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RECORDS AND
REPORTING

July 9, 1998

Mrs. Blanca S. Bayó
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Florida Public Service Commission
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**Re: Docket No. 971399-TP Lifting of Marketing Restrictions
Imposed by Order No. PSC-96-1569-FOF-TP**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence, which we ask that you file in the above-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.

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Sincerely,

[Signature]
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MKK/ds

cc: All parties of record
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of BellSouth) Docket No.: 971399-TP
Telecommunications, Inc. to Lift)
Marketing Restrictions Imposed)
By Order No. PSC-98-1569-FOF-TP)
_____) Filed: July 9, 1998

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I. STATEMENT OF THE CASE

On February 13, 1995, the Florida Public Service Commission ("Commission") issued Order No. PSC-95-0203-FOF-TP in Docket No. 930330-TP holding that 1+ intraLATA presubscription was in the public interest and should be implemented in Florida and set forth the implementation timeframe and the method of cost recovery. On May 23, 1996, the Commission approved BellSouth's Tariff to recover the implementation costs of intraLATA presubscription in Order No. PSC-96-0692-FOF-TP ("Tariff Order"). On May 24, 1996, a Joint Complaint was filed in Docket No. 960658-TP concerning BellSouth's Tariff and its business office practices regarding intraLATA presubscription. These dockets were subsequently consolidated and the matter was set for hearing on October 17, 1996. As a result of that hearing, the Commission issued Order No. PSC-96-1569-FOF-TP ("Order") on December 23, 1996, in Docket Nos. 930330-TP and 960658-TP.

In the Order, the Commission prohibited BellSouth for a period of 18 months from marketing its intraLATA toll service to existing customers who call to change intraLATA carriers or for other reasons. Order at pp. 7-9. The Commission also in that Order prohibited BellSouth for an indefinite period of time from marketing its intraLATA toll service to new customers unless the customers introduced the subject. Order at p. 6. The purpose of the restrictions was to increase customer awareness regarding the availability of various

intraLATA toll carriers, as well as to allow time for the major interexchange carriers to establish themselves in the intraLATA market. Order at pp. 6, 8, and 9.

The marketing restrictions imposed with regard to existing customers expired on June 23, 1998. The restrictions regarding new customers have no expiration date and are still in place. Because the purpose of the restrictions has been served, BellSouth filed a petition on October 21, 1997, requesting the Commission lift these restrictions. Florida Competitive Carriers Association (FCCA), MCI Telecommunications Corporation (MCI), and AT&T Communications of the Southern States (AT&T) (collectively referred to as "Intervenors") intervened to oppose BellSouth's request. They have not challenged the lifting of the restrictions for existing customers but object to BellSouth's petition to lift the restrictions regarding new customers. Tr. Ex. 1, Depo. of Sandra Seay, May 22, 1998, pp. 24, 36. A hearing on BellSouth's petition was held June 18, 1998. Intervenors FCCA, MCI and AT&T presented the testimony of Sandra Seay and BellSouth presented the testimony of Hilda Geer. The hearing produced a transcript of 169 pages and eight exhibits.

BellSouth submits the following brief in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. The statement of the issue identified in this matter is followed immediately by a summary of BellSouth's position marked by an asterisk and a discussion of the basis of BellSouth's position.

STATEMENT OF BASIC POSITION

The sole issue in this case is whether the Commission should remove the restrictions in Order No. PSC-96-1569-FOF-TP on BellSouth from marketing its intraLATA toll service to new customers. Based on the undisputed and overwhelming evidence submitted at the hearing, the restrictions should be lifted. The purpose of these restrictions was to increase customer awareness of the availability of various intraLATA toll carriers and to allow time for the major interexchange carriers to establish themselves in the intraLATA market. Order at pp. 6, 8 and 9. It is clear from the evidence in this case that the Commission's purpose has been accomplished.

