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April 12, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 991947-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Motion to Strike and Response to Motion for Summary Judgment. Please file this document 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,
E. Earl Edenfield, Jr.

E. Earl Edenfield, Jr. (A)

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- APP _____
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- CHR _____
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- SAS 3
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Enclosures

cc: All parties of record
M. M. Criser, III
N. B. White
R. D. Lackey

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**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

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In re:)	
)	Docket No. 991947-TP
Petition for Arbitration of the Interconnection)	
Agreement Between BellSouth Telecommunications,)	
Inc. and Florida Telephone Services, LLC)	
Pursuant to the Telecommunications Act of 1996.)	Filed: April 12, 2000
)	

**BELLSOUTH TELECOMMUNICATIONS INC.'S MOTION TO STRIKE AND
RESPONSE TO MOTION FOR SUMMARY JUDGMENT**

On March 27, 2000, Florida Telephone Services, Inc ("FTS") filed two pleadings: the Direct Testimony of Paul B. Joachim and a Memorandum in Support of Motion for Summary Judgment.¹ For the reasons set forth below, BellSouth Telecommunications, Inc. ("BellSouth") requests that the Florida Public Service Commission ("Commission") strike both of the pleadings filed by FTS.

ARGUMENT

On February 23, 2000, the Commission entered an Order Establishing Procedure (Order No PSC-00-0390-PCO-TP) that, among other things, set forth the controlling dates for filing testimony and pleadings in this proceeding. The Order Establishing Procedure provides that direct testimony is to be filed no later than March 9, 2000. In addition, the Order Establishing Procedure cautions the parties that "failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony." As FTS offered no excuse or explanation for missing the direct

¹ BellSouth did not receive a Motion for Summary Judgment, only the referenced Memorandum..

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testimony filing deadline,² the Commission should strike the Direct Testimony of Paul B. Joachim.

In addition to missing the direct testimony filing deadline, FTS failed to file a Pre-Hearing Statement as required by the Order Establishing Procedure. The ramifications of failing to file a Pre-Hearing Statement are clearly set forth in the Order Establishing Procedure, which provides that “such failure shall preclude the party from presenting testimony in support of its position.” Therefore, the Direct Testimony of Paul B. Joachim should be stricken for this independent reason.

As to the Memorandum in Support of Motion for Summary Judgment (“Memorandum”), the Commission should strike the Memorandum as no separate Motion for Summary Judgment has been filed. Even assuming, *arguendo*, that the Memorandum suffices as a Motion for Summary Judgment, the Memorandum fails to allege the rudimentary requirements upon which the Commission should consider a motion for summary judgment. Specifically, the Memorandum fails to allege that there is no material issue of fact in this proceeding and that FTS is entitled to judgment as a matter of law.

Clearly, BellSouth is entitled to recover the costs incurred as a result of FTS using BellSouth’s OSS. The Memorandum filed by FTS is nothing more than a misplaced argument as to why, in FTS’ opinion, BellSouth should not be entitled to recover OSS costs. In fact, the Memorandum is nothing more than arguments that should have been presented in direct testimony. Therefore, the Commission should strike the Memorandum filed by FTS. In the

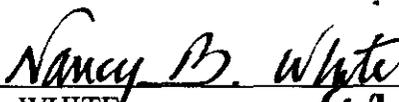
²In addition, FTS never filed a Response to BellSouth’s Petition for Arbitration. While not necessarily required under the Telecommunications Act of 1996, it certainly demonstrates a lack of interest in establishing a position on the issue raised in this arbitration proceeding.

alternative, the Commission should simply deny FTS' request for summary judgment as being insufficient under Florida law and contrary to both FCC and Florida precedents.

WHEREFORE, BellSouth respectfully requests that the Commission strike both the Direct Testimony of Paul B. Joachim and FTS' Memorandum.

Respectfully submitted this 12th day of April 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



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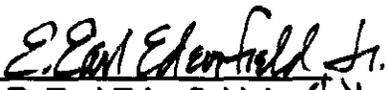
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**CERTIFICATE OF SERVICE
DOCKET NO. 991947-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 12th day of April, 2000 on the following:

Beth Keating
Staff Counsel
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E. Earl Edenfield Jr. (per)