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REPLY TO:
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August 5, 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, Prehearing Statement. 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

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EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07914 AUG-55

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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: August 5, 1997

**PREHEARING STATEMENT OF TIME WARNER AxS
OF FLORIDA, L.P., AND DIGITAL MEDIA PARTNERS**

Pursuant to Order No. PSC-97-0792-PCO-TL, Time Warner and Digital Media Partners (hereinafter collectively referred to as "Time Warner Communications") files its Prehearing Statement.

A. **All Known Witnesses**: Time Warner Communications is sponsoring the rebuttal testimony of Bob Gaskins.

B. **All Known Exhibits**: Letter from Susan M. Arrington of BellSouth to Carolyn Marek of Time Warner Communications.

C. **Time Warner Communication's Statement of Basic Position**:

1. BellSouth must have a fully operational interconnection agreement in order to satisfy some of the 14 checklist items. BellSouth has not been able to meet one of the most fundamental provisions of the BellSouth/Time Warner Communications agreement--the Firm Order Commitment ("FOC") with a facilities check.

2. Track A versus Track B. Track B is now closed to BellSouth since interconnection has been requested by many new entrants. The Commission must decide whether BellSouth has met the 14 checklist items required by Track A. As noted above, BellSouth has not.

07914
FPSC-RECORDS/REPORTING

The Telecommunications Act of 1996, 47 USC 151, *et. seq.* (the "Act"), defines the conditions under which a regional bell operating company, such as BellSouth, may enter the in-region interLATA market. Under 47 USC Section 271(c)(1)(A), only if the requirements of Track A are not met because competitive local exchange providers have not requested interconnection, can BellSouth seek to comply with the Track B requirements in 47 USC Section 217(c)(1)(B). BellSouth is not given a choice of pursuing either Track A or B at its option. Given the Act's fundamental commitment to the development of local exchange competition, Congress has clearly mandated that Track A be pursued since it would result in the creation of facilities-based competition. Only the inaction of competitive providers permits BellSouth to pursue Track B. Since competitive providers have sought interconnection with BellSouth under Track A, the Statement of Generally Available Terms under Track B is unavailable to BellSouth in Florida. Section 271(c)(1)(A) defines the process to determine whether the *interLATA relief requirements* are satisfied if an interconnection agreement is reached between BellSouth and a competing facilities-based carrier. That provision applies when BellSouth has entered into one or more binding agreements approved under Section 252 of the Act. In contrast, Section 271(c)(1)(B) demonstrates that only if BellSouth has not entered into a binding interconnection agreement with one or more unaffiliated local exchange competitors, or has not been requested to do so by one or more competitive carriers, can BellSouth proceed to file a Statement of Generally Available Terms as a means of demonstrating that it has complied with Section 271. Under the express terms of the statute, if BellSouth has received a request for access and interconnection by a competing provider, BellSouth

must pursue Track A compliance, including reaching and implementing an interconnection agreement with a facilities-based carrier in order to satisfy Section 271. It may not pursue Track B in these circumstances. Only if no request for interconnection has been made, or an agreement is not reached within the time frame prescribed by Section 271, may a Bell Operating Company proceed under Track B to obtain permission from the State Commission to provide access and interconnection telecommunication services by filing a Statement of Generally Available Terms.

In Florida, BellSouth has received numerous requests for interconnection by competing providers of local exchange service, such as AT&T, MCI, Sprint and Time Warner, within the time frame required by Section 271. In addition, BellSouth has actually entered into interconnection agreements, pursuant to which facilities based local exchange services are being provided to business customers. No competing provider is currently offering services to residential customers, although they are authorized to provide such services. Consequently, only Track A is available to BellSouth to pursue to obtain interLATA relief. Notwithstanding this plain language of Section 271, BellSouth has indicated it might ignore the requirements of Track A by attempting to submit its application under Track B. As the Act and Conference Report unequivocally state, the purpose for the Statement is to allow BellSouth into the interLATA market if, and only if, BellSouth has not received a request for interconnection from a facilities-based carrier under Track A. Accordingly, BellSouth's statement cannot be used as evidence that it has fulfilled its obligation under Section 271 of the Act.

