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January 22, 2003

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 are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Continuance, 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 (CA)

Enclosure

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White
477230

DOCUMENT NUMBER-DATE

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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 Federal Express this 22nd day of January 2003 to the following:

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Meredith Mays (RA)

(+) 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: January 22, 2003
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR CONTINUANCE**

I. INTRODUCTION

Pursuant to Florida Rule of Civil Procedure 1.460, BellSouth Telecommunications, Inc. ("BellSouth") files this Motion for Continuance seeking an order from the Florida Public Service Commission ("Commission") continuing the hearing in the above-listed case until such time as the Florida Competitive Carriers Association ("FCCA") responds fully and completely to all outstanding discovery requests as it has been ordered to do. On January 10, 2003, this Commission entered Order No. PSC-03-0084-PCO-TL, which Order required the FCCA to respond to certain discovery responses by 5:00 p.m. on Friday, January 17, 2003 some thirteen days before the date scheduled for the hearing in this proceeding. Rather than provide discovery to BellSouth consistent with that Order, the FCCA filed a Motion for Reconsideration and a Request for Oral Argument. Because BellSouth has not received information it requires to properly present its defense in this case, even though the FCCA has been ordered to provide that information, the hearing should be continued.¹ Absent a continuance, the FCCA will have been able to effectively eviscerate an order of this Commission and the Commission would establish a clearly inappropriate precedent that would no doubt be used again and again by reluctant litigants

¹ On January 21, 2003, BellSouth emailed counsel for the FCCA as well as counsel for ITC^DeltaCom advising of its intent to file a continuance and requesting that counsel consent to same. Neither the FCCA nor ITC^DeltaCom has responded to the email.

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appearing before this Commission who wished to avoid producing discovery necessary to the fair conduct of a proceeding.

II. DISCUSSION

Generally, this Commission has the discretion to grant or deny a motion for a continuance. Under special circumstances, however, a continuance is required. For example, a continuance may be required “where there has not been sufficient time to complete discovery and properly prepare for trial and where the continuance causes no substantial prejudice or injustice to the opposing party.” *Carpenter v. Carpenter*, 451 So.2d 914, 915 (Fla. Dist. Ct. App. 1984). In this case, a continuance is required.

A continuance is required here because the FCCA has failed to provide BellSouth with information requested in discovery. BellSouth filed a motion to compel discovery, which motion was granted in part by the Prehearing Officer. Notably, Commissioner Baez found that:

[T]he information sought by BellSouth appears reasonably calculated to lead to the discovery of admissible evidence related to the issues in this case and to BellSouth’s possible defenses.

* * *

[T]he FCCA and its members are not immune to discovery merely because the association filed the Complaint rather than the individual members of the association. The FCCA’s individual members shall not be allowed to thwart due process and discovery by hiding behind their association.

Order No. PSC-03-0084-PCO-TL, p. 6.

Having recognized that BellSouth propounded discovery related to its defenses and that the FCCA’s failure to provide the information requested would have the effect of thwarting BellSouth’s due process rights, proceeding to hearing without resolving this matter would unquestionably rob BellSouth of its opportunity to defend against the spurious allegations of the FCCA’s Complaint. Moreover, the FCCA has requested oral argument before the full

Commission. The earliest date oral argument could take place absent a special setting, would be on February 4, 2003, which is the date of the next regularly scheduled Commission agenda, and which is after the scheduled January 30, 2003 hearing. However, even if a special agenda were convened for the purpose of hearing FCCA's motion, and an immediate ruling in BellSouth's favor were issued, any production would essentially be too late to be used in this proceeding. In such circumstances, the FCCA would still prevail, even though it had lost its underlying claim.

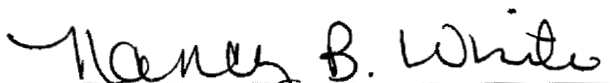
Because the FCCA elected to pursue reconsideration of Order No. PSC-03-0084-PCO-TL instead of responding to discovery, it is the FCCA's actions rather than any action taken by BellSouth, that has caused the need for this continuance. Thus, there is no prejudice caused to the FCCA by postponing the hearing in this case until after an order has been issued disposing of the FCCA's Motion for Reconsideration. Even if the FCCA could make some claim of prejudice (which BellSouth would dispute), the potential prejudice caused to BellSouth by not having the discovery to which it is entitled would outweigh any concern in a temporary delay in the hearing, particularly since the delay is solely the fault of the FCCA.

The FCCA's position is all the more egregious since there is no merit to its motion for reconsideration, which further removes any claim that the FCCA would be prejudiced by such a continuance. In support of this, BellSouth incorporates by reference its Responses in Opposition to the FCCA's Motion for Reconsideration, which response fully addresses the substance of the discovery requested from the FCCA and the reasons that BellSouth requires such information.

III. CONCLUSION

BellSouth respectfully requests that the Commission grant its Motion for Continuance and enter an order postponing the hearing in this case until such time as the FCCA has fully and completely responded to all outstanding discovery.

Respectfully submitted this 22nd day of January 2003.



NANCY B. WHITE

JAMES MEZA

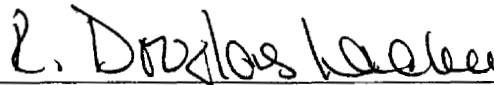
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