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September 4, 1997

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

Re: Docket No. 960786-TL Section 271)

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Memorandum in Opposition to Joint Motion to Strike Draft Statement of Generally Available Terms, which we ask that you file in the captioned matter.

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,



J. Phillip Carver

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU Steer _____
- CTR _____
- EAG _____
- LEG 2 _____
- LIN 5 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH _____

Enclosures

cc: All parties of record
A. M. Lombardo
R. G. Beatty
William J. Ellenberg II

DOCUMENT NUMBER-DATE

08912 SEP-45

*FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
DOCKET NO. 960786-TL

I HEREBY CERTIFY that a true and correct copy of the

foregoing was served by Hand Delivery and U. S. Mail this 4th day of

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

In re: Consideration of BellSouth)
Telecommunications, Inc. entry) Docket No. 960786-TL
into InterLATA services pursuant)
to Section 271 of the Federal) Filed: September 4, 1997
Telecommunications Act of 1996)
_____)

BELLSOUTH'S MEMORANDUM IN OPPOSITION TO JOINT MOTION TO
STRIKE DRAFT STATEMENT OF GENERALLY AVAILABLE TERMS

BellSouth Telecommunications, Inc. (BellSouth) hereby files, pursuant to Rule 25-22.037(b), Florida Administrative Code, its response to the Joint Motion to Strike ("Joint Motion") filed on behalf of AT&T Communications of the Southern States, Inc., American Communication Services of Jacksonville, Inc., Florida Competitive Carriers Association, Intermedia Communications Inc., MCI Telecommunications Corporation, and Metropolitan Fiber Systems of Florida, Inc./WorldCom, Inc. ("Joint Movants"), and states the following:

I. INTRODUCTION

On the eve of this Hearing, Joint Movants renewed their attempt to hamstring the development of a record concerning whether BellSouth has opened the Florida market to local competition by fulfilling its obligations under the Competitive Checklist. (Compare, Joint Motion for Advance Ruling On BellSouth's Ineligibility for "Track B" and to Delete a Portion of Issue 1," filed May 27, 1997.) For various procedural reasons, Joint Movants have requested that this Commission "strike or sever BellSouth's SGAT

from this proceeding.” Joint Motion at 2. These arguments are incorrect for the reasons set out below. Perhaps more importantly, there is no valid substantive argument for ignoring BellSouth’s Statement of Generally Available Terms and Conditions (“Statement” or “SGAT”) in this proceeding. Joint Movants have had BellSouth’s Statement and testimony setting out exactly what BellSouth’s view of its role is since July 7, 1997. They do not explain how consideration of the Statement in this proceeding is even remotely unfair to any party.

Joint Movant’s legal posturing aside, BellSouth believes that the Statement has a key role to play in this proceeding. The Statement provides a concise offering of the Checklist items set out in Section 271(c)(2)(B) and directly addresses Issues 1.b and 2-15 of the Issues List. Congress intended that, upon approval by a state commission, a statement will legally bind the respective BOC to provide in a non-discriminatory fashion each of the items specified by Congress in the Checklist as necessary for carriers generally to enter the local market. See, e.g., 141 Cong. Rec. S8195(Statement of Sen. Pressler)(checklist was proposed by congressional staff “to find a way in this complex telecommunications arena to have a test of when markets are open”). In contrast, the fifty-five individual access and interconnection agreements that BellSouth has with Florida carriers provide offerings tailored to the particular requirements of particular carriers. Although these individualized offerings provide what individual carriers want from BellSouth, they do not necessarily match what is required by the checklist, and so are not always relevant to whether BellSouth is meeting its checklist obligations. For example, BellSouth has agreed to supply operational support system interfaces designed

specifically to AT&T's needs. The interfaces BellSouth has agreed to supply to MCI and Sprint differ from what the other wants and from what AT&T wants.¹

Thus, the Statement's utility in assessing checklist compliance is that it sets out clearly the steps BellSouth has taken to meet its checklist obligations to the general CLEC community rather than to meet the particular needs of, for example, large interexchange carriers, that may exceed BellSouth's checklist obligations. Including consideration of the Statement in this proceeding offers an efficient way to address the majority of the Issues List without endless debates over the particular provisions of fifty-five different access and interconnection agreements and whether those provisions meet, don't meet or exceed checklist requirements. By utilizing the Statement, the Commission and the parties can better focus on whether BellSouth is able to meet its actual checklist obligations to open the local market.

The Statement is also properly before this Commission under Section 252(f). Consideration of the Statement under that Section implicates all the same issues of Checklist compliance set out in Issues 2-15 of the Issues List. As such, review of the Statement in this proceeding makes sense and avoids the delay and duplication of effort sought by Joint Movants.

¹ There are many other differences between what BellSouth has agreed to provide to meet the needs of particular carriers in their interconnection agreements. As additional examples, AT&T, and Sprint all have differently specified technical and connectivity billing requirements. MCI's agreement addresses sub-loop unbundling to meet its needs while AT&T's opted to rely on the bona fide request process to address those issues in its agreement.