The Conference Committee Report is consistent with the statutory language in

demonstrating that only Track A, and not Track B, is available to BellSouth. The Conference Report conclusively demonstrates that Congress intended, whenever possible, to use requests for interconnection and interconnection arrangements with competing facilities-based carriers to satisfy Section 271. Congress also plainly commanded that a Statement of Generally Available Terms is a default process which is not relevant and serves no purpose if requests for interconnection have been submitted. Since BellSouth has interconnection agreements with competing providers in Florida, the Commission is compelled to conclude that Section 271(c)(1)(A) applies under these circumstances. Based on the clear statutory language and legislative history of the Act, and the interpretation of the FCC in *the matter of implementation of the local competition provisions in the Telecommunications Act of 1996, FCC Docket No. 96-325 Order, August 8, 1996*), Track B is not available to BellSouth and a Statement of Generally Available Terms is irrelevant to the Section 271 compliance in Florida.

The Florida Public Service Commission has approved interconnection agreements under Sections 251 and 252 of the Telecommunications Act of 1996 between BellSouth and a number of competing providers. These agreements, on their face, are the type of agreements with facilities-based carriers envisioned under Section 271. The Conference Report instructs that the State Commission must determine whether the agreement is "operational," and not simply signed, in order to satisfy Track A under Section 271. According to the report, "the requirement that the BOC is providing access and interconnection means that the competitor has *implemented* the agreement and the competitor is *operational*." Conference Report, New Section 271, page 148.

In Florida, binding agreements exist. Competing providers are currently providing switched local exchange services to business customers, but they are not currently providing services to residential customers pursuant to the terms of their interconnection agreements with BellSouth. Because these agreements exist, BellSouth is bound by the provisions of Track A. Moreover, BellSouth cannot satisfy Section 271 at this time unless one of these agreements with a competitive provider is deemed implemented or operational. BellSouth is entitled to interLATA relief when it can demonstrate compliance with Section 271. BellSouth cannot circumvent this congressional determination by trying to comply with Track B. The Commission is under no obligation to assist BellSouth in that effort.

D.-G. Time Warner Communications' Position on the Issues:

ISSUE 1.A.

Has BellSouth met the requirements of section 271(c)(1)(A) of the Telecommunications Act of 1996?

- (a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?

Time Warner Response: Yes. Time Warner Communications has entered into a binding Interconnection Agreement with BellSouth.

- (b) Is BellSouth providing access and interconnection to its network facilities for

the network facilities of such competing providers?

Time Warner Response: No. BellSouth is not meeting provisions contained in the Interconnection Agreement with Time Warner Communications.

- (c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

Time Warner Response: Time Warner Communications is just beginning to offer service to business customers predominantly over its own facilities.

ISSUE 1.B.

Has BellSouth met the requirements of Section 271(c)(1)(B) of the Telecommunications act of 1996?

Time Warner Response: No.

- (a) Has an unaffiliated competing provider requested access and interconnection with BellSouth?

Time Warner Response: Yes.

- (b) Has a statement of terms and conditions that BellSouth generally offers to provide access and interconnection been approved or permitted to take effect under Section 252(f)?

Time Warner Response: No.

ISSUE 1.C.

Can BellSouth meet the requirements of Section 271(c)(1) through a combination of track A (Section 271(c)(1)(A)) and track B (Section 271(c)(1)(B)? If so, has BellSouth met all of the requirements of those sections?

Time Warner Response: As set forth in detail above, in Time Warner's Statement of Basic Position, Track B is not available to BellSouth. Further, BellSouth has not yet demonstrated it has the ability to meet the requirements of section 271 (c) (1) (A) of the Telecommunications Act of 1996.

ISSUE 2:

Has BellSouth provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(i) and applicable rules promulgated by the FCC?

Time Warner Response: No.

ISSUE 3:

Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252 (d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

Time Warner Response: No.

ISSUE 4:

Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC?

Time Warner Response: No position at this time.

ISSUE 5:

Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to section 271(c)(2)(iv) and applicable rules promulgated by the FCC?

Time Warner Response: Based upon the situations described by Bob Gaskins in his rebuttal testimony in this proceeding and Exhibit A to his testimony, Time Warner is not certain that BellSouth is yet ready to provide these network elements.

ISSUE 6:

Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC?

Time Warner Response: Based upon the situations described by Bob Gaskins in his rebuttal testimony in this proceeding and Exhibit A to his testimony, Time Warner is not certain that BellSouth is yet ready to provide these network elements.

ISSUE 7:

Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC?

