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November 19, 1996

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, Florida 32399-0850

RE: **Docket No. 961150-TP**
Sprint Arbitration

Dear Mrs. Bayo:

Enclosed please find an original and fifteen copies of BellSouth's Memorandum In Opposition to Sprint Communication Company's Motion to Strike BellSouth's Notice of Order, which we ask that you file 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 to the parties shown on the attached Certificate of Service.

Sincerely yours,

J. Phillip Carver (JPC)

J. Phillip Carver

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU Leath
- CTR _____
- EAG _____
- LEG 1
- LIN 3
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Enclosures

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

DOCUMENT NUMBER-DATE
12365 NOV 19 96
FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
DOCKET NO. 961150-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 19th day of November, 1996 to the following:

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*Hand delivery

the various arbitrations providing the Commission with their respective interpretation of the Eighth Circuit's Order.

2. Nevertheless, with the filing by Sprint, every one of the Petitioners have filed in their respective cases, a motion to strike BellSouth's notice. In their motions, AT&T and MCI each claimed that, by filing its notice, BellSouth was somehow attempting to provide the Commission with an additional post-hearing brief.

3. Sprint, does not even have this tenuous argument to rely upon. Instead, Sprint argues, even though the hearing in this matter will not begin until December 3, 1996, that simply because BellSouth has filed a pleading that is not technically authorized, it should be stricken. At the same time, Sprint acknowledges that there is nothing improper about filing a Notice to request recognition of the Order of the Federal Court. (Sprint Motion, par. 1, fn. 1). Thus, Sprint is not so much protesting the filing of this particular pleading, as it is objecting to the content of the pleading. In other words, Sprint argues, in effect, that while it may be proper to file a Notice, the notice must be completely void of any commentary upon or reference to the substance of the Order for which the notice is requested. Sprint, however, provides no support for this questionable contention.

4. More to the point, Sprint has failed entirely to allege that it will be prejudiced in any way by the filing by BellSouth. Instead, Sprint simply argues that BellSouth could cover the same ground in the testimony it has filed in this docket, or in its post-hearing brief. In point of fact, since the notice largely provides BellSouth's legal interpretation of the Order, it is questionable whether it can appropriately be included in testimony. While it is true that BellSouth could set forth the matters that are in the notice in a post-hearing brief, BellSouth submits that it serves no purpose to keep the position of any party as to the legal effect of the Order undisclosed until the filing of the post-hearing briefs. To the contrary, BellSouth believes that the Commission would be better served by having a full statement as early as possible of the legal positions (and the controlling authority to be relied upon) of each party. To this end, BellSouth again states that it has no objection to the filing of a substantively responsive pleading by Sprint.

5. There is, however, no legitimate reason to strike BellSouth's pleading given that (1) Sprint has cited no authority for the contention that a notice must be limited in the way it contends; (2) it has alleged no prejudice whatsoever as a result of BellSouth's filing, and (3) if Sprint were inclined to provide the Commission with a statement of its own legal position, it could certainly do so.

WHEREFORE, for the reasons set forth above, BellSouth respectfully requests the entry of an Order denying Sprint's Motion to Strike in its entirety. Respectfully submitted this 19th day of November, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

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