

PENNINGTON, MOORE, WILKINSON & DUNBAR, P.A.
ATTORNEYS AT LAW

ORIGINAL
FILE COPY

BARBARA D. AUGER
ROBERT CINTRON, JR.
ROBERT S. COHEN
PETER M. DUNBAR
MARTHA J. EDENFIELD
JOHN T. LEADBEATER
DAVID K. MINACCI
(Also admitted in Georgia)
EDGAR M. MOORE

E. MURRAY MOORE, JR.
JOHN C. PELHAM
CARL R. PENNINGTON, JR., P.A.
C. EDWIN RUDE, JR.
GARY A. SHIPMAN
CYNTHIA S. TUNNICLIFF
WILLIAM E. WHITNEY
BEN H. WILKINSON
CATHI C. WILKINSON

OF COUNSEL
HERBERT F. CLARK
(Admitted in New Jersey, New York & Wisconsin Only)
R. STUART HUFF, P.A.
Coral Gables, Florida
CHRISTOPHER W. KANAGA
(Admitted in Massachusetts & Colorado Only)
WILLIAM VANDERCREEK
(Admitted in Texas & Iowa Only)

SPECIAL CONSULTANTS
RANDY MILLER*
DAVID L. SWAFFORD*
*NOT A MEMBER OF THE FLORIDA BAR

215 SOUTH MONROE STREET
2ND FLOOR
TALLAHASSEE, FLORIDA 32301

(850) 222-3533
FAX (850) 222-2126
E-Mail Phlaw@Supernet.net

REPLY TO:
P.O. BOX 10095
TALLAHASSEE, FL 32302-2095

July 25, 1997

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

via Hand Delivery

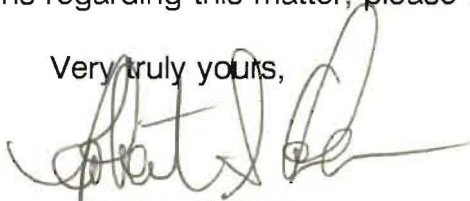
Re: In Re: Consideration of BellSouth
Telecommunications, Inc.'s entry into
InterLATA services pursuant to Section
271 of the Federal Telecommunications
Act of 1996; Docket No. 960786-TL

Dear Ms. Bayo:

Enclosed for filing please find an original and fifteen copies of Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partners, Motion to Dismiss or in the Alternative for Abatement of BellSouth Telecommunications' Application for InterLATA Relief. You will also find a copy of this letter enclosed. Please date-stamp the copy of this letter to indicate that the original was filed and return to me.

If you have any questions regarding this matter, please feel free to contact me.

Very truly yours,



Robert S. Cohen

ACK _____
AFA _____
APP _____
CAF _____
CMI Green
CTR _____
EAC _____
LEG 2 RSC:dat
LIN 5 enclosures
OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07526 JUL 25 97

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILED

In Re: **Consideration of BellSouth Telecommunications, Inc.'s entry into InterLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996**

Docket No. 960786-TL
Filed: July 25, 1997

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR ABATEMENT OF BELL SOUTH TELECOMMUNICATIONS' APPLICATION FOR INTERLATA RELIEF

Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partners (hereinafter referred to collectively as "Time Warner Communications" or "Time Warner"), hereby file this Motion to Dismiss or, in the alternative, for Abatement of BellSouth Telecommunications' Petition for InterLATA Relief and, in support hereof, state the following:

1. Pursuant to Order dated July 2, 1997, Chairman Julia Johnson issued an Order Modifying Procedural Schedule and Issues List in the above-referenced proceeding. This Order notes that pursuant to 47 U.S.C. Sec. 271(d)(3), the Federal Communications Commission (FCC) has ninety days to issue a written determination approving or denying a Bell Operating Company's application for InterLATA authority. Further, the FCC is directed to consult with the applicable state commission before making a determination regarding the Bell Operating Company's entry into the InterLATA market. The Florida Public Service Commission (FPSC) opened this docket to begin to fulfill its consultative role.

2. Time Warner Communications files this Motion to Dismiss or, in the alternative, for Abatement of BellSouth Telecommunications' ("BellSouth") Application for

DOCUMENT NUMBER-DATE

07526 JUL 25 97

FPSC-RECORDS/REPORTING

InterLATA Authority on the grounds that this entire proceeding is premature and should be stopped immediately before additional FPSC and industry resources are wasted. BellSouth should not have filed its application for InterLATA authority since it has full knowledge that it can not now supply something as fundamental as a Firm Order Commitment (FOC) with a facilities verification, something that is critical for new entrants to have in order to give their customers a firm due date. In fact, Time Warner Communications has a provision in its Master Interconnection Agreement with BellSouth which states that BellSouth must give Time Warner an FOC and a Design Layout Record (DLR) within five business days upon receipt of an Access Service Request (ASR) for Local Interconnection Trunk Groups. In order to provide a DLR, BellSouth would have to provide a facilities verification. The provision at issue, Section 11.02 of the Interconnection Agreement between Time Warner and BellSouth, reads as follows:

All Parties shall work cooperatively to manage the capacity of Local Interconnection Trunk Groups. Any Party may send another an ASR to initiate changes to the Local Interconnection Trunk Groups that the ordering Party desires based on the ordering Party's capacity assessment. The receiving Party will issue a Firm Order Confirmation ("FOC") and a Design Layout Record ("DLR") to the ordering Party within 5 business days after receipt of the ASR upon review of and in response to the ordering Party's ASR to begin the provisioning process.

