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June 14, 2002

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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COMMISSION
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Re: Docket No. 020129-TP

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of US LEC of Florida Inc., Time Warner Telecom of Florida, LP and ITC^DeltaCom Communications ("Petitioners") are the original and fifteen copies of Petitioners' Motion in Limine.

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,

[Handwritten signature of Kenneth A. Hoffman]
Kenneth A. Hoffman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of US LEC of Florida)
Inc., Time Warner Telecom of Florida, LP)
and ITC^DeltaCom Communications)
objecting to and requesting)
suspension of proposed CCS7)
Access Arrangement Tariff filed by)
BellSouth Telecommunications, Inc.)
)
)
_____)

Docket No. 020129-TP

Filed: June 14, 2002

PETITIONERS' MOTION IN LIMINE

Petitioners US LEC of Florida Inc., Time Warner Telecom of Florida, LP and ITC^Deltacom Communications ("Petitioners"), by and through undersigned counsel, and pursuant to the Rule 28-106.204(1), Florida Administrative Code, hereby file this Motion in Limine to preclude BellSouth Telecommunications, Inc. ("BellSouth") from submitting prefiled testimony in this proceeding offering legal opinions and interpretations addressing the legal issue(s) in this case. In support of this Motion, Petitioners state as follows:

1. On May 9, 2002, Staff issued a Recommendation in this proceeding recommending that the Commission determine that BellSouth's CCS7 access arrangement tariff (T-02-0063) ("CCS7 tariff") be cancelled on grounds that the tariff violates Section 364.163, Florida Statutes. That recommendation was considered by the Commission at the May 21, 2002 Agenda Conference. The recommendation was not adopted by the Commission as the Commission voted to defer a ruling on the legal issue and schedule this matter for final hearing.

2. On June 3, 2002, an Issues Identification Conference was held. At the Issues Identification Conference, counsel for Petitioners discussed the prospect of bifurcating this proceeding to allow BellSouth and the Petitioners an opportunity to brief the legal issue identified

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by Staff and discussed at the May 21, 2002 Agenda Conference,¹ with the understanding that if the Commission determines that the tariff does not violate Section 364.163, Florida Statutes, this case would proceed to a final evidentiary hearing. BellSouth objected to the proposed bifurcation and advised that it intended to address the legal issue in its testimony. This motion addresses that pronouncement.

3. Legal argument concerning the interpretation and application of a statute is not the proper subject of testimony and properly belongs in the posthearing brief of a participating party. This is a well established evidentiary rule of law which has been applied by the Commission in the past. See, e.g., Order No. PSC-94-0371-PCO-WS issued March 30, 1994 (“It has not been Commission practice to allow expert testimony on legal issues”); Order No. PSC-99-0099-PCO-TP issued January 20, 1999; see also T.J.R. Holdings Co., Inc v. Alachua County, 617 So.2d 798, 800 (Fla. 1st DCA 1993) and Williams v. Department of Transportation, 579 So.2d 226 (Fla. 1st DCA 1991).

4. The Petitioners have limited resources. Petitioners should not be put in the position of having to secure an “expert” on the application of Chapter 364, Florida Statutes, to present testimony in this proceeding when such testimony is clearly precluded under Florida law. Such legal argument, as noted in Order No. PSC-94-0371-PCO-WS, properly rests in a posthearing brief.

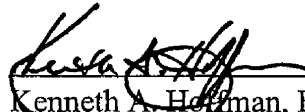
5. Petitioners have filed this Motion in Limine rather than waiting for BellSouth to file its prefiled direct testimony, and then moving to strike any such testimony offering legal argument

¹The legal issue in this proceeding was finalized at the Issues Identification Conference to state: “Does BellSouth’s CCS7 Access Arrangement Tariff violate Section 364.163 or any other provisions of Chapter 364, Florida Statutes?”

and opinions concerning the legal issue in this proceeding. Petitioners maintain that a Motion in Limine is the appropriate vehicle to secure a ruling within a reasonable time prior to the deadline for the filing of prefiled direct testimony, July 1, 2002, to avoid the unnecessary expenditure of resources on prefiled direct and rebuttal testimony reflecting legal arguments and opinions, when all such legal arguments and opinions can and should be addressed in the posthearing briefs. An order granting this Motion would remove the uncertainty as to whether Petitioners now have to retain an individual to prepare testimony and testify on legal issues prior to the deadline for the filing of prefiled direct testimony.

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the Prehearing Officer grant this Motion and preclude all parties from submitting testimony or other evidence addressing the legal issue identified in this proceeding, to-wit, whether BellSouth's CCS7 tariff violates Section 364.163 or any other provisions of Chapter 364, Florida Statutes.

Respectfully submitted,



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CERTIFICATE OF SERVICE

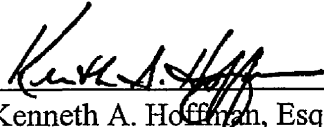
I HEREBY CERTIFY that a copy of the foregoing Proposed Issues was furnished by U. S. Mail and Hand Delivery(*) to the following this 14th day of June, 2002:

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