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August 27, 2001

Mrs. Bianca S. Bayo, Director
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Dear Mrs. Bayo:

RE: Docket No. 960786-TL

Enclosed please find the original and 15 copies of AT&T Communications of the Southern States, Inc., AT&T Broadband Phone of Florida, LLC, TCG South Florida, Inc., COVAD Communications, Inc., KMC Telecom, Inc., Nuvox Communications, Inc., and XO Florida, Inc.'s Response in Opposition to BellSouth Telecommunications, Inc.'s Motion to Strike Portions of Select Intervenors' Direct Testimony. Please stamp the extra copy provided and return for our files.

Thank you and please contact the undersigned if there are any questions regarding this matter.

Sincerely,

James P. Lamoureux

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of BellSouth Telecommunications,)
Inc.'s entry into interLATA services pursuant to) Docket No. 960786-TL
Section 271 of the Federal Telecommunications)
Act of 1996.) Filed: August 27, 2001

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,
AT&T BROADBAND PHONE OF FLORIDA, LLC, TCG SOUTH
FLORIDA, INC., COVAD COMMUNICATIONS, INC., KMC TELECOM,
INC., NUVOX COMMUNICATIONS, INC., AND XO FLORIDA, INC.'S
RESPONSE IN OPPOSITION TO BELL SOUTH
TELECOMMUNICATIONS, INC.'S MOTION TO STRIKE PORTIONS
OF SELECT INTERVENORS' DIRECT TESTIMONY**

AT&T Communications of the Southern States, Inc., AT&T Broadband Phone of Florida, LLC, TCG South Florida, Inc., Covad Communications, Inc., KMC Telecom, Inc., NuVox Communications, Inc. and XO Florida, Inc. (collectively "Intervenors") hereby submit their Response in Opposition to BellSouth Telecommunications Inc.'s ("BellSouth's") Motion to Strike Portions of Select Intervenors' Direct Testimony ("Motion to Strike"). BellSouth seeks to strike portions of six AT&T witnesses' testimony,¹ portions of Covad's witness's testimony,²

¹ See BellSouth Telecommunications, Inc.'s Motion to Strike Portions of Select Intervenor's Direct Testimony, Docket No. 960786-TL, filed August 17, 2001; Letter dated August 21, 2001 from James Meza III, counsel for BellSouth to Blanca S. Bayó, Florida Public Service Commission, attaching a page and line summary of the testimony BellSouth seeks to strike. ("Attachment")

² The actual Motion to Strike, filed on August 17, 2001, did not delineate by page and line the testimony BellSouth claims should be stricken. This information followed the actual pleading via letter on August 21. Though in its motion BellSouth states that it is moving to strike portions of Covad witness' Davis' testimony, it includes no reference to Ms. Davis' testimony in its page

(Footnote cont'd on next page)

portions of two of KMC's witnesses' testimony, portions of one of NuVox's witness's testimony and portions of XO's witness' testimony. BellSouth seeks to exclude this testimony because the testimony "relates to BellSouth's Operational Support System" and is being "addressed via third-party OSS testing."³ However, as explained below, BellSouth has moved to strike areas of testimony that do not address the functionality of OSS (which is the subject of the third-party test) but rather provide key evidence to this Commission which relates directly to the service BellSouth provides to ALECs when BellSouth provisions the items in the § 271 checklist. Such evidence clearly is a proper subject for testimony in this Section 271 proceeding.

On April 25, 2001, Prehearing Officer Deason issued his Order Regarding Issues To Be Addressed At Hearing that set forth the Approved Issues this Commission would consider.⁴ This Issue List clearly contemplates testimony regarding whether BellSouth currently complies with the fourteen-point checklist set forth in the Telecommunications Act of 1996 ("Act").⁵ In approving Commissioner Deason's Order on the issues,⁶ this Commission narrowed the scope of Issue three, checklist item 2, by excluding testimony regarding whether BellSouth provides

(Footnote cont'd from previous page.)

and line chart. Thus, Covad has no way to respond to BellSouth's generalized motion as to Covad as BellSouth did not state what it believes should be stricken. Therefore, as to Covad, BellSouth's motion must be denied outright.

³ *Motion to Strike* at 1.

