

JAMES MEZA III  
Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

August 28, 2001

Mrs. Blanca S. Bayó  
Director, Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 010345-TP (Structural Separation of BellSouth)**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss, Motion for More Definite Statement, and Motion to Strike Clarified and Amended Petition, 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 shown on the attached Certificate of Service.

Sincerely,

  
James Meza III (LA)

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

DOCUMENT NUMBER-DATE

10732 AUG 28 01

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE  
Docket No. 010345-TP**

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

U.S. Mail this 28th day of August, 2001 to the following:

Jason Fudge  
Beth Keating  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Time Warner Telecom of Florida, L.P.  
c/o Carolyn Marek  
233 Bramerton Court  
Franklin, Tennessee 37069  
Tel. No. (615) 376-6404  
Fax. No. (615) 376-6405  
carolyn.marek@twtelecom.com

Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
P.O. Box 10095 (32302)  
215 South Monroe Street, 2nd Flr.  
Tallahassee, FL 32301  
Tel. No. (850) 222-3533  
Fax. No. (850) 222-2126  
Counsel for Time Warner  
Pete@penningtonlawfirm.com  
Karen@penningtonlawfirm.com

Ms. Rhonda P. Merritt  
AT&T Communications  
AT&T Digital Phone  
TCG South Florida  
101 North Monroe Street  
Suite 700  
Tallahassee, FL 32301  
Tel. No. (850) 425-6342  
Fax. No. (850) 425-6361  
rpmerritt@att.com

Michael A. Gross  
Florida Cable Telecomm. Assoc.  
246 E. 6th Avenue, Suite 100  
Tallahassee, FL 32303  
Tel. No. (850) 681-1990  
Fax. No. (850) 681-9676  
mgross@fcta.com

Maxcess, Inc.  
Ms. Doris Franklin  
315 South Calhoun Street  
Suite 314  
Tallahassee, FL 32301-1837  
Tel. No. (850) 513-1020  
Fax. No. (850) 513-1022  
dfranklin@maxcess.net

Joseph A. McGlothlin  
Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson, Decker, Kaufman,  
Arnold & Steen, P.A.  
117 South Gadsden Street  
Tallahassee, FL 32301  
Tel. No. (850) 222-2525  
Fax. No. (850) 222-5606  
jmcglothlin@mac-law.com  
vkaufman@mac-law.com  
Attys. for FCCA  
Attys. for ACCESS

Brian D. Sulmonetti  
MCI Telecommunications Corp.  
Concourse Corporate Center Six  
Six Concourse Parkway, Suite 3200  
Atlanta, GA 30328

Matthew Feil  
Florida Digital Network, Inc.  
390 North Orange Avenue  
Suite 2000  
Orlando, FL 32801  
Tel. No. (407) 835-0460  
mfeil@floridadigital.net

Michael Sloan  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street  
Suite 300  
Washington, D.C. 20007-5116  
Tel. No. (202) 295-8458  
mcsloan@swidlaw.com

Richard D. Melson  
Hopping Green Sams & Smith, P.A.  
P.O. Box 6526  
Tallahassee, FL 32314  
Tel. No. (850) 425-2313  
Atty. for MCI WorldCom

Donna McNulty  
MCI WorldCom, Inc.  
325 John Knox Road  
Suite 105  
Tallahassee, FL 32303  
Tel. No. (850) 422-1254

Joseph W. Hatchett  
Fred R. Dudley  
Bruce Culpepper  
Akerman, Senterfitt & Edison, P.A.  
301 South Bronough, Suite 200  
Tallahassee, Florida 32301-1707  
Tel. No. (850) 222-3471  
Fax. No. (850) 222-8628  
Attys. for AT&T, TCG & MediaOne

John F. O'Sullivan  
SunTrust International Center  
28th Floor  
One Southeast Third Avenue  
Miami, Florida 33131-1704  
Tel. No. (305) 374-5600  
Fax. No. (305) 374-5095  
Attys. for AT&T, TCG & MediaOne

George N. Meros, Jr.  
Lori S. Rowe  
Gray, Harris & Robinson  
301 South Bronough, Suite 600  
Post Office Box 11189  
Tallahassee, FL 32302  
Tel. No. (850) 222-7717  
Fax. No. (850) 222-3494  
Attys. for AT&T

**Thomas A. Cloud**  
**Gray, Harris & Robinson**  
301 East Pine Street, Suite 1400  
Post Office Box 3068  
Orlando, FL 32802-3068  
Tel. No. (407) 843-8880  
Fax. No. (407) 244-5690  
Atty. for AT&T

