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September 18, 2000

**ORIGINAL**

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RECORDS AND REPORTING

**HAND DELIVERY**

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

Re: Docket No. 000084-TP

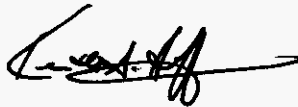
Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of US LEC of Florida, Inc. ("US LEC") are the original and fifteen copies of US LEC's Motion for Continuance and Abatement and Alternative Motion for Extension of Time for Filing Testimony and Prehearing Statements and to Reschedule Prehearing Conference and Final Hearing.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
SMP Director  
COM 3 KAH/rl  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_ Enclosures  
LEG 1 Trib.3  
OPC \_\_\_\_\_  
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DOCUMENT NUMBER-DATE

11695 SEP 18 8

FPSC-RECORDS/REPORTING

Petition by BellSouth Telecommunications, Inc. )  
 for approval of arbitration of an interconnection )  
 agreement with US LEC of Florida, Inc. pursuant )  
 to the Telecommunications Act of 1996. )

Docket No. 000084-TP

Filed: September 18, 2000

**US LEC OF FLORIDA, INC.'S MOTION FOR  
 CONTINUANCE AND ABATEMENT AND  
 ALTERNATIVE MOTION FOR EXTENSION OF TIME  
 FOR FILING TESTIMONY AND PREHEARING STATEMENTS  
 AND TO RESCHEDULE PREHEARING CONFERENCE  
 AND FINAL HEARING**

Respondent US LEC of Florida, Inc. ("US LEC"), by and through its undersigned counsel, and pursuant to Rule 28-106.204 and 28-106.210, Florida Administrative Code, hereby requests a continuance and abatement of these proceedings. US LEC requests a continuance and abatement of these proceedings pending the disposition by the Commission of the matters at issue in Docket No. 000075-TP, the generic investigation focusing on the payment of reciprocal compensation for termination of Internet Service Provider ("ISP")-bound traffic, which is scheduled to be decided June 5, 2001. In the alternative, US LEC requests a ninety day extension of time for the filing of prefiled testimony, exhibits, and prehearing statement and a rescheduling of the prehearing conference and final hearing approximately ninety days after the dates set forth in the Order Establishing Procedure, Order No. PSC-00-1483-PCO-TP issued August 17, 2000.<sup>1</sup> In support of these motions, US LEC

<sup>1</sup>Under the Order Establishing Procedure, prefiled direct testimony and exhibits are due September 21, 2000. While there is no specific procedural rule on point, US LEC maintains that the filing of this Motion for Continuance and Abatement and Alternative Motion for Extension of Time serves to or should serve to postpone the current controlling date for filing prefiled direct testimony and exhibits. US LEC maintains that it is appropriate to postpone the filing of all prefiled direct testimony and exhibits pending the disposition of these Motions and, therefore, does not intend to file its prefiled direct testimony and exhibits pending the disposition of these

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states as follows:

1. This docket concerns a petition for arbitration filed by BellSouth Telecommunications, Inc. ("BellSouth") pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act") to resolve open issues between US LEC and BellSouth in the negotiation of an interconnection agreement. US LEC has filed a response to BellSouth's petition for arbitration. The Order Establishing Procedure attaches the proposed issues for disposition by the Commission. Prefiled testimony and exhibits are due September 21, 2000 with the final hearing scheduled for December 14, 2000.

2. As BellSouth and the Commission staff are aware, US LEC has sought to avoid the time and expenditure of resources associated with an arbitration hearing by awaiting the filing of a reasonably satisfactory BellSouth interconnection agreement with the Commission that US LEC could adopt pursuant to Section 252(i) of the Act. It was for this reason that US LEC requested, with BellSouth's consent, two extensions of time for the filing of its response to BellSouth's petition for arbitration. Counsel for US LEC, BellSouth and the Commission staff discussed US LEC's desire to adopt a BellSouth interconnection agreement and avoid the time and expense of arbitration at the August 9, 2000 Issues Identification Conference wherein it was agreed to extend the deadlines for filing direct and rebuttal testimony one month to allow additional time for the filing of additional

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Motions. To the extent necessary, US LEC requests permission to defer the filing of its prefiled direct testimony and exhibits until, at least, fourteen days after the date of an order disposing of these Motions. To avoid any prejudice to BellSouth, counsel for US LEC has contacted counsel for BellSouth by voice mail and letter dated September 18, 2000 to advise counsel for BellSouth that these Motions are being filed in the event BellSouth deems it appropriate to similarly defer the filing of BellSouth's prefiled direct testimony and exhibits pending the disposition of these Motions.

BellSouth interconnection agreements with the Commission, one of which could potentially be adopted by US LEC.