⁴ See Order Regarding Issues To Be Addressed At Hearing, *In re: Consideration of BellSouth Telecommunications, Inc.'s entry into InterLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-TL, Order No. PSC-01-1025-PCO-TL (April 25, 2001) ("*Issues Order*").

⁵ See *Issues Order* at 7-11.

⁶ See Order No. PSC-01-1252-FOF-TL.

nondiscriminatory access to its OSS in Florida. This Commission has decided that it will rely on the results of third-party OSS testing currently underway in Florida to answer this important question. Accordingly, Intervenor submitted testimony that focused on, among other topics, the actual problems ALECs are experiencing as they try to compete in Florida and whether BellSouth has demonstrated compliance with the Telecommunication Act of 1996's checklist items.

In the filed testimony Intervenor has made reference to BellSouth's OSS, not to supplement any information in the third party test, but because it would be virtually impossible to discuss BellSouth's checklist compliance without mentioning OSS in any way. As the FCC has recognized "[a]s part of a [Bell Operating Company's] BOC's demonstration that it is 'providing' a checklist item (e.g., unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service."⁷ The issue is whether BellSouth can provision the checklist items as required by the checklist. Accordingly, discussion of BellSouth's ability to provide loops, switching and other network elements to ALECs is a matter the Commission will, and must, consider in the context of determining checklist compliance.

If this Commission adopts BellSouth's view that all testimony that "relates to its OSS"⁸ is inappropriate, it will not be able to fully evaluate compliance with the Act's checklist. ALECs

⁷ See Memorandum Opinion and Order, *In the Matter of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100 rel. July 20, 2001 n. 68 citing, Memorandum and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3990 ¶ 84 (1999).

⁸ See *Motion to Strike* at 1.

will be prevented from submitting any testimony that addresses their difficulties in serving customers, difficulties caused by BellSouth's failure to provision adequately the checklist items. Indeed, key evidence of factors that impact BellSouth's ability to comply with the checklist, evidence that likely will be offered by BellSouth and ALECs to the Federal Communications Commission, will not be available to this Commission as it reviews BellSouth compliance with Section 271. For example, BellSouth seeks to strike portions of AT&T witness Berger's Testimony that address BellSouth's refusal to provide ALECs access to its Loop Facility Assignment Control System ("LFACS") database.⁹ Access to this information is fundamental in order for the Commission to consider whether ALECs have appropriate access to network elements. The testimony does not relate to the functionality of BellSouth's OSS; it relates to BellSouth's refusal to provide information on available facilities, information that is essential for an ALEC to compete using unbundled loops (Checklist Item 4). If AT&T is precluded from bringing this issue to the Commission's attention, the Commission will not be able to make a fully informed decision regarding BellSouth's compliance with checklist item 4, the subject of Issue 5.

BellSouth also seeks to strike Ms. Berger's Testimony regarding BellSouth's duplicate billing of AT&T customers after these customers switched local service providers from BellSouth to AT&T and ported their numbers.¹⁰ This marketplace problem would be overlooked if AT&T is not permitted to bring this problem to the Commission's attention. This problem can have significant negative impact on ALEC-customer relations and affect ALECs' ability to

⁹ See *Attachment* at 1.

¹⁰ This problem concerns BellSouth's compliance with checklist item 11, Issue 12.

compete with BellSouth. To claim that these issues were excluded by the Commission's Order is an effort to conceal relevant testimony from this Commission.

Ms. Berger's Testimony also addresses the significant problems AT&T has experienced in its attempt to provide its customers with predictable and reliable hot cuts (checklist items 4, and 11, Issues 5 and 12). Ms. Berger discusses BellSouth's failure to return firm order confirmations for hot cuts in a timely manner and the impact of these delays on Florida consumers. BellSouth seeks to strike this testimony even though AT&T is not offering it to demonstrate that BellSouth fails to provide nondiscriminatory access to its OSS. Rather, AT&T has offered this testimony to demonstrate BellSouth's inability to comply with checklist items 4 and 11. As such, it would be inappropriate for this Commission to exclude Ms. Berger's testimony on this important topic and limit this Commission's view of the marketplace on this crucial issue.

BellSouth's expansive view of this Commission's order would keep from this Commission information which directly responds to an Issue set forth by the Commission. For example, BellSouth seeks to strike six lines of Mr. Bradbury's Testimony that sets forth the scope of his testimony.¹¹ The issues Mr. Bradbury identifies are relevant to Issue 8(b).¹²

¹¹ See Attachment at 1.