**William B. Graham, Esq.**  
**McFarlain & Cassedy, P.A.**  
215 South Monroe Street  
Suite 600  
Tallahassee, FL 32301  
Tel. No. (850) 222-2107  
Fax. No. (850) 222-8475  
Atty. for AT&T

**IDS Telcom L.L.C.**  
1525 Northwest 167th Street  
Second Floor  
Miami, Florida 33169

**Suzanne Summerlin, Esq.**  
1311-B Paul Russell Road  
Suite 201  
Tallahassee, Florida 32301

**Kenneth A. Hoffman, Esq.**  
**Rutledge, Ecenia, Purnell &  
Hoffman, P.A.**  
P.O. Box 551  
Tallahassee, FL 32302-0551  
Tel. No. (850) 681-6788  
Fax. No. (850) 681-6515  
Represents US LEC

**Mr. Jeremiah T. Needham**  
**Regulatory Manager**  
US LEC Corporation  
Morrocroft III  
6801 Morrison Boulevard  
Charlotte, NC 28211  
Tel. No. (704) 319-1944  
Fax. No. (704) 602-1944

**Covad Communications Company**  
**Ms. Catherine F. Boone**  
10 Glenlake Parkway  
Suite 650  
Atlanta, GA 30328-3495  
Tel. No. (678) 222-3469  
Fax. No. (240) 525-5673  
cboone@covad.com

**Vicki Gordon Kaufman**  
**McWhirter Reeves McGlothlin Davidson**  
**Decker Kaufman Arnold & Steen, P.A.**  
117 South Gadsden Street  
Tallahassee, Florida 32301  
Tel. No. (850) 222-2525  
Fax. No. (850) 222-5606  
Atty. for Covad  
vkaufman@mac-law.com

**Maureen Flood**  
**CompTel**  
**Director of Regulatory and State Affairs**  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036  
Tel. No. (202) 296-6650  
Fax. No. (202) 296-7585

Robert J. Aamoth  
Andrew M. Klein  
Kelley Drye & Warren LLP  
1200 19th Street, N.W.  
Washington, D.C. 20036  
Tel. No. (202) 955-9600  
Fax. No. (202) 955-9792  
[RAamoth@KelleyDrye.com](mailto:RAamoth@KelleyDrye.com)  
[AKlein@KelleyDrye.com](mailto:AKlein@KelleyDrye.com)

D. Mark Baxter  
Stone & Baxter, LLP  
557 Mulberry Street, Suite 1111  
Macon, Georgia 31201-8256  
Represents ACCESS

  
James Meza III  
James Meza III (KA)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition of AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. for Structural Separation of BellSouth <u>Telecommunications, Inc.</u>	) ) ) ) ) ) )	Docket No.: 010345-TP      Filed: August 28, 2001
--	---------------------------------	---

**BELLSOUTH'S MOTION TO DISMISS, MOTION FOR  
MORE DEFINITE STATEMENT, AND MOTION  
TO STRIKE CLARIFIED AND AMENDED PETITION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Florida Public Service Commission ("FPSC") (1) dismiss AT&T Communications of the Southern States, Inc.'s, TCG South Florida Inc.'s, and MediaOne Florida Telecommunications, Inc.'s (collectively "AT&T") Clarified and Amended Petition for Structural Separation ("Amended Petition") to the extent the Amended Petition is still requesting that the Commission structurally separate BellSouth; (2) require AT&T to file a more definite statement as to its request for "all relief necessary or appropriate as the facts and circumstances require"; and (3) strike the Amended Petition for failing to comply with Rule 25-22.036, Florida Administrative Code. In support of these motions, BellSouth submits the following:

1. On March 21, 2001, AT&T filed its Petition for Structural Separation, wherein, after twenty-eight pages of baseless accusations and arguments, AT&T specifically requested that the Commission order the structural separation of BellSouth.
2. Based on AT&T's specific claim for relief, on April 10, 2001, BellSouth filed a Motion to Dismiss and Motion to Strike, claiming, among other things, that (1) the Commission lacked the authority to order structural separation; (2) the Commission was

prohibited from ordering structural separation; and (3) the Petition failed to comply with basic pleading requirements. BellSouth's Motion to Dismiss and Motion to Strike are still pending.

3. On June 20, 2001, AT&T filed its Motion to Clarify and Amend AT&T's Petition for Structural Separation, wherein it requested that the Commission award all relief necessary or appropriate under the circumstances in addition or as an alternative to structural separation. On July 2, 2001, BellSouth filed an Opposition to AT&T's Motion to Clarify and Amend on the grounds that it was untimely and introduced new issues into the proceeding. In Order No. PSC-01-1615-PCO-TP, dated August 8, 2001, the Commission granted AT&T's Motion and ordered that all responses to the Amended Petition be filed by August 28, 2001.