Circumstances have changed significantly in the intraLATA toll market since the Commission issued its Order, as indicated by the evidence presented at the hearing. Hilda Geer, Director - Consumer Operations, South Florida, testified BellSouth had lost, as of May 31, 1998, 32 percent of its residential, 25 percent of its complex business, and 36 percent of its small business intraLATA toll PIC-able lines. Tr. at p. 104, Tr. Exh. 2, Depo. of Hilda Geer, pp. 21-22. This loss of market share is clear evidence that customers are aware of the various intraLATA toll carriers and that these carriers have successfully established themselves in the intraLATA toll market, as was intended by the Order and the restrictions on BellSouth. Tr. at pp. 104-105. These changed circumstances, along with the other evidence presented in the hearing, illustrate the

Commission's goals in imposing the marketing restrictions on BellSouth have been achieved and intraLATA competition is thriving in Florida. Since the Commission's goals have been achieved, the restrictions are unnecessary, tend to result in customer confusion, and create an unlevel playing field for BellSouth.

Intervenors argue that local market presence of competitors is the test for whether the restrictions on BellSouth's marketing of intraLATA toll services should be lifted, yet they offer no quantification of what the local competition is, and have no suggestion as to how much local competition is enough to warrant the lifting of the restrictions. Tr. at 141-144. As Commissioner Clark queried, "How much of the local market has to be -- is it 10% of the local market? At what point would you classify it as open to local competition? . . . You don't have a position, but you just know now is not the time? Witness Seay: That is correct."

As a competitor in the intraLATA toll business, BellSouth is requesting the Commission to allow BellSouth to inform new customers that BellSouth provides intraLATA toll service without waiting for the customers to introduce the subject. Tr. at p. 43. BellSouth proposes the following fair and nondiscriminatory three-step protocol be used in its contacts with new customers:

1. BellSouth would advise the customer that he has an option of selecting a long distance carrier for local toll calls.
2. BellSouth would advise the customer that BellSouth can provide his local toll service.
3. BellSouth would offer to read to the customer the list of available carriers. If the customer responds affirmatively, then the list should be read.

Tr. at p. 28. To suggest that BellSouth not be allowed to inform customers that it also provides intraLATA service, as the intervenors argue, defies common sense, penalizes BellSouth unfairly for having been the incumbent intraLATA toll provider, and serves to limit customer choice. This is in direct contradiction of the Commission's goals in opening the intraLATA marketplace to competition. Moreover, the restrictions are no longer needed because the evidence confirms customers are aware of the availability of other intraLATA toll carriers and competition is thriving in the intraLATA toll market in Florida. Therefore, the restrictions should be lifted.

III. POSITION ON INDIVIDUAL ISSUE

Issue 1: Should the Commission grant BellSouth relief from the requirements of Section III of Order No. PSC-96-1659-FOF-TP, issued December 23, 1996 in Docket Nos. 930330-TP and 960658-TP?

* **Position:** Yes. The current market conditions are markedly different than they were when the Commission imposed the restrictions on BellSouth for marketing intraLATA toll service to new customers. The increased activity in the intraLATA market in the last two years, as evidenced by Hilda Geer's testimony, supports there is customer awareness of intraLATA toll carrier options and that competing carriers have established themselves in the intraLATA toll market, thereby resulting in a competitively thriving intraLATA toll market as intended by

the Commission's Order. Since the intent of that Order has been met, the restrictions should be lifted.

Issue 1a: What relief, if any, is appropriate?

***Position:** The marketing restrictions imposed by Order No. PSC-96-1659-FOF-TP on BellSouth for new customers should be lifted. BellSouth should be able to inform customers that BellSouth provides intraLATA toll service without the customer having to ask, utilizing the three-step protocol proposed by BellSouth. Although Witness Geer testified it was not the Company's intent to inform customers of BellSouth's calling plan options unless the customers selected BellSouth as their intraLATA toll carrier, BellSouth believes it should be allowed to and would be willing to inform customers of such plans should the Commission decide it would be in the best interest of the customers for BellSouth to do so.

