

BENNETT L. ROSS  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0793

January 16, 1998

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

RE: **Docket Nos. 960833-TP/960846-TP/960757-TP**

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Memorandum In Opposition To Staff's Motion to Compel, which we ask that you file in the captioned docket.

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 on the parties shown on the attached Certificate of Service.

Sincerely,

*Bennett L. Ross (KR)*

Bennett L. Ross

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

Enclosures

cc: All Parties of Record  
A. M. Lombardo  
R. G. Beatty  
W. J. Ellenberg

DOCUMENT NUMBER-DATE

**00974** JAN 16 88

FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**

**DOCKET NOS. 960833-TP, 960846-TP and 960757-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served  
by Federal Express this 16 day of January, 1998 to the following:

Monica Barone  
Charles J. Pelligrini  
Staff Counsel  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
(850) 413-6187  
(850) 413-6250

Tracy Hatch, Esq. (+)  
Michael W. Tye, Esq.  
101 N. Monroe Street  
Suite 700  
Tallahassee, Florida 32301  
Attys. for AT&T  
Tel. (850) 425-6364  
Fax. (850) 425-6361

Mark A. Logan, Esq.  
Brian D. Ballard, Esq.  
Bryant, Miller & Olive, P.A.  
201 S. Monroe Street  
Tallahassee, Florida 32301  
Attys. for AT&T  
Tel. (850) 222-8611  
Fax. (850) 224-1544

Richard D. Melson, Esq.  
Hopping Green Sams & Smith  
123 South Calhoun Street  
P.O. Box 6526  
Tallahassee, Florida 32314  
Tel. (850) 222-7500  
Fax. (850) 224-8551  
Atty. for MCImetro

Floyd R. Self, Esq. (+)  
Messer, Caparello, Madsen,  
Goldman & Metz, P.A.  
215 South Monroe Street  
Suite 701  
Tallahassee, FL 32302-1876  
Tel. (850) 222-0720  
Fax. (850) 224-4359  
Atty. for WorldCom, Inc.

Mr. Brian Sulmonetti (+)  
Director, Regulatory Affairs  
WorldCom, Inc.  
1515 South Federal Hwy., Suite 400  
Boca Raton, FL 33432  
Tel. (561) 750-2940  
Fax. (561) 750-2629

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs,  
Odom & Ervin  
305 South Gadsden Street  
Post Office Drawer 1170  
Tallahassee, FL 32302  
Tel. (850) 224-9135  
Fax. (850) 222-9164

Mr. Thomas K. Bond (+)  
MCI Metro Access Transmission  
Services, Inc.  
780 Johnson Ferry Rd., Suite 700  
Atlanta, GA 30342

Brad Mutschelknaus  
Kelley Drye & Warren, L.L.P.  
Suite 500  
1200 19th Street, N.W.  
Washington, D.C. 20036

Patrick K. Wiggins  
Wiggins & Villacorta  
501 East Tennessee St.  
P.O. Drawer 1657  
Tallahassee, FL 32302  
Atty. for Intermedia

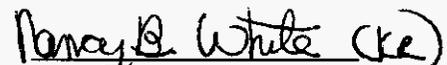
Steve Brown  
Intermedia Comm. Inc.  
3625 Queen Palm Drive  
Tampa, FL 33610-1309

Peter M. Dunbar, Esq.  
Barbard D. Auger, Esq.  
Pennington, Moore, Wilkinson  
& Dunbar, P.A.  
215 South Monroe Street  
2nd Floor  
Tallahassee, FL 32301  
Tel. (850) 222-3533  
Fax. (850) 222-2126  
Atty. for Time Warner

Carolyn Marek  
Vice President of  
Regulatory Affairs  
Southeast Region  
Time Warner Comm.  
2828 Old Hickory Boulevard  
Apt. 713  
Nashville, Tennessee 37221  
Tel. (615) 673-1191  
Fax. (615) 673-1192

Benjamin Fincher, Esq.  
Sprint Communications Company  
Limited Partnership  
3100 Cumberland Circle  
Atlanta, GA 30339

(+) Protective/Non-Disclosure  
Agreement

  
Nancy B. White

106432

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms and conditions, pursuant to the Federal Telecommunications Act of 1996	)	
	)	
	)	
	)	Docket No. 960757-TP
	)	
	)	

In re: Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	)	
	)	
	)	
	)	Docket No. 960833-TP
	)	
	)	

In re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996	)	
	)	
	)	
	)	Docket No. 960846-TP
	)	
	)	
	)	Filed: January 16, 1998

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MEMORANDUM IN OPPOSITION TO STAFF'S MOTION TO COMPEL**

BellSouth Telecommunications, Inc. ("BST") respectfully opposes the Motion to Compel Discovery filed by the Staff of the Florida Public Service Commission (hereinafter referred to as "Staff").

**INTRODUCTION**

On November 24, 1997, the Staff served BST with Staff's Third Set of Interrogatories (Items 30-60) and Third Request for Production of Documents (Items 40-50). BST filed its responses and objections to those discovery requests on December 10, 1997. On December 19, 1997, Staff served BST with Staff's Fifth Set

of Interrogatories (Items 99-121). BST filed its responses and objections to those requests on January 7, 1998. In its Motion to Compel Discovery, Staff challenges BST's responses and/or objections to Interrogatories 35-42 (Third Set); Requests for Production 41 and 42 (Third Set); and Interrogatory 107 (Fifth Set).

