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October 8, 2001

BY HAND DELIVERY

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Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

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Re: Docket No. 000121-TP

Dear Ms. Bayó:

Enclosed for filing in the above docket are the original and fifteen copies of AT&T Communications of the Southern States, Inc., WorldCom, Inc., and Z-Tel Communications, Inc.'s Joint Response In Opposition To BellSouth's Motion for Reconsideration and Clarification.

By copies of this letter, this document has been furnished to the parties on the attached service list.

Very truly yours,



Richard D. Melson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail or Hand Delivery (*) this 8th day of October, 2001.

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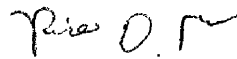
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the)
Establishment of Operations Support)
Systems Permanent Performance)
Measures for Incumbent Local)
Exchange Telecommunications)
Companies)
_____)

Docket No. 000121-TP

Filed: October 8, 2001

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.,
WORLDCOM, INC., AND Z-TEL COMMUNICATIONS, INC.'S
JOINT RESPONSE IN OPPOSITION
TO BELL SOUTH'S MOTION FOR RECONSIDERATION AND
CLARIFICATION**

AT&T Communications of the Southern States, Inc., WorldCom, Inc, and Z-Tel Communications, Inc. (ALECs) respectfully submit their Joint Response in Opposition to BellSouth Telecommunications, Inc.'s (BellSouth's) Motion for Reconsideration and Clarification filed on September 25, 2001, in this docket.

STANDARD OF REVIEW

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959); (citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but

should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse* at 317.

**BELLSOUTH'S ARGUMENTS REGARDING BENCHMARKS TO BE
APPLIED TO MEASUREMENTS FAIL TO MEET STANDARD FOR
RECONSIDERATION**

The primary focus of BellSouth's motion is the set of benchmarks adopted by the Commission. BellSouth acknowledges that the Commission reviewed the benchmarks and made individual determinations on each one. As BellSouth states at paragraph 5 of its motion: "In some instances, BellSouth's proposals were accepted, in other instances the ALEC's [sic] proposals were accepted, and in some instances, the decision is to select a benchmark somewhere in between." Without presenting any new arguments or pointing to any evidence the Commission overlooked, BellSouth now asks the Commission to reconsider any benchmark that BellSouth did not propose. BellSouth thus urges the Commission to substitute a one-sided set of benchmarks in lieu of what the Commission crafted. BellSouth merely rehashes the arguments it attempted previously for its benchmarks and presents no valid reason for reconsidering the Commission's case-by-case judgments.

Benchmarks should be based on the level of performance that can be expected to offer an efficient carrier a meaningful opportunity to compete, not simply on BellSouth's historical performance. (Tr. 150) Along with better pricing and improved OSS functionality, enhanced performance measurements, standards and remedies are critical factors in enabling ALECs to enter the Florida market, particularly the residential market. The ALEC Coalition proposed analogs and benchmarks for BellSouth's proposed measures in Exhibit 14, KK-1, KK-3, and KK-5 and for the ALECs' proposed measures

in KK-4. Many of the ALECs' proposed metric revisions and new metrics are geared toward ensuring that the ALECs' market entry does not run into many of the same impediments experienced in other states. (Tr. 120)

The Commission provided the general rationale for the benchmarks it adopted on page 145 of its Order:

...we agree with the ALEC Coalition that benchmarks set below 90 or 95 percent do not generally allow the ALECs a meaningful opportunity to compete. We are increasing many of the benchmarks that are set below this level for both reporting and compliance purposes.

Some of the measures and benchmarks proposed by the ALECs were set by other state commissions or were gained from their experience in other states. ALECs submit that BellSouth is attempting to have benchmarks set in Florida that are generally lower than those set by other state commissions across the country. There is no reason why Florida should hold BellSouth to a lower standard than other Bell companies must observe. BellSouth initially failed to provide the Commission with any good reason why it should be given relaxed standards, and its arguments on reconsideration are no different and certainly no better than what it presented the first time. The Commission understood that many of the benchmarks are for functions that BellSouth and other ILECs say they cannot measure on the retail side to provide an appropriate retail analog, such as for firm order confirmations and rejections, but in the real competitive world have shorter intervals than the benchmarks BellSouth offered. BellSouth does not wait two or ten hours to provide a customer calling for service with a due date, and its representatives find out right when they are typing in the order whether it will be accepted as error free or not. No other ILEC has less than a 95% benchmark for confirmations and rejections, and some even have shorter intervals to meet those benchmarks. BellSouth has offered no

studies or evidence regarding why its systems and processes should produce worse levels of performance than other ILECs, and the Commission was correct in its decision to hold BellSouth to tougher standards than BellSouth proposed.

