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December 23, 2002

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

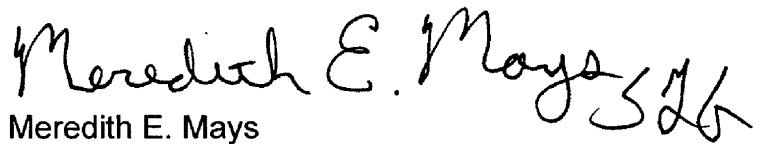
Re: Docket No. 020507-TL (FCCA Complaint)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Prehearing Statement, 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,


Meredith E. Mays

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White
474005

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**CERTIFICATE OF SERVICE
DOCKET NO. 020507-TL**

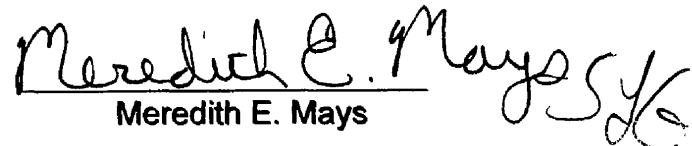
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and FedEx Mail this 23rd day of December 2002 to the following:

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Meredith E. Mays

(*) via Hand Delivery
(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of the Florida)	
Competitive Carriers Association)	Docket No. 020507-TL
Against BellSouth Telecommunications, Inc.)	
And Request for Expedited Relief)	Filed: December 23, 2002
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**PREHEARING STATEMENT OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

In compliance with the Order Establishing Procedure (Order No. PSC-02-1537-PCO-TP) issued in this docket on November 12, 2002, BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits its Prehearing Statement.

A. Witnesses

BellSouth proposes to call the following witnesses to offer direct and rebuttal testimony on the issues in this matter:

<u>Witness</u>	<u>Issues</u>
John Ruscilli (Direct and Rebuttal)	1, 2, 3
W. Keith Milner (Direct and Rebuttal)	4
Eric Fogle (Direct and Rebuttal)	5, 6a, 6b
Bill Smith (Direct and Rebuttal)	5
William E. Taylor (Rebuttal)	3, 4, 5

BellSouth has made a good-faith attempt to identify the issues to which these witnesses' testimony primarily relates. Some witnesses present facts supporting these issues, some witnesses present policy considerations supporting these issues, and some do both. Any given witness' testimony may also relate to other issues in this docket.

BellSouth reserves the right to call witnesses to respond to Florida Public Service Commission ("Commission") inquiries not addressed in direct or rebuttal testimony and witnesses to address issues not presently designated that may be designated by the Prehearing Officer at the prehearing conference to be held on January 6, 2003.

B. Exhibits

BellSouth reserves the right to file exhibits to any testimony that may be filed under the circumstances identified in Section "A" above. BellSouth also reserves the right to introduce exhibits for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

<u>Witness</u>	<u>Document Indicator</u>	<u>Title of Exhibit</u>
John Ruscilli	JAR-1	FCC's July 2002 Report on High-Speed Services for Internet Access
	JAR-2	FCC's December 2002 Report on High-Speed Services for Internet Access
W. Keith Milner	WKM-1	Publicly available information relating to FCCA members' provision of DSL service

	WKM-2	Supplier correspondence with DSLAM list price information
	WKM-3	Business Case Internal Rate of Return
Eric Fogle	EF-1	Overview of Agreed upon Contractual Terms
	EF-2	Cost Estimate to Deploy FastAccess over UNE loops
William E. Taylor	WET-1	Curriculum Vitae

C. Statement of Position

The Commission does not have jurisdiction to grant the relief requested by the FCCA. The issues list in this case (specifically Issues 2, 4, 5, 6a, and 6b) relate solely to BellSouth's FastAccess Internet Service, which is an unregulated broadband offering. The Commission has no authority to regulate this service. Furthermore, none of BellSouth's practices relating to its FastAccess service violate any provisions of federal law, as the FCC has previously determined on three occasions. Likewise, none of BellSouth's practices relating to its FastAccess service violate any provisions of state law. Moreover, the relief sought by the FCCA extends well beyond this Commission's prior orders and if granted would eliminate any incentive for BellSouth to continue to invest in DSL services in Florida, which is contrary to the goals of both federal and state law. The Commission should reject all aspects of the FCCA's Complaint.

D. BellSouth's Position on the Issues

Issue 1: Does the Commission have jurisdiction to grant the relief requested in the complaint?

Position: No. By seeking an order that would require BellSouth to provide its unregulated information service to any requesting end user, the relief requested by the FCCA exceeds this Commission's jurisdiction, seeks to extend this Commission's prior rulings well beyond the scope of the Commission's authority, and is contrary to the goals of Florida law, which seek to limit, rather than create, unnecessary regulation. Moreover, to the extent the Commission dictates the rates, terms, and conditions of BellSouth's provision of an unregulated service to an existing customer, such action is likewise beyond the scope of this Commission's jurisdiction.