¹² Issue 8 (b) states:

Does BellSouth currently provide nondiscriminatory access to the following pursuant to Section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC:

* * *

(b) Does BellSouth currently provide selective routing in Florida?

Mr. Bradbury, like Ms. Berger, does not address the functionality of BellSouth's OSS; he addresses BellSouth's method of dealing with ALECs in the marketplace. This crucial evidence should not be withheld from the Commission.

Similarly, the testimony of AT&T's Steven Turner addresses checklist item 4, Issue 5, and details the problems ALECs have experienced in connection with ordering bundled services from BellSouth. In particular, Mr. Turner explains BellSouth's obligation to provide line splitting and the impact of BellSouth's failure to provide this service. Mr. Turner's Testimony is appropriate to demonstrate that BellSouth is not currently in compliance with checklist item 4.

In connection with checklist item 2, Issue 3, AT&T witness Bernadette Seigler describes the loss of service incidents suffered by newly migrated AT&T UNE-P customers; explains the principal cause of the loss of dial tone; and details BellSouth's response to the problem. Ms. Seigler's Testimony also highlights problems in BellSouth's business rules related to universal service order codes ("USOCS") and problems AT&T has experienced using the LENS ordering interface. BellSouth seeks to strike all of this testimony, yet Ms. Seigler's Testimony does not analyze whether BellSouth is providing nondiscriminatory access to its OSS. It addresses the market realities for AT&T and its customers when AT&T obtains customers from BellSouth and serves those customers using UNE-P. Mere references to aspects of BellSouth's OSS system should not be sufficient to strike otherwise relevant testimony.

Similarly, Judy Wheeler's Testimony explains to the Commission the number porting process and the problems AT&T Broadband has experienced in providing service to its customers that are directly attributable to BellSouth.¹³ In the testimony BellSouth seeks to strike,

¹³ Ms. Wheeler's Testimony addresses checklist item 11, Issue 12.

Ms. Wheeler does not comment on whether BellSouth provides nondiscriminatory access to BellSouth's OSS. She explains what happens to AT&T Broadband and its customers when customers migrate from BellSouth. Of course, Ms. Wheeler mentions the names of the parts of BellSouth's OSS upon which AT&T must rely. How else could these processes be explained?

The portion of the BellSouth motion that seeks to strike part of the testimony of KMC witnesses Mario Espin and Jim Sfakianos is entirely without merit. The KMC testimony at issue has absolutely nothing to do with the functioning of BellSouth's OSS, but rather relates solely and directly to BellSouth's failure to provide functioning T-1 loops to KMC. This is a checklist item 4 issue, and as such is entirely within the scope of testimony permitted by Commissioner Deason's Order. (See Issue 5). The Espin and Sfakianos testimony details KMC's actual marketplace experience with BellSouth and BellSouth's corresponding failure to provide KMC with non-discriminatory access to loops as required by the Act. These two KMC City Directors describe their problems with BellSouth-provisioned circuits, noting that these same problems do not afflict BellSouth customers. This is precisely the type of factual information other state commissions have considered in their reviews, and that the FCC has requested be evaluated at the state level.¹⁴ Without the KMC testimony at issue, this evidence is not likely to be entered into the record, and it is critical to this Commission's consideration of whether BellSouth is providing nondiscriminatory access to network elements other than OSS.

Finally, BellSouth seeks to strike the testimony of every witness who commented on the integrity of BellSouth's self-reported performance data. None of this testimony addresses the

¹⁴ See *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (F.C.C. Dec. 22, 1999) (No. CC99-295, FCC 99-404).

functionality of BellSouth's OSS; it addresses whether BellSouth is able to report accurate, reliable performance data to this Commission, data upon which BellSouth will rely to establish Section 271 compliance at this Commission and at the FCC. Because of the numerous problems ALECs have identified in BellSouth's self-reported performance data, ALECs believe that BellSouth cannot establish that its data is accurate and reliable. The Commission should hear the evidence that raises these concerns.