4. As stated above, AT&T's Amended Petition seeks as relief the structural separation of BellSouth in addition to "all relief necessary or appropriate as the facts and circumstances require." Amended Petition at 1. To the extent AT&T is still requesting structural separation as relief, BellSouth moves that the Commission dismiss AT&T's Amended Petition. In support of this request, BellSouth incorporates by reference all of the arguments set forth in the Motion to Dismiss that BellSouth filed in this docket on or about April 10, 2001.

5. Regarding AT&T's request that the Commission "order all relief necessary or appropriate as the facts and circumstances requires", BellSouth requests that, pursuant to Rule 1.140(e), Florida Rules of Civil Procedure and Rule 28-106.24, Florida Administrative Code, AT&T provide a more definite statement as to the specific type of relief it is requesting. See Manka v. DeFranco's, Inc., 575 So. 2d 1357,

1359 (Fla. 1<sup>st</sup> DCA 1991) (any ambiguity as to claim for damages could be cured by motion for more definite statement).

AT&T has not identified what type of additional or alternative relief it is requesting. Indeed, in its Motion, AT&T admitted that the “facts determined at the hearing might compel relief more substantial, less substantial, or just different than structural separation.” Motion at 1. As currently stated, AT&T’s Amended Petition forces BellSouth to speculate as to what relief AT&T is requesting, which severely prejudices BellSouth. Without knowing what additional or alternate relief AT&T is requesting, BellSouth cannot prepare a defense to these unlimited, unspecified claims for relief.

Furthermore, as made clear in BellSouth’s Motion to Dismiss, the Commission’s power is not unlimited because it is a creature of statute. City of Cape Coral v. GAC Utilities, Inc., 281 So. 2d 493 (Fla. 1973). “As such, the Commission’s powers, duties, and authority are those and only those that are conferred expressly or impliedly by statute of the State. Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof.” Id.

Consequently, it is axiomatic that AT&T specifically identify what alternative or additional claims of relief it is requesting so that the parties as well as this Commission can determine whether the Commission has the authority to order the requested relief. Accordingly, to the extent AT&T’s Amended Petition is seeking alternative or additional relief to structural separation, BellSouth moves that AT&T specifically identify the additional or alternative relief it is seeking.



9. In addition, BellSouth requests that the Commission strike the Amended Complaint because it fails to comply with Rule 25-22.036, Florida Administrative Code. This Rule requires that each Complaint contain “the specific relief requested, including any penalty sought.” Rule 25.22.036, Florida Administrative Code. For the reasons stated above, AT&T’s request for “all relief necessary or appropriate as the facts and circumstances require” in addition to or as an alternative to structural separation does not identify the specific relief requested. Accordingly, AT&T’s Amended Petition does not comply with Rule 25-22.036 and should be stricken.

10. Moreover, AT&T’s Amended Petition does not cure the procedural defects previously identified in BellSouth’s Motion to Strike. As stated in the Motion to Strike, stripped of the improper allegations, opinions, and legal conclusions, AT&T’s Petition as well as its Amended Petition do not satisfy basic pleading requirements, including the requirement that the Complaint identify the actions that allegedly constitute a violation of rule, order or statute as set forth in Rule 25-22.036. Id. Therefore, BellSouth incorporates by reference all of the arguments set forth in the Motion to Strike and adds that the Amended Petition should be stricken because it does not conform to Rule 25-22.036.<sup>1</sup>

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that the Commission (1) dismiss AT&T’s Amended Petition to the extent it is still requesting that the Commission structurally separate BellSouth; (2) require AT&T to provide a more definite statement as to the specific relief it is requesting in addition or as an alternative to

---

<sup>1</sup> It should be noted that in AT&T’s Memorandum in Opposition to BellSouth’s Motion to Dismiss, AT&T cited to only five alleged instances in the twenty-eight page Complaint where it claims that it complied with Rule 25-22.036(b)(2). Absent a claim for relief in addition or alternative to structural separation, the Amended Petition is identical to the original Petition.

structural separation; and (3) strike AT&T's Amended Petition for failing to comply with Rule 25-22.036.

Respectfully submitted this 28th day of August, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*

NANCY B. WHITE (KA)

JAMES MEZA III

c/o Nancy H. Sims

150 So. Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5558

*R. Douglas Lackey*

R. DOUGLAS LACKEY (KA)

E. EARL EDENFIELD JR.

PATRICK W. TURNER

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0747

408093