Issue No. 2: What are BellSouth's practices regarding the provisioning of its FastAccess Internet service to:

- 1) a FastAccess customer who migrates from BellSouth to a competitive voice provider; and**
- 2) to all other ALEC customers.**

Position:

1) BellSouth's policy has and remains that it will continue to provide its FastAccess service to existing FastAccess customers that migrate voice service to a competitive voice carrier so long as the voice service is provided over a resold BellSouth line. In addition, BellSouth has proposed methods and procedures to implement this Commission's prior orders relating to BellSouth's FastAccess service. Such methods and procedures will apply so long as these orders remain effective.

2) BellSouth provides its FastAccess service to end user customers that receive voice service on a BellSouth line or via a resold BellSouth voice line. BellSouth does not provide its retail FastAccess service to end user customers

that receive voice service from an ALEC using its own facilities or using unbundled network elements, except as otherwise ordered by this Commission and as long as such orders remain effective.


Issue No. 3: Do any of the practices identified in Issue 2 violate state or federal law?

Position: No. BellSouth's business decision to deploy network facilities capable of providing DSL service and providing such unregulated service as an overly to an existing exchange facility is wholly appropriate.

Issue 4: Should the Commission order that BellSouth may not disconnect the FastAccess Internet service of an end user who migrates his voice service to an alternative voice provider?

Position: No. The Commission should not attempt to regulate the circumstances under which BellSouth makes available its unregulated information service offering. Moreover, as set forth above, the Commission has no jurisdiction to enter such an order.

Issue 5: Should the Commission order BellSouth to provide its FastAccess Internet service, where feasible, to any ALEC end user that requests it?

 Position: No. It is not practicable, reasonable, or realistic to enter such an order since BellSouth has no particular advantage in the broadband market, and ALECs provide their own broadband service and are capable of providing their own broadband service to the extent such service is not currently provided. Moreover, such an order exceeds this Commission's jurisdiction. Finally, ALECs have any number of alternatives that allow the provision of broadband services to ALEC customers. ALECs should not be permitted to benefit from BellSouth's investment decisions when unwilling to make similar investments.

Issue 6a: If the Commission orders that BellSouth may not disconnect its FastAccess Internet service, where a customer migrates his voice service to an ALEC and wishes to retain his BellSouth FastAccess service, what changes to the rates, terms, and conditions of his service, if any, may BellSouth make?

Position: The Commission should not enter such an order, which exceeds the Commission's jurisdiction and which seeks to regulate an unregulated service offering. Notwithstanding that such an order would exceed this Commission's jurisdiction, an overview of changes BellSouth may need to make are as follows:

1. BellSouth must be permitted to implement credit card billing for the end user customer receiving FastAccess service.
2. If the end user is served via an ALEC loop, the ALEC needs to provide a splitter to be added between the BellSouth DSLAM and the ALEC loop.
3. If the end user is served via an ALEC loop, the ALEC would need to provide BellSouth access to the mechanized loop testing capability on the ALEC voice switch in order to conduct troubleshooting as needed.
4. BellSouth needs the flexibility, in its discretion, to deploy a second line to the end user customer's home; such loop could be used either to provide FastAccess service and/or to provide the unbundled loop and/or UNE-P service.
5. To the extent that providing FastAccess over an ALEC line leads to higher costs incurred by BellSouth to provision this service (which was designed, priced, and implemented as an overlay service, and not a

standalone service offering), BellSouth must be able to recover such costs from the cost-causer (the ALEC and its customers).

In addition, BellSouth reserves the right to identify other changes; and specifically reserves the right to respond and/or to identify other changes for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

Issue 6b: If the Commission orders BellSouth to provide its FastAccess service to any ALEC end user that requests it, where feasible, then what rates, terms and conditions should apply?

BellSouth incorporates by reference as if fully stated herein its response to 6a. In addition, BellSouth adds that to the extent that it is ordered to provide FastAccess service to a customer that is not an existing FastAccess customer, there would be additional non-recurring costs to establish such service, which it must be able to recover.

BellSouth also reserves the right to identify other changes; and specifically reserves the right to respond and/or to identify other changes for cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission.

E. Stipulations

The parties have entered into no stipulations at this time.

F. Pending Motions

Various Requests for Confidential Classification are pending. BellSouth has also filed a motion to compel against the FCCA, and may file a Motion to

Compel against ITC^DeltaCom Communications, Inc. if the parties are unable to informally resolve pending discovery issues.

G. Decisions

BellSouth reserves the right to identify additional decisions and to identify such decisions for the purposes of cross-examination, impeachment, or any other purpose authorized by the applicable Florida Rules of Evidence and the Rules of the Commission. Moreover, BellSouth is not representing that the decisions cited below are the only applicable decisions that may relate to the matters raised in this case. BellSouth also incorporates by reference, as if fully stated herein, all decisions that it has cited in its prior pleadings in this docket.

Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13 F.C.C. rcd 22,466 (October 30, 1998). In this decision the FCC found that GTE's DLS-Solutions-ADSL Service was an interstate service and was properly tariffed at the federal law, demonstrating that this Commission lacks jurisdiction.