## DISCUSSION

### 1. The Interrogatories

BST believes that its original responses to Staff's discovery requests were appropriate. In an effort to resolve this discovery dispute, however, and without waiving its right to object to the admission at the hearing of information that BST believes is irrelevant, BST has attached supplemental responses to Interrogatories 35, 36, 37, 38, 39, 41, and 42. In addition, BST is preparing a response to Interrogatory 107 and will furnish it to Staff either today, January 16, 1998 or Monday, January 19, 1998.

The answers to interrogatories 35 and 107 involved matters within the custody and control of BST and BST believes the supplemental answers provided should resolve any concerns the Staff had regarding these responses.

The responses to Interrogatories 36, 37, 38, 39, and 41 involve a different issue.

These interrogatories all seek information, in whole or in part, regarding the unregulated operations of BellSouth Corporation, a corporate entity which is not a party to this proceeding. The interrogatories ask for things such as the equity ratio for the unregulated operations of BellSouth Corporation, the embedded cost of debt for such entities, and other information such as the amount of equity, assets, net

income, and return on equity for BellSouth Enterprises, a subsidiary of BellSouth Corporation and for each of BellSouth Enterprises' subsidiaries. The Staff also asked for the pretax interest coverage ratio, the total debt to total capital ratio, funds from operations interest coverage ratio and net cashflow to total debt ratio for BellSouth Enterprises.

Essentially none of this information is publicly available. Just as the cost of capital for BST cannot be determined by looking at publicly available information relating solely to the operations of BST (i.e., BST has no publicly traded stock), the same is true of all of the other subsidiaries of BellSouth Corporation. As a result, none of the information sought by the Staff can possibly be relevant to this proceeding, nor can it be expected to lead to the discovery of admissible evidence.

Nevertheless, BST has attempted, through its supplemental answers to Interrogatories 36, 37, 38, 39, 40, 41, and 42, where information was available to it, to provide further answers. For instance, using publicly available information, a common equity ratio for the non-regulated portions of BellSouth Corporation has been derived. BST has, however, not been able to provide more detailed answers because the information to do so, if it exists at all, is not in the possession, custody or control of BST.

No doubt the first response to this statement will be that this issue has been previously raised in other proceedings, and indeed resulted in a decision by the Florida Supreme Court which was favorable to the Staff. See Southern Bell Telephone and Telegraph Company v. Deason, 632 So. 2d 1377 (1994). The difficulty with this position is that what is now at issue is a discovery request, not an

audit request. In Southern Bell, the Supreme Court found that Section 364.183 (1), Florida Statutes, while allowing direct access by the Florida Public Service Commission to records maintained by an affiliate of a regulated company through an audit process, did “not apply to documents that are sought as a part of discovery in a legal proceeding.” Id. at footnote 12.

Clearly this is a matter in litigation. BST has stated that it does not have the material which is responsive. Absent some showing that there is another theory which would allow the Staff to obtain discovery indirectly from BellSouth Corporation by sending such discovery to BST, the motion to compel must be denied. There are no facts asserted by the Staff, or authority cited which would lead to a different result. BST cannot be compelled to provide information which it does not have, and since BellSouth Corporation is not a party to this proceeding nor subject to the jurisdiction of this Commission, there is no basis to compel BellSouth Corporation to produce the information in question.

## **2. Requests for Production 41 and 42**

In these two requests, Staff asked BST to provide, for the last three years, “copies of all reports or analyses for BellSouth Florida, BellSouth Telecommunications, Inc., and BellSouth Corporation prepared by or for” Standard & Poor’s and Moody’s Investor Services. Through a misunderstanding about what the request sought, BST responded to this request by providing Staff with copies of reports that BST and BellSouth Corporation (there is no entity known as BellSouth Florida) have received from Standard & Poor’s and Moody’s Investor Services. BST did not include any information that it prepared for submission to those agencies. In

light of Staff's motion to compel, BST now understands that the Staff was not requesting materials the rating agencies might have had prepared about BST, but information that BST and its parent compiled to provide to the rating agencies' production of such reports.

BST does have certain materials that it has provided to bond rating agencies, including Standard & Poor's and Moody's, on its own behalf, but it does not have possession custody or control of any such documents that might have been prepared by BellSouth Corporation or any of its other subsidiaries.

The materials that BST does have and that it now understands to be responsive to the Staff's request constitutes confidential proprietary business information. In fact, some of the information contained in those reports is so sensitive that any individual who reviews the information is deemed to be an "insider" for purposes of the Securities and Exchange Commission rules.

With this in mind, and assuming that those members of the Staff who wish to review this material are willing to review the materials with the understanding that doing so may make them "insiders" for purposes of the Securities and Exchange Commission, BST will produce the requested materials that are in its possession custody and control at a mutually agreed upon time and place, subject to the material being treated as proprietary confidential business information. BST will file the appropriate Notices and Requests for Confidential Classification at the appropriate time.

Respectfully submitted this 16th day of January, 1998.

BellSouth TELECOMMUNICATIONS, INC.

Robert G. Beatty (KR)

ROBERT G. BEATTY

NANCY B. WHITE

c/o Nancy Sims

150 South Monroe Street, Suite 400

Tallahassee, Florida 32301

(305) 347-5555

R. Douglas Lackey (KR)

R. DOUGLAS LACKEY

BENNETT L. ROSS

675 W. Peachtree Street

Suite 4300

Atlanta, Georgia 30375

(404) 335-0793

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