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MEMORANDUM

June 12, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) ^{MLB}
DIVISION OF COMMUNICATIONS (GREER) ⁵⁷⁶ ⁸⁰⁰

RE: DOCKET NO. 960290-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. TO REQUIRE CARRIERS TO FILE INTERCONNECTION AGREEMENTS, IN COMPLIANCE WITH SECTION 252 (A) OF THE TELECOMMUNICATIONS ACT OF 1996

AGENDA: REGULAR AGENDA - JUNE 24, 1997
PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960290TP.RCM

CASE BACKGROUND

On March 1, 1996, AT&T Communications of the Southern States, Inc. (AT&T) filed a letter requesting that the Florida Public Service Commission require the filings of all existing interconnection agreements between local exchange telecommunications companies and other local exchange telecommunications companies pursuant to Section 252(a)(1) of the Telecommunications Act of 1996 (the Act).

On July 24, 1997, the Commission issued Proposed Agency Action Order No. PSC-96-0959-FOF-TP. Therein, the Commission determined that Section 252(a)(1) of the Telecommunications Act of 1996 requires the filing of interconnection agreements between competitive carriers in the same geographic markets entered into before or after the enactment of the Act. The Commission also required that existing interconnection agreements between

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competitive carriers in the same geographic markets that had not yet been filed had to be filed by the incumbent local exchange company within 14 days from the issuance of that Order. On August 5, 1996, BellSouth Telecommunications, Inc. (BellSouth) notified the Commission that it had complied with Order NO. PSC-96-0950-FOF-TP.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order (FCC Order), 96-325, in CC Docket No. 96-98. The FCC Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the Act. The Commission appealed certain portions of the FCC Order, and requested a stay of the order pending that appeal. The request for stay was granted by the Eighth Circuit Court of Appeals.

In Order 96-325, the FCC included a specific analysis of Section 252(a) of the Act in its Order. On August 13, 1996, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (MCI) protested the Commission's Proposed Agency Action Order No. PSC-96-0959-FOF-TP. Thereafter, on August 14, 1996, AT&T also filed a protest of the Commission's order, and requested a hearing. Both MCI and AT&T argued that the Commission's interpretation of Section 252(a) was contrary to the Act. On September 28, 1996, the portions of FCC Order 96-325 that were not stayed became final. Among the portions of the FCC Order that were not stayed and became final on that date was the FCC's interpretation of Section 252(a) of the Act. The applicable portions of the FCC Order are, however, currently being reviewed by the Eighth Circuit.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission issue a Proposed Agency Action Order requiring the filing of all interconnection agreements for approval, in conformance with FCC Order 96-325?

RECOMMENDATION: Yes. Staff recommends that the Commission issue a Proposed Agency Action Order requiring that all interconnection agreements be filed with the Commission for approval under Section 252(e) of the Act, in conformance with FCC Order 96-325. (Culpepper, Greer)

STAFF ANALYSIS: At paragraphs 165 through 171 of the FCC Order,

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the FCC specifically addresses Section 252(a) of the Act, and the requirement to file interconnection agreements. Therein, the FCC concludes that all interconnection agreements, including any agreement negotiated before the enactment of the Act, must be submitted to the state commission for approval under Section 252(e) of the Act. In addition, the FCC requires that all pre-Act agreements between Class A carriers must be filed by no later than June 30, 1997. The FCC states that the Act does not exempt certain categories of agreements from the requirements of 252(e). The FCC further notes its belief that the pro-competitive goals of the Act are best met by subjecting all agreements to review by the state commissions. This portion of the FCC's Order was not stayed by the Eighth Circuit, and became final on September 28, 1996.

While it is the LECs' obligation, rather than the Commission's obligation, to comply with the FCC Order, staff believes it is appropriate for the Commission to issue an order conforming its position on the intent of 252(a) with that set forth by the FCC. Staff notes, however, that while the portions of the FCC Order that were not stayed have now become final, certain portions have, nevertheless, been appealed to the Eighth Circuit. The portion of the FCC Order interpreting Section 252(a) is one those portions that is the subject of the appeal. Thus, in view of the fact that the FCC's interpretation of 252(a) is the subject of an appeal, and since the Commission's first order on this issue, Order No. PSC-96-0959-FOF-TP, was issued as Proposed Agency Action, staff believes that it is appropriate for the Commission to issue a subsequent order on this issue as Proposed Agency Action. Staff, therefore, recommends that the Commission issue a Proposed Agency Action Order requiring all LECs to file all interconnection agreements with the Commission for approval under Section 252(e) of the Act, in conformance with FCC Order 96-325.

Furthermore, staff notes that an Order issued from this recommendation would dispose of the issue raised in both MCI's and AT&T's protests. It would not, therefore, be necessary to hold a hearing on AT&T and MCI's protests of Order No. PSC-96-0959-FOF-TP, if the Commission issued the Proposed Agency Action Order recommended here. In addition, staff suggests that since the issue addressed in this recommendation is a purely legal issue, any protest of an Order resulting from this recommendation could be set for an informal, Section 120.57(2), Florida Statutes, hearing.

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ISSUE 2: If the Commission approves staff's recommendation in Issue 1, should BellSouth Telecommunications, Inc. be required to comply with the Order resulting from this recommendation?

RECOMMENDATION: Yes. On August 5, 1996, BellSouth Telecommunications, Inc. filed a notice of compliance with Order No. PSC-96-0959-FOF-TP. BellSouth was the only LEC to file such notice. The Order resulting from this recommendation would require all LECs to file all interconnection agreements in accordance with FCC Order 96-325. BellSouth should be required to comply with the Order resulting from this recommendation. Staff emphasizes that it is not recommending additional requirements for BellSouth beyond those that would be applied to all LECs. Staff intends only to clarify that while BellSouth notified the Commission that BellSouth had filed its interconnection agreements in compliance with Order No. PSC-96-0959-FOF-TP, if an Order is issued from this recommendation, BellSouth should be required to make the additional filings necessary to comply with the Commission's order. (Culpepper, Greer)

STAFF ANALYSIS: As previously stated, BellSouth filed notice of its compliance with Order No. PSC-96-0950-FOF-TP, on August 5, 1996. In compliance with that Order, BellSouth filed its interconnection agreements with carriers competing in the same geographic markets. FCC Order 96-325, however, clearly requires the filing of all interconnection agreements by June 30, 1997. An Order resulting from this recommendation would require the filing of all interconnection agreements in accordance with FCC Order 96-325. BellSouth should be required to comply with an Order resulting from this recommendation.

Staff emphasizes that it is not recommending additional requirements for BellSouth beyond those that would be applied to all LECs. Staff intends only to clarify that while BellSouth notified the Commission that BellSouth had filed its interconnection agreements in compliance with Order No. PSC-96-0959-FOF-TP, if an Order is issued from this recommendation, BellSouth should be required to make the additional filings necessary to comply with the Commission's order.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, if no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order from this recommendation, the Order shall become final.
(Culpepper)

STAFF ANALYSIS: Yes, if no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order from this recommendation, the Order shall become final.