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July 1, 2002

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 960786A-TL

Dear Ms. Bayo:

On behalf of the Florida Competitive Carriers Association (FCCA), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ FCCA's Motion to Strike BellSouth's Unauthorized Supplemental Affidavits.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

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COMMISSION
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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. 960786A-TL
Filed: July 01, 2002

**FCCA'S MOTION TO STRIKE BELLSOUTH'S
UNAUTHORIZED SUPPLEMENTAL AFFIDAVITS**

The Florida Competitive Carriers Association (FCCA), pursuant to Rule 28-106.204, Florida Administrative Code, files this Motion to Strike BellSouth Telecommunication, Inc.'s (BellSouth) Supplemental Affidavits of Elizabeth A. Stockdale and W. Keith Milner.

1. On June 17, 2002, BellSouth filed the Supplemental Affidavits of Elizabeth A. Stockdale and W. Keith Milner. The supplemental affidavits are untimely and prejudicial to other parties. FCCA asks the Commission to strike them from the record.

The Affidavits Are Untimely

2. The deadline to file testimony in this docket has long since passed. The appropriate time to provide evidence for inclusion into the record has come and gone. The hearing in this case took place over 8 months ago, in mid-October, 2001. The parties submitted their briefs on the issues on November 6, 2001. Supplementation of the record at this late point in time is contrary to the interests of justice and fair play.

The Affidavits Are Prejudicial and Violate Due Process

3. Admission of the affidavits into the record would prejudice the parties to the case. The system of pre-filing testimony and allowing for cross-examination at the hearing affords all parties

the opportunity to present their case, and affords opposing parties the opportunity to impeach witness testimony. The Legislature secured this right for all parties to hearings involving disputed issues of material fact by enacting §120.57(b), Florida Statutes, which states:

All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, [and] to conduct cross-examination and submit rebuttal evidence. . . . If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut the material.

BellSouth's supplemental filing improperly seeks to short-circuit that system by submitting evidence into the record which parties will have no opportunity to address through discovery, testimony, cross-examination or briefs.

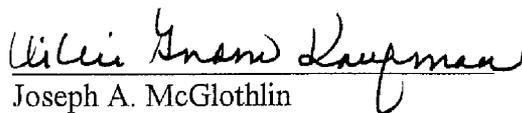
4. Ms. Stockdale's affidavit supplements the affidavit of Victor Wakeling and addresses competitive market conditions in Florida. In this case, the FCCA sponsored the testimony of Joseph Gillan who offered rebuttal to the testimony of BellSouth witness Wakeling on the very same issues addressed in Ms. Stockdale's supplemental affidavit. While the FCCA, and Mr. Gillan were provided the opportunity to challenge and rebut the testimony presented in Mr. Wakeling's affidavit, no such opportunity is present with respect to Ms. Stockdale's affidavit. Similarly, the FCCA and the other parties would be afforded no opportunity to address the information in the Supplemental Affidavit of Mr. Milner, which addresses the 14 checklist items. By allowing the admission of the affidavits, the Commission would impermissibly allow BellSouth to "get the last word," and would deny the parties the opportunity to address the issues raised therein. The prejudice to the FCCA and the other parties would be significant.

5. More subtle is the prejudicial effect on the Commission should these affidavits be admitted into the record. If admitted, the affidavits will provide the Commission with only a one-

sided view of the world – BellSouth’s view. Presented with only BellSouth’s view, the Commission loses the opportunity to make an informed decision based on information which has been fully vetted through the exercise by all parties of their due process rights. Such participation was previously accomplished through the discovery, testimony, cross-examination, evidence and briefs of the parties presented in this docket. BellSouth should not be allowed to unilaterally circumvent that process.’

6. A decision to allow BellSouth’s supplemental affidavits into the record in this case would be tantamount to a decision to reopen the record. Should the Commission allow BellSouth’s affidavits into the record, it must take steps to preserve the due process rights afforded to all parties to the case. The parties must be provided with adequate time to conduct discovery, file rebuttal testimony, and address all issues raised in BellSouth’s supplemental affidavits.

WHEREFORE, the FCCA moves the Commission to strike BellSouth’s supplemental affidavits of Elizabeth A. Stockdale and W. Keith Milner. In the alternative, if the Commission reopens the record and accepts the affidavits, it must afford the parties adequate opportunity, through discovery and testimony, to address the issues raised in the supplemental affidavits.



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion to Strike BellSouth's Unauthorized Supplemental Affidavits has been furnished by (*) hand delivery or by U. S. Mail on this 1st day of July, 2002 to the following:

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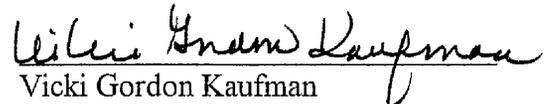
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