The Commission carefully considered the concerns raised by the parties on a benchmark-by-benchmark basis, and its decision adopts benchmarks from both BellSouth and ALECs, and in some cases alternative benchmarks developed by Staff. The Commission rejected most of the new measures proposed by the ALECs and it did not adopt “as is” all of the ALECs’ proposed benchmarks. Obviously, ALECs would have preferred that the Commission adopt all of their proposed benchmarks. But they have chosen to live with decisions on benchmarks that were adverse to them for the time being. ALECs may request the Commission to review certain benchmarks during the six-month review process, by which time the Commission can consider several months of experience with the benchmarks it has implemented. Likewise, BellSouth may raise any concerns it has concerning benchmarks during the six-month review. It should not be allowed to jump the gun now.

BellSouth’s reliance on the Commission’s interim measures and benchmarks adopted for the third-party test is misplaced. The interim measures and benchmarks used by the Commission for the third-party test are just that – interim – and were similar to those proposed by BellSouth. The Commission apparently concluded that these measures and benchmarks would be used for the sake of time because there were none in place when the test began. These measures and benchmarks were adopted without the benefit of an evidentiary proceeding and at the request of BellSouth. This proceeding was established by the Commission to set permanent measures based on an evidentiary

record. Accordingly, the interim metrics and benchmarks provide no basis for reconsidering the Commission's Order.

In a last-ditch effort to support its motion, BellSouth attaches an excerpt of testimony, which was not part of this record, regarding one aspect of the ALECs' proposed benchmarks from a proceeding in another state, even admitting "it can obviously not be considered as evidence in this proceeding." (BellSouth Motion, page 6) This attempt by BellSouth to re-open the record in this case (while denying it is doing so) should be rejected. Likewise, in BellSouth's discussion of C-2, it tries to re-open the record yet again by attaching and discussing Exhibit B to its motion. BellSouth's attempt to introduce new evidence in its reconsideration motion does not provide an appropriate basis for the Commission to reconsider its decision.

BELLSOUTH'S ARGUMENTS CONCERNING METRICS P-3, O-9 AND C-2 PROVIDE NO VALID GROUNDS FOR RECONSIDERATION

P-3: Percent Missed Installation Appointments

BellSouth would have the Commission reverse itself and determine that once BellSouth misses an appointment, subsequent appointments should not be considered, whether missed or made. The Commission decided this issue correctly and BellSouth provides no basis for reconsideration. The first missed appointment harms the ALEC's relationship with its new customer. Subsequent misses reinforce the impression that the ALEC does not have a good business operation and cannot be trusted with the customer's account. Subsequent appointments therefore should be counted in the Percent Missed Installation Appointments metric. BellSouth is also wrong in claiming that the Average Order Completion Interval and Total Service Order Cycle Time capture these subsequent misses. Both metrics exclude large quantities of orders that seek longer than the

standard interval, “L”-coded orders -- and they unfortunately include requests for shorter than the standard interval that could cover up missed subsequent appointments by making the reported interval look like the standard interval.

Q-9: Firm Order Confirmation Timeliness

The Commission’s Order requires that BellSouth provide facilities checks before issuing confirmations. BellSouth has not provided any reason for the Commission to change this much needed requirement. The ALECs find it difficult to believe that BellSouth gives its retail customer a meaningless due date and the puts the order in facilities hold status as often as it does for ALECs. If BellSouth wants to raise the issue of needing more time for facilities checks, it should do so at the sixth month review after it actually has seen whether it can provide the same checks that other ILECs do in the timeframes established by the Commission. If ALECs cannot trust the due dates given them on confirmations, as they often cannot in the BellSouth region, then they lose the confidence of their own customers in setting dates for expected service delivery. The Commission’s decision should help improve this situation.

C-2: Collocation Average Arrangement Time

In its Final Order, the Commission directed that the completion of the collocation interval would occur when the ALEC accepts the collocation. BellSouth complains that this might give ALECs the opportunity to delay acceptance, thus forcing BellSouth to miss the benchmark. ALECs submit that the solution to the problem BellSouth raises is to make the completion time when the collocation cage is suitable for use by the ALEC and the cable assignment information necessary to use the facility has been provided to the ALEC. This is the approach agreed to by Verizon in New York and that has been

incorporated into Ameritech's business rules. The aim is to prevent ILECs from counting cages that are unusable or even lacking the space and power requirements ordered to be considered as delivered on time. ALECs believe the phrase "suitable for occupancy" covers those legitimate reasons for non-acceptance and would not capture cases where the ALEC is delaying acceptance without good reason.

ALECs note that BellSouth also seeks clarification with respect to certain procedural matters. BellSouth Motion at ¶¶ 15-19. In general, ALECs do not oppose this request, although they disagree with BellSouth's suggestion that more than ninety days may be required for implementation of the plan. BellSouth has provided no detailed explanation regarding why it would take longer than ninety days to implement the plan ordered by this Commission. Therefore, BellSouth should be required to fully implement the enforcement plan within ninety days.

CONCLUSION

BellSouth has failed to meet the standard of review for reconsideration because it has not identified a point of fact or law that was overlooked by the Commission or that the Commission failed to consider when it rendered its decision regarding the benchmarks to be applied to measurements. Accordingly, the Commission should deny BellSouth's motion for reconsideration.

Respectfully submitted this 8th day of October, 2001.

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