3. US LEC is currently engaged in arbitration proceedings with BellSouth throughout the BellSouth region. US LEC has devoted substantial time and resources analyzing the more recently filed BellSouth interconnection agreements with the Commission with the goal of reaching a comprehensive regional agreement with BellSouth. In that regard, US LEC has been in the process of analyzing the comprehensive and voluminous interconnection agreements between: (a) BellSouth and ICG Telecom Group, Inc. filed with the Commission on July 27, 2000 in Docket No. 990691-TP; and (b) BellSouth and American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. filed with the Commission on August 17, 2000 in Docket No. 001183-TP. Most recently, US LEC's efforts have focused on analyzing the BellSouth/e.spire interconnection agreement to determine if the provisions in that agreement are acceptable to US LEC. US LEC may ultimately determine to adopt the BellSouth/e.spire interconnection agreement. In addition, US LEC anticipates that BellSouth will soon be filing interconnection agreements arising out of recent final decisions made by the Commission in arbitration proceedings involving BellSouth and Intermedia Communications (Docket No. 991854-TP) and BellSouth and Global NAPS, Inc. (Docket No. 991220-TP). Based on the Commission's decisions in the Intermedia and Global NAPS arbitration, US LEC anticipates that at least one of these interconnection agreements may be acceptable to US LEC and allow US LEC and BellSouth to avoid the time and expenditure of resources associated with an arbitration hearing.

4. As in the case of numerous other arbitration proceedings before the Commission, two primary issues that materially affect US LEC in this docket concern the reciprocal compensation

rates for the transport and termination of local traffic and whether ISP-bound traffic should be treated as local traffic for the purposes of reciprocal compensation, or whether it should be otherwise compensated. It appears likely that the Federal Communications Commission ("FCC") will issue an order concerning issues related to reciprocal compensation and any compensation mechanism therefor for ISP-bound traffic in the near future. Congress may also pass a law concerning these issues before the end of the current Congressional session. In either case, a preemptive decision by the FCC or Congress could effectively resolve the open issues between BellSouth and US LEC concerning reciprocal compensation for ISP-bound traffic thereby rendering unnecessary an arbitration hearing on these issues.

5. Moreover, the Commission will be addressing a host of legal, policy and factual issues concerning an appropriate *compensation mechanism for reciprocal compensation for ISP-bound traffic* in Docket No. 000075-TP. US LEC believes it would be a waste of time and resources of the parties to litigate issues concerning reciprocal compensation for ISP-bound traffic for the purposes of a multi-year interconnection agreement when these decisions will be made by either the FCC or Congress or certainly by the Commission by mid-2001.<sup>2</sup>

6. In the meantime, US LEC is willing to continue to live by the rates, terms and conditions of its current interconnection agreement with BellSouth pending a decision by the FCC, Congress or this Commission on issues concerning reciprocal compensation for termination of ISP-bound traffic. Such a result would be consistent with prior Commission arbitration orders where the Commission ordered the parties to continue to operate under their current interconnection agreement

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<sup>2</sup>BellSouth and US LEC are both parties to Docket No. 000075-TP.

pending a decision by the FCC on this issue. See, e.g., In re: Petition by MediaOne Florida Telecommunications, Inc. for arbitration of an interconnection agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996, Order No. PSC-99-2009-FOF-TP issued October 14, 1999; In re: Petition of ICG Telecom Group, Inc. for arbitration of unresolved issues in interconnection negotiations with BellSouth Telecommunications, Inc., Order No. PSC-00-0128-FOF-TP issued January 14, 2000.

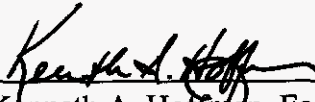
7. US LEC maintains that BellSouth would not be prejudiced by a continuance and abatement of the proceedings as requested herein and would like benefit by avoiding the unnecessary expenditure of time and resources associated with an arbitration hearing.

8. Counsel for US LEC has conferred with counsel for BellSouth and is authorized to represent that BellSouth opposes this Motion.

9. US LEC hereby consents to an extension of the Commission's deadline set forth in 47 U.S.C. §252(b)(4)(C) of the Act for the resolution of the disputed interconnection agreement issues between BellSouth and US LEC for such time as may be necessary to grant this Motion for Continuance and Abatement and reschedule the final hearing in this proceeding.

WHEREFORE, US LEC respectfully requests that the Prehearing Officer enter an Order granting this Motion for Continuance and Abatement by continuing and abating these proceedings pending the Commission's final order in Docket No. 000075-TP. Alternatively, if such request is not granted, US LEC requests that the controlling dates in the Order Establishing Procedure be extended for a period of ninety days and that the Prehearing Conference and Final Hearing be rescheduled on dates approximately ninety days after the current dates set forth in the Order Establishing Procedure.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kenneth A. Hoffman", is written over a horizontal line.

Kenneth A. Hoffman, Esq.

John R. Ellis, Esq.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, Florida 32302

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(850) 681-6515 (Telecopier)


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery(\*) or U. S. Mail to the following this 18th day of September, 2000:

Kip Edenfield, Esq., via telecopier and U. S. Mail  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, N.E.  
Suite 4300, BellSouth Center  
Atlanta, GA 30375

Michael P. Goggin, Esq., via telecopier and U. S. Mail  
c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301-1556

Diana Caldwell, Esq.(\*)  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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Tallahassee, FL 32399-0850

  
\_\_\_\_\_  
Kenneth A. Hoffman, Esq.

USLEC/abatement