3. Over the last two months, Time Warner has been trying to negotiate performance standards with BellSouth. It has been Time Warner's intent to complete these negotiations prior to July 17, 1997, the date on which direct prefiled testimony was due from Time Warner and the other intervening parties to this proceeding. In the course of these negotiations, when the issue of the FOCs came up, BellSouth inquired as to whether Time Warner wanted a "good" FOC (one with a facilities verification) or a "fast"

one (one within twenty-four hours, but without the facilities check). Time Warner sought to enforce provision 11.02 of its Interconnection Agreement, which, as stated before, requires both a "good" and a "fast" FOC. BellSouth responded that it would not be able to comply with the Interconnection Agreement until the end of this year at the earliest. See attached to this Motion as Exhibit A, and incorporated by reference herein, a letter from Susan M. Arrington, Manager-Interconnection Services\Pricing with BellSouth, to Carolyn Marek, of Time Warner Communications.

4. As additional support for this Motion, with respect to Local Service Requests (LSRs) for Interim Number Portability (INP), BellSouth has been lax in providing FOCs to Time Warner. It is important to note that the term "LSR" was invented by BellSouth after the signing of the Interconnection Agreement with Time Warner so that no performance standards on FOCs were negotiated for LSRs. Additionally, BellSouth has been in default of the Interconnection Contract with Time Warner in that BellSouth has not completed the *disconnect and provision of RCF for INP* within twenty-four hours of BellSouth's receipt of the service order under provision 6.17 of the Interconnection Agreement which reads as follows:

Service Orders. BellSouth agrees that upon receiving a service order from the Company (which may be transmitted by any means accepted as reliable in the industry) for any customer of BellSouth who wishes to disconnect its service and receive the Company's service, it shall complete the disconnect and provision RCF or DID, if applicable, within 24 hours of BellSouth's receipt of the service order assuming that the necessary DID trunks have already been installed. Whenever possible, disconnects shall be coordinated between the Parties to avoid breaks in service to the end user.

5. With the July 31, 1997, date for the filing of any rebuttal testimony rapidly approaching, Time Warner believes that a further expenditure of resources on behalf of

the FPSC and the Intervenors to this proceeding must be discontinued. This matter should be dismissed, held in abeyance, or the application of BellSouth should be withdrawn until the end of the year or until BellSouth is in compliance with these fundamental interconnection provisions in accordance with the checklist items. The parties need not exhaust huge resources to examine whether BellSouth meets the checklist items when the facts of this non-compliance with Time Warner's Interconnection Agreement alone puts BellSouth out of compliance.

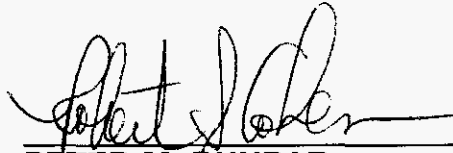
6. While waiting for BellSouth to equip itself to comply with its Interconnection Agreements with Time Warner and other providers, the FPSC can continue to address the Track A versus Track B issue, but could accomplish this through comments and reply comments rather than a hearing that is, at best, premature. Other states have addressed the Track A versus Track B issue and concluded that a RBOC is precluded from using Track B once they have entered into negotiations with an ALEC for interconnection. In this respect, as far as Florida is concerned, BellSouth would have been precluded from following Track B sometime ago.

7. Due to the proximity of today's date with the deadline for filing of rebuttal testimony, Time Warner has been unable to poll the other participants in this proceeding to determine their positions concerning whether this proceeding should continue unabated. Time Warner believes that other companies who are *similarly situated* will agree with the representations made in this Motion.

WHEREFORE, for the reasons stated above, and in the interest of economy for both the FPSC and the parties to this proceeding, Time Warner respectfully requests oral

argument on this motion and further requests the Commission to enter an order dismissing the proceeding, abating the proceeding, or at least postponing the proceeding until such time as BellSouth has the ability to comply with those Interconnection Agreements as already entered into.

RESPECTFULLY SUBMITTED this 25th day of July, 1997.



PETER M. DUNBAR

FLA. BAR NO. 146594

ROBERT S. COHEN

FLA. BAR NO. 347353

Pennington, Moore, Wilkinson
& Dunbar, P.A.

Post Office Box 10095

Tallahassee, Florida 32302-2095

(904) 222-3533

Counsel for: Time Warner AxS of
Florida, L.P. and Digital Media Partners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing has been sent by hand delivery or overnight mail to the parties on the attached list this 25th day of July, 1997.


