

E. EARL EDENFIELD, JR.  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0763

ORIGINAL

June 21, 2002

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

RECEIVED: FPSC  
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Re: **Docket No. 020129-TP: 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.**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Petitioners' Motion in Limine, 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 a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,

*E. Earl Edenfield, Jr.*  
E. Earl Edenfield, Jr. (KA)

Enclosures

AUS \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_  
COM 5 \_\_\_\_\_  
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OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH \_\_\_\_\_

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

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE  
DOCKET NO. 020129-TP**

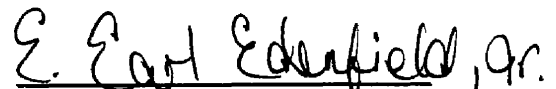
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 21st day of June, 2002 to the following:

Jason Fudge  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[jfudge@psc.state.fl.us](mailto:jfudge@psc.state.fl.us)

Kenneth A. Hoffman, Esq.  
Martin P. McDonnell, 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  
Attys. for US LEC  
[Ken@Reuphlaw.com](mailto:Ken@Reuphlaw.com)

Karen Camechis, Esq.  
Pennington Law Firm  
P.O. Box 10095  
Tallahassee, FL 32302-2095  
Tel. No. (850) 222-3533  
Fax. No. (850) 222-2126  
Atty. for Time Warner  
[karen@penningtonlawfirm.com](mailto:karen@penningtonlawfirm.com)

Nanette Edwards  
4092 South Memorial Parkway  
Huntsville, AL 35802  
Tel. No. (256) 382-3856  
Fax. No. (256) 382-3936  
Atty. for ITC^DeltaCom  
[nedwards@itcdeltacom.com](mailto:nedwards@itcdeltacom.com)

  
E. Earl Edenfield, Jr. (EA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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 21, 2002

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
RESPONSE TO PETITIONERS' MOTION IN LIMINE**

BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Petitioners' Motion in Limine and says:

On June 14, 2002, the Petitioners filed a Motion in Limine seeking to preclude BellSouth from presenting pre-filed "expert" testimony concerning the interpretation and application of §364.163, *Fla. Stat.* (1998). In support of their position, the Petitioners argue that the Florida Public Service Commission ("Commission") has a well-established rule that legal argument is not the proper subject of testimony but, instead, belongs in the post-hearing brief. The Petitioners cite to Commission Order No. PSC-99-0099-PCO-TP (FPSC Docket No. 981008-TP) as the basis for the Commission's rule. In this Order the Pre-Hearing Officer determined that:

I find that Mr. Halprin's Direct and Rebuttal testimony is a combination of fact testimony and legal opinion. While legal opinion is, generally, more appropriately expressed through post-hearing briefs, we do have the discretion of allowing such testimony to be presented and simply giving it the weight that it is due in our deliberations. Mr. Halprin's testimony, however, contains an extensive amount of legal analysis and opinion that appears to extend beyond the scope of the issues in this case. This testimony focuses on the FCC's Memorandum Opinion and Order, issued in CC Docket 98-79, on October 30, 1998, regarding GTE Telephone's ADSL tariff. The relevance of this testimony regarding an FCC ruling,

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which was issued some 22 months after the Agreement between these parties was approved by this Commission, is not readily apparent. Therefore, the following portions of Mr. Halprin's Direct and Rebuttal testimony shall be stricken:

Order No. PSC-99-0099-PCO-TP, at 3-4.

The Petitioners reliance on this Order is misplaced for a number of reasons. First, Mr. Halprin was a lawyer and law professor, so he was an "expert" in the classic sense of the word. At this point, BellSouth does not anticipate retaining an "expert" but, instead, it may have its policy witness give a "layman's" opinion of the law to the extent necessary to explain or support the facts and/or BellSouth's policy positions. This type of testimony is routinely admitted by the Commission and given whatever weight it deserves. In fact, BellSouth cannot recall many cases where a "lay" witness has not discussed some statute, order, or rule.

Second, Mr. Halprin's testimony appears to have been excluded because of relevance to the issues in the case, not simply because it was legal opinion. In their Motion in Limine, the Petitioners concede Section 364.163 of the Florida Statutes is relevant to a determination in this proceeding. Thus, the Petitioners cannot *reasonably* contend that legal issues are not relevant to the resolution of this proceeding.

Finally, the rule is not as absolute as the Petitioners would have this Commission believe. In fact, in the Order cited by Petitioners the Commission expressly acknowledges that the Commission has the "discretion of allowing such testimony to be presented and simply giving it the weight that it is due in our deliberations." Petitioners conveniently failed to point out this fact in their Motion in Limine. Given the Commission's discretion, the Petitioner's Motion in Limine is premature. Instead of precluding testimony sight unseen, the Commission should first review the testimony

(assuming that Petitioners continue to pursue this issue after actually reviewing BellSouth's testimony) and determine whether it constitutes "expert" legal opinion or is simply a "layman's" opinion on the impact of the statute upon the facts and/or policy positions in this proceeding.

**WHEREFORE**, for the foregoing reasons, BellSouth respectfully requests that the Commission deny Petitioners' Motion in Limine.

Respectfully submitted this 21<sup>st</sup> day of June 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE  
JAMES MEZA III (CA)  
c/o Nancy H. Sims  
150 So. Monroe Street, Suite 400  
Tallahassee, FL 32301  
(305) 347-5558



R. DOUGLAS LACKEY  
E. EARL EDENFIELD JR. (CA)  
Suite 4300  
675 W. Peachtree St., NE  
Atlanta, GA 30375  
(404) 335-0763