, Florida Administrative Code, call upon parties to identify issues and categorize them into issues of fact, issues of policy, and legal issues. Therefore, in identifying legal issues, Joint Complainants were doing no more than conforming to the Commission rules and the requirements of the Order Establishing Procedure.

10. Finally, at page 5 of its motion, BellSouth claims -- again -- that

Complainants have "violated" the Order Establishing Procedure. BellSouth is wrong. Complainants have instead adhered to the Order and the underlying rule that are designed -- not to diminish due process rights -- but simply to facilitate an orderly procedure and pave the way to a productive and hopefully streamlined prehearing conference. With respect to that objective, BellSouth's frivolous motion is definitely counterproductive. It should be emphatically, summarily denied.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Joint Complainants' Response to BellSouth's Motion to Strike, has been furnished by hand delivery* or by U.S. Mail to the following parties, this 4th day of October, 1996:

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