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May 9, 2001

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

**Re: 960786-TL (Section 271)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to MCI WorldCom's Motion for Reconsideration of Order No. PSC-01-1025-PCO-TL and BellSouth Telecommunications, Inc.'s Response to Motion for Reconsideration of Florida Competitive Carriers Association and AT&T 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 to the parties by U.S. Mail as shown on the attached Certificate of Service.

Sincerely,

  
Lisa S. Foshee (KA)

Enclosures

cc: All Parties of Record  
Marshall M. Criser III  
R. Douglas Lackey

DOCUMENT NUMBER-DATE

05847 MAY-96

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Consideration of	)	
BellSouth Telecommunications, Inc.'s	)	Docket No. 960786-TL
Entry into InterLATA Services Pursuant	)	
To Section 271 of the Federal	)	Filed: May 9, 2001
Telecommunications Act of 1996	)	
_____	)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO MCI  
WORLD COM'S MOTION FOR RECONSIDERATION  
OF ORDER NO. PSC-01-1025-PCO-TL**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds and opposes MCI WorldCom's Motion for Reconsideration of Order No. PSC-01-1025-PCO-TL, issued by the Florida Public Service Commission ("Commission") on April 25, 2001. BellSouth supports the Prehearing Officer's exclusion of evidence on MCI's alleged "commercial experience" to the extent that the Commission keeps other performance data issues in the Florida Third Party Test ("TPT").

**DISCUSSION**

MCI has not presented any grounds upon which the Commission should reconsider Prehearing Officer's decision to exclude evidence on commercial usage from the hearing. As the Prehearing Officer noted in his Order, under the Commission's view of the TPT, the analysis that will be done in the TPT "requires an analysis of commercial data." Order, at 5. Given the Commission's position on this issue, the Prehearing Officer logically excluded commercial data from the hearing to streamline the process and avoid duplicative effort. In opposition to that goal, MCI is seeking two bites at the apple – it wants the TPT to be as expansive and all-inclusive as possible, but also wants the right to reargue performance issues in the hearing, presumably to the extent that the TPT supports BellSouth's case. MCI's proposal would create duplicative work in two dockets without

adding anything to the evidentiary record upon which the Commission can make its recommendation to the FCC. In short, all performance issues should be handled in one docket or the other, but not in both. To the extent that the Commission considers performance data issues in the TPT, it should consider commercial usage/experience issues there as well.

MCI has not presented any valid reasons for the Commission to change the Issues List. MCI first claims that nothing in the order establishing the TPT specifically contemplated that KPMG would evaluate the ALEC's commercial experience. (Motion, at 2). As noted in the Order, the Prehearing Officer has a different understanding of the scope of the TPT. Moreover, even if the original TPT order did not include an analysis of performance data, the Staff has amended the test to include "a KPMG overall evaluation of commercial performance data." Thus, regardless of the scope of the initial test plan, the TPT now includes performance data issues. Given the effort MCI has put into expanding the scope of the TPT, it is disingenuous for MCI to now argue that the Staff cannot amend the plan to more fully meet the Staff's view of the Commission's needs.

Second, MCI argues that the Commission should expand the scope of the hearing specifically to include evidence on an alleged mass market launch of local service by MCI in Georgia. This argument highlights the fact that MCI has spent so much time protecting its share of the long distance market in the regulatory arena that it has lost sight of the actual marketplace. While MCI has been defending its long distance revenue, other carriers have gone about the business of entering the local market. Over 362 ALECs have been certified to provide local service in Florida. As of December 2000,

ALECs served approximately 713,127 lines in BellSouth's service area, which is approximately 9.8% of the total access lines. Moreover, ALECs' existing collocation arrangements allow them to serve more than 90% of BellSouth's residential and business access lines. In short, local competition is thriving in Florida. The fact that MCI may *start* competing in Georgia, *five years* after the implementation of the Act, should not cause any change in the scope of the hearing. If MCI truly is concerned about commercial usage in Florida, MCI should come to Florida and compete.

Third, BellSouth agrees that its OSS are region-wide, and that commercial usage of its systems is the most probative evidence of its compliance with the checklist. That being said, there is still no reason to allow MCI to argue performance issues (which include commercial usage) in both the TPT and the 271 hearing – as the Hearing Officer recognized, the issues should be handled in one docket or the other.

Finally, MCI, as well as the other parties to the TPT docket, will have the opportunity to comment on the TPT in general, and the performance data analysis specifically. The Staff proposal included a comment cycle, during which MCI (and any other party) will be free to present whatever evidence they deem appropriate to address KPMG's conclusions. This comment cycle will ensure that all parties have a full and fair opportunity to present their respective cases.

In conclusion, the Commission should deny MCI's Motion for Reconsideration. Under the current Issues List, the Prehearing Officer clearly delineated the issues for the hearing and the issues for the TPT. MCI seeks to dissolve that demarcation and present evidence on performance data and commercial usage in both proceedings. MCI's proposal would create duplicative work for all parties to no logical end. If the

Commission continues to maintain that performance data be handled in the TPT, any evidence of commercial experience/usage should be handled in the TPT as well.