II. THE STATEMENT PLAYS A ROLE IN ASSESSING CHECKLIST
COMPLIANCE REGARDLESS OF THE TRACK BELLSOUTH PURSUES AT THE

FCC

Joint Movants argue that BellSouth's Statement should not be considered at all in this proceeding. Joint Movants argue that, if BellSouth proceeds under Track A, the Statement is irrelevant. Movants also argue that, if BellSouth proceeds under Track B, including the Statement in this proceeding somehow limits the Commission's ability to consider its legality and infringes upon some unspecified "due process" right. Motion at 5.

Initially, BellSouth would point out that Movants are confusing Tracks under Section 271(c)(1) with whether BellSouth can meet its checklist obligations as set out in Section 27(c)(2) and in the Issues List. Section 271(c)(2) sets out the Checklist and how a Bell company can meet it. Section 271(c)(2) does not set out one method to meet the Checklist if Track A is followed and a second if Track B is followed. It allows a Bell company to rely on access and interconnection either provided or generally offered, as long as this interconnection and/or access meets each of the competitive checklist items set forth in 271(c)(2)(B).

Movants cite portions of the FCC's Ameritech Order for the proposition that BellSouth must rely solely on interconnection agreements to meet its Checklist obligations if it proceeds under Track A. Motion at 3. This effort is misplaced because the Ameritech decision reflects the ruling of the FCC on one 271 application by one Bell

Operating company. The Ameritech decision is not the product of a rule-making proceeding, and it has no binding legal affect upon this Commission. Instead, the requirements for checklist compliance under Section 271 are spelled out clearly in the Act as set forth above.

Nevertheless, the Ameritech decision does not stand for the broad proposition urged by movants. The FCC's principal concern was that the Bell company have a "concrete and specific legal obligation" to supply checklist items. *Ameritech Order* at Para. 110. The FCC's language that this obligation be in a "state-approved interconnection agreement" cannot be taken to exclude a state approved Statement, because an approved Statement creates a concrete and specific commitment to offer access and interconnection upon the terms set forth in the statement. Certainly, the FCC was not presented with deciding the issue Movants raise here.

The section of the Joint Motion devoted to arguments that the Statement should not be considered even should BellSouth follow Track B is a hodgepodge of specious contentions.² Fundamentally, Movants appear to have confused this proceeding with a proceeding at the FCC to seek authority under Track B to enter the Florida long distance market. Thus, Movants are correct that BellSouth should not go to the FCC under Track B without an approved Statement. Motion at 9-10. This fact provides no support,

² For example, Movants advance the facially deficient contentions that the Issues identified in this proceeding do not encompass consideration of the SGAT and that the Procedural Order entered July 2, 1997 somehow contemplated -- or created the necessity for -- two hearings rather than one.

however, for the clearly erroneous contention that BellSouth cannot come to this Commission for approval of a Statement as part of this proceeding. BellSouth has filed a Statement for consideration by this Commission. This Commission is free to inquire into the Statement as part of this proceeding as it sees fit, and to act on its inquiry as it sees fit. Conducting that inquiry within this proceeding in no way limits the scope of this Commission's authority. Moving it to a separate proceeding will only duplicate the Commission's work -- Issues 2-15 and the evidence gathered in reference to those issues will remain the principal focus of a separate proceeding to evaluate BellSouth's Statement and delay the ability of CLECs to order out of the Statement and compete with the Joint Movants.³

BellSouth's direct testimony filed on July 7, 1997 clearly laid out what BellSouth's Statement was intended to do. See, e.g., Scheye Testimony at 2-5; Varner Testimony 39-41. The Statement's offerings and how they have been implemented were matched up to the issues list issue-by-issue in the testimony of Mr. Scheye. Thus, the Statement provides evidence relevant to the Issues List and provides a basis for evaluating whether BellSouth is meeting its checklist obligations.

III. CONCLUSION

Movants have been engaged in a year of discovery from BellSouth related to the Issues List and how BellSouth is meeting its Checklist obligations to open the local


³ Issues 2-15 concern whether BellSouth can provide checklist items in a manner that meets its non-discriminatory obligations under the Telecommunications Act. These are the same concerns that underlie an inquiry into whether a Statement can be approved under Section 252(f).

market. They have received boxes upon boxes of answers and documents. They are now contending that all this discovery leaves them somehow unprepared to address whether BellSouth's Statement, and BellSouth's ability to meet the obligations an approved Statement would create, are sufficient to open the local market. In this regard, Movants may contend that they were unable to conduct discovery as to the revisions to the SGAT. This contention ignores the fact that changes to the SGAT (which were occasioned by the Eight Circuit Court of Appeals' recent Opinion) were minimal. There were only five revisions to the SGAT, one of which merely changed the letter used to identify an attachment. The four remaining changes were simple, direct and clearly apparent from the filing package. Moreover, the parties have conducted extensive cross examination on the revisions to the SGAT and have obtained the permission of the Commission to conduct further examination if they deem it necessary. Thus, there is no basis for any party to plausibly argue surprise or unfairness.

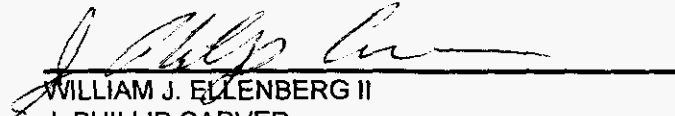
WHEREFORE, BellSouth respectfully requests that the Commission deny the motion to Strike or Sever for the reasons set forth above.

Respectfully submitted this 4th day of September, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.



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