The basis for BellSouth's position is supported by the clear and undisputed facts in this case, which speak for themselves. Since the marketing restrictions have been imposed, BellSouth has increasingly lost market share in the intraLATA toll market, which proves the Commission's intent to promote intraLATA toll competition has been met. Competing intraLATA carriers have successfully seized the unshackled opportunity given them by these marketing restrictions to establish their presence in the intraLATA toll market. Customers

are aware of the availability of these competing intraLATA toll carriers as May 31, 1998, 32% of new residential, 25% of new complex, and 36% of new small business customers selected intraLATA toll carriers other than BellSouth. Tr. at p. 104. Prior to that, BellSouth's losses to other intraLATA toll carriers in these market segments as of January 30, 1998, were 30% of its residential, 26% of complex, and 32% of small business intraLATA toll PIC-able lines. Tr. at p. 27. This increasing trend of new customers selecting other intraLATA toll carriers is relevant because it shows that customers are well aware of the availability of the various carriers in the intraLATA toll market, thereby eliminating the necessity for the continuation of the restrictions on BellSouth.

Additionally, such a loss of market share is not only relevant, but is significant because the intraLATA toll market is a new competitive market. Tr. at p. 135. The significance of these statistics is highlighted by the fact that MCI's market share of the interLATA market is just 19% after 14 years, while it has taken only two years for BellSouth to lose 36% of its residential, 25% of its complex business, and 32% of its small business intraLATA toll PIC-able lines. Tr. at pp. 136-137. Further evidence of a thriving competitive intraLATA toll market in Florida is indicated by the fact that of the 4,569,797 Local Presubscribed Interexchange Carrier (LPIC) changes from January 1997,

through February 1998, BellSouth was not the intraLATA toll carrier on 57% of the residential lines and 46% of the business lines. Tr. at p. 35, Exh. 6.

Sandra Seay, Regional Support Manager - Law and Public Policy, Southeastern Region for MCI, witness for Intervenors, does not dispute BellSouth's statistics. Tr. at pp. 137-138. In fact, Seay testified she has no specific data in mind that she believes would be more relevant to demonstrate there is effective intraLATA toll competition than what has already been filed. Tr. at p. 160. She further admits the intraLATA toll market is competitive in Florida and that customers are aware they have choices of carriers for intraLATA toll services. Tr. at pp. 149-150.

Intervenors essentially ignore the undisputed statistics and facts and argue the local market must be fully competitive before the restrictions on BellSouth prohibiting it from marketing intraLATA services are lifted. Tr. at pp. 139, 142. They, however, provide no valid explanation as to why, other than to claim "BellSouth still is the company in which customers getting new service for the first time must come through them." Tr. at p. 138. Interestingly, however, Intervenors provide no evidence of what the local competition is in Florida. In fact, when asked about this, Witness Seay could provide no information.

Q Are you an expert on the local competitive market in Florida?

A No, I'm not.

Q Do you know how many ALECs are certificated to do business in Florida?

A No, I do not.

Q Do you know how many ALECs' resellers are actually out there reselling service to residential and business customers?

A No.

Q Do you know if there are any facility-based local exchange companies, ALECs, in Florida actually providing residential and business service today?

A No . . . I don't know.

Tr. at pp. 143-144.

Furthermore, intervenors could not say how much local competition would be enough to warrant lifting the restrictions. Tr. at pp. 141-142, 158 (Seay "[did not] know what that number would be."). Nor could they say how much market share BellSouth would have to lose in the intraLATA toll market before the marketing restrictions should be lifted. Seay responded to this latter question in three pages of testimony without providing an answer and ultimately stated it was "contingent upon the openness of the local market." Tr. at pp. 152-155. Such a circular argument is without merit and should be rejected by the Commission as grounds to continue the restrictions on BellSouth.

In further support of their argument that the restrictions should not be lifted until the local market is open to competition, Intervenors rely on the fact that BellSouth's petition to offer long distance was denied by the Commission because it did not meet the 14-point checklist set forth in the Telecommunications Act of 1996. Tr. at pp. 47, 128-129. Yet, Witness Seay testified if the Commission were to find BellSouth met the 14-point checklist, the restrictions should still not be lifted at that time "[b]ecause local competition would just be starting at that point." Tr. at p. 142. This is just another circular argument by Intervenors that must fail for lack of merit, logic or support.