This 9<sup>th</sup> day of May, 2001.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of )  
BellSouth Telecommunications, Inc.'s ) Docket No. 960786-TL  
Entry Into InterLATA Services Pursuant )  
To Section 271 Of The Federal ) Filed: May 9, 2001  
Telecommunications Act of 1996 )  
\_\_\_\_\_ )

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO MOTION  
FOR RECONSIDERATION OF FLORIDA  
COMPETITIVE CARRIERS ASSOCIATION AND AT&T**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to and opposes the Motion for Reconsideration ("Motion") of the Florida Competitive Carriers Association and AT&T (collectively, the "ALECs"). The Prehearing Officer already considered the issues raised by the ALECs in the Motion. The ALECs have not presented any arguments in support of their position other than those that were presented to, and rejected by, the Prehearing Officer. Thus, the Commission should deny the Motion.

First, the ALECs argue that items that are outside the scope of the Florida Third Party Test ("TPT") should be considered in the hearing. What the ALECs consistently ignore is that the Commission specifically designed the TPT to address all of the issues associated with the assessment of BellSouth's provision of nondiscriminatory access to OSS. As noted by the Prehearing Officer, the Commission, in adopting the TPT, specifically held as follows:

if BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall be considered to have remedied the OSS concerns that we identified in Order No. PSC-97-1459-FOF-TL for purposes of our recommendation to the FCC on any future application by BellSouth for interLATA authority in Florida. Likewise, if only portions of BellSouth's OSS systems pass the third-party testing in Florida, then BellSouth shall

not be required to make any further demonstration to us with regard to these portions.

Order No. PSC-99-1568-PAA-TP, at 10-11. In addition, the Commission held that "we believe that the third party testing process, if fully implemented in Florida, will provide sufficient information to allow us to fulfill our consultative role under Section 271 of the Act with regard to BellSouth's provision of OSS systems." The Commission was explicit that the TPT would provide the Commission with all of the information it needed to assess BellSouth's compliance with its OSS obligations under the checklist. To now allow the ALECs to litigate a myriad of issues outside the confines of the TPT would thwart the Commission's intent in designing the TPT, and would render much of the time, expense and effort expended on the TPT moot. The Prehearing Officer's decision to exclude OSS issues from the hearing, on the other hand, accurately reflects the Commission's intent with respect to the purpose and scope of the TPT.

In an effort to convince the Commission to limit the purpose of the TPT, the ALECs set forth a litany of things to divert the Commission's attention from the central issue. What the ALECs fail to recognize, however, is that it was exactly this sort of scattershot diversionary tactic that the Commission intended to avoid by implementing the TPT. The Commission initiated the TPT specifically to "provide better, more accurate information about the status of BellSouth's systems than might be obtained through further administrative proceedings on [BellSouth's provision of nondiscriminatory access to its OSS]." Order No. PSC-99-1568-PAA-TP, at 10. The ALECs' Motion validates the Commission's approach to the TPT.

Second, the ALECs argue that the Prehearing Officer misinterpreted the Commission's Order regarding interim performance measurements. To support their position, the ALECs cite selective portions of Order No. PSC-00-0260-PAA-TI and consistently ignore the Commission's specific conclusion that the performance metrics adopted in the TPT would "provide the quantitative yardstick by which the existence of nondiscrimination or parity can be detected." *Id.* at 3. The Commission's Order implementing the TPT leaves no doubt that the Commission intended to use the interim performance measures for purposes of issuing a 271 recommendation to the FCC.

Third, the ALECs argue that the Commission must wait on the implementation of permanent performance measurements to issue its 271 decision. This argument also is without merit. While the Commission's work in the permanent performance measurements docket certainly is important, it is not a threshold issue for 271 purposes. To the contrary, the Commission adopted interim performance measurements in Florida specifically to allow the Commission to collect the performance data necessary to make a 271 decision *before* it finished its permanent measures docket.

In addition, while the ALECs gloss over implementation issues, it is crucial for the Commission to recognize that due to the enormous complexity in code writing and programming, it usually takes BellSouth six months to implement a performance measurements order. Given this schedule, BellSouth cannot expect to begin to collect data under the permanent measures adopted by this Commission until February 2002. This delay is neither necessary nor prudent. The Commission adopted interim measures pursuant to which it can collect performance data; thus, there is no need to jeopardize the



public interest by waiting on the implementation of permanent performance measurements.

Finally, the ALECs argue that the Commission should reconsider the exclusion of evidence related to commercial usage from the hearing. For the reasons set forth in its Response to Motion for Reconsideration of MCI WorldCom, BellSouth supports the Prehearing Officer's decision to exclude this issue. The most important thing the Commission must do with respect to this issue is be consistent - the Commission can consider performance data and evidence of commercial experience in the 271 hearing, or in the TPT docket, but it should not allow the ALECs to have it considered in both proceedings. The ALECs have not presented any compelling reason to consider the performance issues in the hearing as opposed to the TPT. Moreover, the ALECs ignore the fact that the Staff has proposed a comment cycle at the conclusion of the TPT. This comment cycle will provide all parties with the opportunity to present evidence related to KPMG's conclusions in the TPT, including conclusions on BellSouth's performance data. The comment cycle will provide adequate opportunity for all parties to present their case on BellSouth's performance to the Commission for consideration.

In conclusion, the Commission should deny the ALECs' Motion. The Prehearing Officer's decision comports with the intent of the Commission's Order initiating the TPT, as well as with the dictates of economy and efficiency. The ALECs, on the other hand, have failed to put forth any colorable reason to include their proposed issues in the hearing.

This 9th day of May, 2001.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 960786-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by  
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**(+) Signed Protective Agreement**