ROBERT S. COHEN

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, FL 32301

Mr. Brian Sulmonetti
LDDS WorldCom Communications
Suite 400
1515 S. Federal Highway
Boca Raton, FL 33432

Tom Bond, Esquire
MCI Telecommunications Corp.
780 Johnson Ferry Road, Ste. 700
Atlanta, GA 30342

Jeffrey J. Walker
Regulatory Counsel
Preferred Carrier
Services, Inc.
1425 Greenway Drive, Suite 210
Irving, TX 75038

Benjamin W. Fincher
3100 Cumberland Circle
Atlanta, GA 30339

Richard M. Rindler
Swidler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Patricia Kurlin
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, FL 33619-1309

Paul Kouroupas
TCG - Washington
2 Lafayette Center
1133 Twenty First Street, N.W.
Suite 400
Washington, D.C. 20036

Nancy B. White
BellSouth Telecommunications,
Inc.,
Museum Tower Building
Suite 1910
150 West Flagler Street
Miami, Florida 33130

Floyd R. Self
Messer, Caparefio, Madsen,
Goldman & Metz, P.A.
215 So. Monroe St., Suite 701
Tallahassee, FL 32301

Richard D. Melson
Hopping Green Sams & Smith
Post Office Box 6526
Tallahassee, FL 32314

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs,
Odom & Ervin
Post Office Drawer 1170
Tallahassee, FL 32302

Andrew O. Isar
Director, Industry Relations
Telecommunications Resellers
Association
Post Office Box 2461
Gig Harbor, WA 98335-4461

Timothy Devine
MFS Communications Company, Inc.
6 Concourse Parkway
Suite 2100
Atlanta, GA 30328

Patrick K. Wiggins
Donna L. Canzano
Wiggins & Villacorta, P.A.
Post Office Drawer 1657
Tallahassee, FL 32302

Kenneth A. Hoffman
William B. Willingham
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302

Robert G. Beatty
J. Phillip Carver
c/o Nancy H. Sims
150 South Monroe Street
Room 400
Tallahassee, FL 32301

Charles J. Beck, Esquire
Deputy Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Tallahassee, FL 32301

Tracy Hatch, Esquire
Marsha Rule, Esquire
AT&T Communications of the
of the Southern States, Inc.
101 North Mornoe Street
Suite 700
Tallahassee, FL 32301

Sue E. Weiske
Time Warner Communications
160 Inverness Drive West
3rd Floor North
Englewood, CO 80112

Laura L. Wilson
Charles F. Dudley
Florida Cable Telecommunications
Association
310 North Monroe Street
Tallahassee, FL 32301

Nancy Sims
Southern Bell Telephone Company
150 South Monroe C
Suite 400
Tallahassee, Florida 32301

BellSouth Telecommunications, Inc.
Room 34591 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

July 16, 1997

VIA FACSIMILE

Carolyn Marek
Time Warner Communications
P.O. Box 210706
Nashville, Tennessee 37221

Re: Performance Measures

Dear Carolyn:

Mary Jo Peed and I are in receipt of the revised Performance Measures between BellSouth and Time Warner based on discussions held during our conference call on July 10, 1997.

At this time, BellSouth cannot agree with the language submitted in 3.1 regarding the proposed intervals on Rejection Notices and Firm Order Confirmations with respect to Access Service Requests (ASRs). As I mentioned to you in my voice mail on Friday, July 11, BellSouth does not currently have such intervals for ASRs. However, these intervals are appropriate for Local Service Requests (LSRs).

I feel that I must clarify once again that the Firm Order Confirmation does not include a verification that facilities are available on either an ASR or LSR. As I may have mentioned to you before, BellSouth is currently reviewing this issue and may include this type of information on an ASR FOC by the end of the year. However, at this time, BellSouth cannot commit to measuring any intervals on a FOC that includes a verification of available facilities. Because facilities verification is not currently included on the FOC, I do not have any proposed intervals to offer Time Warner at this time. BellSouth does not provide facilities verification information on any FOC or perform facilities verification when providing due dates to BellSouth's retail customers, and therefore Time Warner is being treated at parity with BellSouth as well as with other CLECs.

BellSouth is basically in agreement with the remaining provisions of these Performance Measures with the following two proposed revisions:

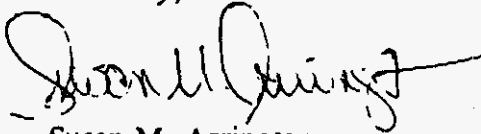


1. Section 3.2, the second paragraph, last sentence states "BellSouth shall measure the average time it takes to restore service for itself, its affiliates and other ALECs." BellSouth proposes to delete "its affiliates" in accordance with previous discussions regarding this issue.

2. BellSouth proposes that we change the heading on the measurements to reflect that these are in fact measurements and not Standards. BellSouth's proposal is that we change "Standard/Interval" to "Measurement/Interval".

If you have any questions, please do not hesitate to call me at (404) 927-7513.

Sincerely,



Susan M. Arrington
Manager - Interconnection Services/Pricing

cc: Jerry Hendrix
Mary Jo Peed
Jerry Moore
Chuck Welch