For example, BellSouth seeks to strike the Testimony of Sharon Norris. Ms. Norris' Testimony addresses Issues 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, and 15.¹⁵ It demonstrates that to the extent BellSouth plans to rely on its self-reported data to demonstrate compliance with any of the checklist items, such data is not trustworthy. Indeed, BellSouth witness Varner just presented BellSouth's May Monthly State Summary report for Florida for this Commission's consideration on August 20, 2001. Ms. Norris' testimony states why this Commission cannot trust that data. The errors, exclusions, and other data problems Ms. Norris discusses call into question the accuracy of all of BellSouth's self-reported data. Without accurate and reliable data, neither this Commission nor ALECs can determine whether BellSouth complies with any of the Act's checklist requirements.

NuVox Communications, Inc. also offered the Testimony of witness Mary Campbell¹⁶ to demonstrate the significant data integrity problems ALECs encounter.¹⁷ Ms. Campbell's

¹⁵ Ms. Norris' Testimony also responds to BellSouth witness Cox's statement that "BellSouth provides nondiscriminatory access to OSS as BellSouth will demonstrate through its Florida performance data **and** the KPMG 3PT results." Direct Testimony of BellSouth witness Cynthia K. Cox, Docket No. 960786-TP, filed on May 31, 2001 at 46 (emphasis added).

¹⁶ Ms. Campbell has only 9 pages of testimony, though BellSouth's line-by-line request asks that testimony of Ms. Campbell on page 13-19 be stricken.

testimony shows that BellSouth's performance reports are incomplete and do not accurately reflect BellSouth's performance. For example, Ms. Campbell discusses how BellSouth's May 2001 reports are missing thousands of local service requests NuVox submitted to BellSouth.¹⁸ Even after NuVox had alerted BellSouth to this problem and BellSouth "revised" its May 2001 data reports to correct this problem, significant data discrepancies continued to exist in BellSouth's performance reports.¹⁹ Like Ms. Norris, Ms. Campbell reaches the conclusion that BellSouth's self-reported performance data is incomplete, inaccurate and unreliable. Ms. Campbell's testimony does not address whether BellSouth is providing nondiscriminatory access to its OSS. Instead, Ms. Campbell's testimony demonstrates to this Commission that BellSouth cannot establish checklist compliance because BellSouth cannot provide ALECs or the Commission with accurate, reliable performance data.

Similarly, XO filed the testimony of Elina Padfield,²⁰ not in regard to operational OSS issues, but as to BellSouth data integrity problems which continually plague ALECs who deal with BellSouth. Such problems inhibit ALECs' ability to compete with BellSouth. Ms. Padfield's testimony demonstrates that data provided in regard to local service requests,

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¹⁷ See Rebuttal Testimony of NuVox Communications witness May H. Campbell, Docket No. 960786-TL, filed on July 20, 2001. NuVox submitted Ms. Campbell's testimony in response to checklist item 2, Issue 3, access to unbundled network elements.

¹⁸ See *id.* at 7-8.

¹⁹ See *id.* at 7.

²⁰ See Rebuttal Testimony of XO Florida witness Elina Padfield, Docket No. 960786-TL, filed on July 20, 2001. XO submitted Ms. Padfield's testimony in response to Checklist items 2 and 11.

number portability, and other data that BellSouth provides to XO is inaccurate and unreliable. This information goes directly to checklist compliance.

Conclusion

Intervenors' testimony demonstrates that BellSouth cannot establish checklist compliance because of the numerous problems ALECs are encountering attempting to compete in Florida. Contrary to BellSouth's assertions, the Testimony submitted by Intervenors does not "defeat the stated goal of the Commission for the third-party test to be the sole determining factor as to whether BellSouth has addressed the Commission's OSS concerns."²¹ As Intervenors have shown, the testimony BellSouth seeks to strike responds directly to the Commission's Order to provide information regarding BellSouth's checklist compliance. This Commission should not strike Intervenors' Testimony simply because BellSouth does not like what it reveals. The testimony which BellSouth seeks to exclude provides this Commission with important evidence regarding BellSouth's ability to comply with Section 271. Accordingly, this Commission should deny BellSouth's Motion to Strike Portions of Select Intervenors' Direct Testimony.

Respectfully submitted,



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²¹ *Motion to Strike at 3.*

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I HEREBY CERTIFY that a copy of the foregoing has been furnished via U.S.

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