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November 27, 1996

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

Docket No. 960833-TP, 960846-TP & 960916-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Response to BellSouth Telecommunications, Inc.'s *Ex Parte* Communication of November 25, 1996.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,

Tracy Hatch
Tracy Hatch

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CLK _____
- CTD _____
- CTM _____
- CTN _____
- CTP _____
- CTR _____
- CTU _____
- CTV _____
- CTW _____
- CTX _____
- CTY _____
- CTZ _____
- OTR _____

Attachments

cc: Parties of Record

DOCUMENT NUMBER-DATE
12720 NOV 27 1996
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications) Docket No. 960833-TP
of the Southern States, Inc.; MCI) Docket No. 960846-TP
Telecommunications Corporation; MCI Metro) Docket No. 960916-TP
Access Transmission Services, Inc.; American)
Communications Services, Inc. and American)
Communications Services of Jacksonville, Inc.)
for arbitration of certain terms and conditions) Filed: November 27, 1996
of a proposed agreement with BellSouth)
Telecommunications, Inc. concerning inter-)
connection and resale under the)
Telecommunications Act of 1996.)

AT&T'S RESPONSE TO BELLSOUTH TELECOMMUNICATIONS, INC.'S
EX PARTE COMMUNICATION OF NOVEMBER 25, 1996

AT&T Communications of the Southern States, Inc. (hereinafter "AT&T"), pursuant to Section 120.66 (2), and Section 350.042 (4), Florida Statutes, hereby submits its response to the *ex parte* communication by BellSouth Telecommunications, Inc. (BellSouth) to Chairman Clark on November 25, 1996.

1. On November 25, 1996, AT&T received the attached memo from Chairman Susan Clark regarding an *ex parte* contact made by Mr. Tony Lombardo on behalf of BellSouth. According to the memo, in the course of a telephone conversation Mr. Lombardo drew the Chairman's attention to certain documents regarding "rebundling" of network elements that BellSouth had provided to her aide. It appears that Mr. Lombardo then attempted to solicit the Commission's support in opposing the FCC's effort to allow alternative local exchange carriers to subscribe to and combine unbundled

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network elements. As Chairman Clark noted in her memo, the Commission has been called upon to determine substantially the same issue in the above dockets. See Issue No. 2, Staff Recommendation dated November 14, 1996. One of the documents provided by BellSouth also relates directly to Issue No. 4 in these dockets.

2. AT&T appreciates the opportunity to respond to this *ex parte* contact and applauds Chairman Clark's prompt notification to the parties.¹ BellSouth's action in contacting a Commissioner regarding the merits of an issue under consideration by the agency -- indeed, one that has been the subject of a hearing and was to have been voted upon the following day -- is not only unethical, but is specifically prohibited by Sections 120.66 and 350.042, Florida Statutes.

3. The Commission should refuse to either review or consider the documents provided by BellSouth. The documents are not in the hearing record and there is no Commission rule or order that allows consideration of such post-hearing filings.² The Commission has firmly resisted efforts to expand hearing records with unauthorized post-hearing filings in the past and should be particularly unyielding when such documents come to the agency via an impermissible *ex parte* contact. To do otherwise would only encourage parties to Commission proceedings to attempt to circumvent the prohibitions on *ex parte* communications set forth in the Florida Statutes.

¹ Section 350.042, Florida Statutes, also requires the individual who makes an *ex parte* contact to submit to the Commission a written statement regarding the details of such contact. AT&T has received no such statement from BellSouth.

² AT&T notes that the documents in question were not proffered as supplemental authority, nor could they qualify as such.

4. Because these documents are not properly before the Commission, AT&T does not believe that it is appropriate to respond to their substance. Nor is AT&T able to do so with any specificity within the shortened time frame allotted. The Commission's deliberations should include neither the documents nor commentary thereon.

WHEREFORE AT&T Communications of the Southern States, Inc., requests this Commission to refuse to review or consider the documents proffered by BellSouth and, if necessary, to strike them from the record of this proceeding.

Respectfully submitted this 27th day of November, 1996.



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ATTORNEYS FOR AT&T
COMMUNICATIONS OF THE
SOUTHERN STATES, INC.

State of Florida**Public Service Commission****-M-E-M-O-R-A-N-D-U-M-**

DATE: November 25, 1996**TO:** Blanca Bayó, Director of Records and Reporting**FROM:** Susan F. Clark, Chairman**RE:** Communications Regarding Docket Nos. 960833-TP, 960846-TP, and 960916-TP

On November 25, 1996, I returned a phone call to Mr. Tony Lombardo, representing BellSouth. During the conversation, Mr. Lombardo spoke with me about an issue that is being considered in the appeal of the FCC's interconnection rules filed in the 8th Circuit Court of Appeals (Docket No. 96-3321, Iowa Utilities Board, et al, Petitioners v. Federal Communications Commission, et al, respondents). Mr. Lombardo directed my attention to two documents delivered to my Aide by Ms. Nancy Sims on November 25, 1996. The first of these documents is a portion of the brief filed in the above appeal by the Mid-Sized Incumbent Local Exchange Carriers. The second document is the Brief of Amici Curiae filed by a group of congressmen in the same proceeding.

Mr. Lombardo indicated that he believed that it was important for the state to oppose the FCC's effort to allow alternative local exchange carriers to subscribe to and combine unbundled elements to recreate existing local exchange service offerings at prices that are lower than the otherwise applicable resale rate.

Because there are similar issues being considered in the above three Commission arbitration proceedings, it is appropriate to disclose this conversation and the attached documents to the parties to the Commission proceedings. Therefore, please send a copy of this memorandum and attachments to the parties and provide them an opportunity to respond. Section 350.042, F.S., allows parties 10 days to respond; however, please advise the parties that, because of time frames established by the Federal Communications Act, the Commission will take up these dockets at its December 2, 1996, Agenda Conference.

CERTIFICATE OF SERVICE

DOCKET NOS. 960833-TP, 960846-TP and 960916-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 27th day of November, 1996:

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