Seay testified "MCI and FCCA gave up their right to argue in favor of balloting as a way to open the intraLATA market in exchange for BellSouth agreeing to a competitively neutral practice." Tr. at p. 114. When cross-examined, however, Seay could not provide a basis for her statement that in essence BellSouth agreed to a permanent restriction on itself for a "one-time deal" for MCI and FCCA other than language in an order that does not support her conclusion. Tr. at p. 132; Exh. 1, Seay dep. at p. 19. Seay claims BellSouth wants to abandon "the permanent competitively neutral practices to which BellSouth agreed in 1995," but admitted she was not involved in the stipulation entered into in 1995, and did not know whether the parties specifically discussed BellSouth's ability to inform customers that BellSouth provided intraLATA

services. Tr. at pp. 113, 131. Seay was not part of the stipulation, was not familiar with it, and did not work around it. Tr. at 131.

What Intervenors want is to hamstring BellSouth and confuse customers rather than allow customers to have a full, fair and complete choice. By arguing against BellSouth being allowed to let customers know BellSouth provides intraLATA toll service, Intervenors are arguing against a competitive market and are arguing for customer confusion and an unlevel playing field for BellSouth. Tr. at pp. 76, 79. If BellSouth is not allowed to educate new customers by telling them BellSouth can provide intraLATA toll service, the customers will think BellSouth does not provide that service, just as BellSouth does not provide interLATA toll service. Tr. at pp. 66-68. This is particularly true since ALECs can market whatever toll services they want, including intraLATA toll service, to customers who call them for local service without waiting for the customers to ask for it, as can the Intervenors when customers call them for any reason (none of the Intervenors have marketing restrictions placed on them). Tr. at p. 133.

This customer confusion is further perpetuated by AT&T's letter of authorization for long distance service which indicates that the customer "may designate only one carrier at the time for any one number." Tr. at p. 144, Exh. 6. This is simply not true, as acknowledged by Seay.

Q And in Florida you can have two carriers for one telephone number, can't you?

A That's correct.

...

Q . . . in Florida is it true that you can only have one long distance company per telephone number?

A No.

Tr. at pp. 146-147. Therefore, a customer may not know that he may select one carrier for interLATA toll calls and another carrier, including BellSouth, for intraLATA toll calls. Tr. at pp. 31-32, 67, 95. Seay agreed there is a fine line in the customer's mind between intraLATA versus interLATA and there may still be some customer confusion. Tr. at p. 151.

Allowing BellSouth to market its intraLATA toll services to new customers will alleviate some of the customer confusion and stimulate competition by encouraging competing intraLATA toll carriers to offer competitive calling plans that will benefit Florida consumers. If the restrictions are not lifted, BellSouth's competitors will continue to enjoy an unshackled opportunity to continue to gain market share without having to "win customers," which is the "cornerstone of a competitive environment." Tr. at p. 33.

The evidence is clear that other intraLATA toll carriers have established themselves in the intraLATA toll market in Florida and that customers are aware

of the availability of these various carriers for intraLATA toll service. There is no dispute that, on average as of May 31, 1998, approximately one-third of BellSouth's residential and business intraLATA toll PIC-able lines were lost to other intraLATA toll carriers. Tr. at p. 104. This is clear evidence that the intent of the marketing restrictions on BellSouth to increase customer awareness and allow interexchange carriers to establish themselves in the intraLATA toll market has been met. Therefore, the restrictions should be lifted.

IV. CONCLUSION

For all the reasons stated herein, BellSouth respectfully requests the Commission adopt BellSouth's positions on the issues in this proceeding.

Respectfully submitted this 9th day of June, 1998.

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CERTIFICATE OF SERVICE
Docket No. 971399-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served
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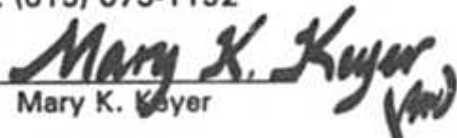
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