Time Warner Response: Based upon the situations described by Bob Gaskins in his rebuttal testimony in this proceeding and Exhibit A to his testimony, Time Warner is not certain that BellSouth is yet ready to provide these network elements.

ISSUE 8:

Has BellSouth provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:

- (a) 911 and E911 services;
- (b) directory assistance services to allow the other telecommunications carrier's customers to obtain telephone numbers; and,
- (c) operator call completion services?

Time Warner Response: Based upon the situations described by Bob Gaskins in his rebuttal testimony in this proceeding and Exhibit A to his testimony, Time Warner is not certain that BellSouth is yet ready to provide these network elements.

ISSUE 9

Has BellSouth provided white pages directory listings for customers of other telecommunications carrier'[s telephone exchange service, pursuant to section 271 (c)(2)(B)(viii) and applicable rules promulgated by the FCC?

Time Warner Response: As set forth in Bob Gaskins rebuttal testimony, Time Warner has experienced delays in the listing of customers by BellSouth, but not to the extent that it takes the position that BellSouth cannot provide Directory Listings.

ISSUE 10:

Has BellSouth provided nondiscriminatory access to telephone numbers for assignment to the other telecommunications carrier's telephone exchange service customers, pursuant to section 271(c)(2)(B)(ix) and applicable rules promulgated by the FCC?

Time Warner Response: Yes.

ISSUE 11:

Has BellSouth provided nondiscriminatory access to databased and associated signaling necessary for call routing and completion, pursuant to

section 271(c)(2)(B)(x) and applicable rules promulgated by the FCC?

Time Warner Response: Based upon the situations described by Bob Gaskins in his rebuttal testimony in this proceeding and Exhibit A to his testimony, Time Warner is not certain that BellSouth is yet ready to provide these network elements.

ISSUE 12:

Has BellSouth provided number portability, pursuant to section 271(c)(2)(B)(xi) and applicable rules promulgated by the FCC?

Time Warner Response: This issue is addressed by Bob Gaskins in his rebuttal testimony. Time Warner has experienced difficulties with orders for interim number portability in Tennessee which it expects to suffer similarly in Florida.

ISSUE 13:

Has BellSouth provided nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xii) and applicable rules promulgated by the FCC?

Time Warner Response: No position at this time.

ISSUE 14:

Has BellSouth provided reciprocal compensation arrangements in

accordance with the requirements of section 252(d)(2) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiii) and applicable rules promulgated by the FCC?

Time Warner Response: Yes.

ISSUE 15:

Has BellSouth provided telecommunications services available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996, pursuant to section 271(c)(2)(B)(xiv) and applicable rules promulgated by the FCC?

(a) Has BellSouth developed performance standards and measurements? If so, are they being met?

Time Warner Response: We have no position on resale at this time as we are offering services predominantly over our own facilities.

ISSUE 16:

By what date does BellSouth propose to provide interLATA toll dialing parity throughout Florida pursuant to Section 271(e)(2)(A) of the Telecommunications Act of 1996.

Time Warner Response: BellSouth is in a better position to answer this question than Time Warner Communications.

ISSUE 17:

If the answer to issues 2-15 is "yes", have those requirements been met in a single agreement or through a combination of agreements?

Time Warner Response: Time Warner answers to ISSUES 2-15 were, in large part, not "yes," but Time Warner does have a single Interconnection Agreement with BellSouth in Florida.

ISSUE 18:

Should this docket be closed?

Time Warner Response: This docket should remain open until such time as BellSouth can demonstrate its ability to perform under section 271 (c) (1) (A) of the Telecommunications Act of 1996.

H. Stipulation:

Time Warner Communications is not aware of any issues that have been stipulated at this time.

I. Pending Motion:

Time Warner Communications has pending a Motion to Dismiss or, in the Alternative, for Abatement of BellSouth Telecommunications' Application for InterLATA Relief filed on July 25, 1997.

RESPECTFULLY SUBMITTED this 5th day of August, 1997.

A handwritten signature in black ink, appearing to read "Peter M. Dunbar", written over a horizontal line.

PETER M. DUNBAR

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Counsel for: Time Warner AxS of
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true copy of the foregoing has been sent by U. S. Mail to the parties on the attached list this 5th day of August, 1997.

A handwritten signature in black ink, appearing to read "Robert S. Cohen", written over a horizontal line.

ROBERT S. COHEN

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