In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, Rel. May 15, 2002. The FCC rejected ALECs' claims that BellSouth's policy of not offering its wholesale DSL service to an ISP or other network services provider on a UNE-P line was discriminatory.

In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-

Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, CC Docket No. 02-150, Rel. September 18, 2002. The FCC confirmed its conclusion that BellSouth's DSL policy is not anticompetitive or discriminatory.

In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee, CC Docket No. 02-307, Rel. December 19, 2002. The FCC confirmed for the third time that BellSouth's DSL policy is not anticompetitive or discriminatory. Significantly, the FCC stated "Network Telephone claims that BellSouth is 'tying' its DSL-based high-speed Internet access service to BellSouth local exchange service BellSouth is correct that we have previously rejected this argument, and nothing in the record would cause us to reach a different determination here." See ¶ 178.

In re: Application by SBC Communications, Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services for Authorization to Provide In-Region, InterLATA Services in California, CC Docket No. 02-306, Rel. December 19, 2002. The FCC confirmed that Bell companies have no obligation to offer DSL transport service for resale and further confirmed that Bell companies' internet service is an information, and not a telecommunications service. Moreover, the FCC stated "we expect that how we decide questions about the regulatory treatment of the underlying transmission facilities provided by incumbent LECs with their own Internet access service could have far-reaching implications for a wide range of issues that would be more appropriately

handled separately. Indeed, many of these issues are being addressed in a pending proceeding before the Commission.” See ¶ 113. This decision indicates that any decision this Commission may make would increase, rather than decrease, regulatory uncertainty in light of pending FCC proceedings.

In the Matter of Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd. 7571 (1991). BellSouth’s retail FastAccess service is a non-regulated enhanced service that is not within the jurisdiction of this Commission.

United States Telecom Ass’n v. FCC, 290 F.3d 415 (D.C. Cir. 2002). In this decision, the DC Circuit vacated the FCC’s line sharing order due to the FCC’s failure to take into account the substantial competition for broadband services. The court noted that the FCC’s own reports confirmed the robust competition and dominance of cable in the broadband market.

In the Matter of the Petition of MCImetro Access Transmission Services, LLC for Arbitration with Ameritech Ohio, Case No. 01-1319-TP-ARB, Ohio Public Service Commission, November 7, 2002. The Ohio Commission adopted Ameritech-Ohio’s proposed language concerning Line Sharing. Significantly, the Commission adopted the recommendations of the panel, which noted:

MCI’s request that “Ameritech-Ohio continue to provide data services” is not an obligation for Ameritech in a situation where Ameritech (or its affiliate) would have been the provider of data prior to MCI winning the voice service of the customer. The Panel found that it would be even more appropriate not to obligate Ameritech to ‘continue to provide data services’ when Ameritech was not the provider of data service prior to MCI winning the voice service of the customer.

Order, p. 27. The Ohio Commission appropriately rejected the type of relief sought by the FCCA in this case.

In re: the Commissions' own motion to Consider Ameritech Michigan's compliance with the competitive checklist in Section 271, Case No. U-12320, Michigan Public Service Commission, October 3, 2002. In relevant part, the Michigan Commission found that:

It is not persuaded that it may require a DSL provider to continue to provide service after a migration from line sharing to line splitting. No authority has been cited that would permit the Commission to do so.

* * *

The Commission is aware of the possibility that when ILEC-affiliated data CLECs consistently refuse to continue providing data service to the end user after migration from line sharing to line splitting, the CLEC's ability to compete for voice customers is compromised However, CLECs and other interested persons are not without recourse **CLECs are also free to seek partnerships with data service providers, which would facilitate competition and DSL availability.** (emphasis supplied).

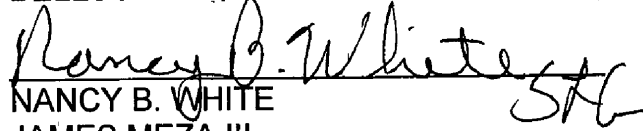
Order, p. 19. Significantly, the Michigan Commission did not require that Ameritech's affiliated data service provider had to continue to provide data services when another carrier won the voice customer. The Michigan Commission also recognized that other carriers have the ability to enter into partnerships with data carriers – other than the ILEC-affiliated data carrier - in order to provide DSL service to customers.

H. Other Requirements

BellSouth knows of no requirements set forth in any Prehearing Order with which it cannot comply.

Respectfully submitted this 23rd day of December, 2002.

BELLSOUTH TELECOMMUNICATIONS, INC.

 *Nancy B. White* SH

NANCY B. WHITE

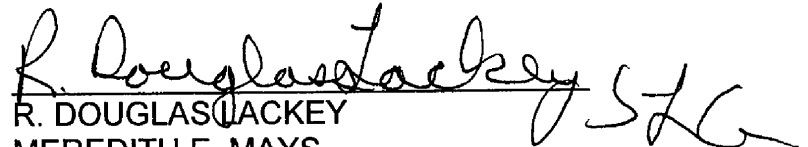
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