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April 29, 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 is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Continuance and/or Rescheduling, 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 (KM)

Enclosure

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

489178

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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

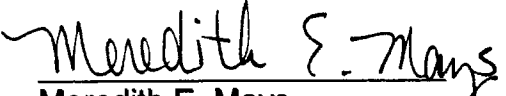
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 29<sup>th</sup> day of April 2003 to the following:

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Meredith E. Mays  
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**(+) 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: April 29, 2003  
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**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION FOR CONTINUANCE AND/OR RESCHEDULING**

**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 and/or rescheduling the hearing in the above-listed case. On April 9, 2003, this Commission issued Order No. PSC-03-0476-PCO-TL (“Order”) setting the hearing in this docket for August 6, 2003. Since the time that the Commission issued its Order, BellSouth has attempted to adjust its witnesses schedules to accommodate this hearing. Despite BellSouth’s efforts, two of its witnesses – Mr. John A. Ruscilli and Mr. Bill Smith – have conflicts with the August 6, 2003 hearing date that cannot be adjusted. Because BellSouth’s defense of this case would be jeopardized without the live testimony of these witnesses, BellSouth respectfully requests that the hearing in this docket be either continued or rescheduled.<sup>1</sup>

**II. DISCUSSION**

The hearing in this case was originally scheduled for January 30, 2003. BellSouth filed a Motion to continue the January 30, 2003 hearing due to a discovery dispute – this Commission

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<sup>1</sup> It is BellSouth’s understanding that while the FCCA may agree to a very short continuance of this hearing, the FCCA would object to rescheduling the hearing until the end of September 2003, which is the first available hearing date that does not conflict with BellSouth’s witnesses schedules. BellSouth has not been successful in discussing this matter with ITC^DeltaCom; thus, BellSouth does not know whether ITC^DeltaCom has any objection to this motion.

had granted, in part, BellSouth's Motion to Compel discovery, and the FCCA sought reconsideration of that Order. Because BellSouth had not received discovery necessary to present its defense in this case, it had no alternative than to seek a temporary delay in the hearing. The hearing was rescheduled to April 16, 2003 (this date was later changed to April 22, 2003 on the Commission's own motion). The FCCA and BellSouth filed a Joint Motion to continue the April 22, 2003 hearing as a result of the resolution of the parties' discovery dispute. To date, BellSouth has not received the discovery that it requested last fall, although the parties have reached a resolution, subject to Commission approval, of that dispute. Thus, while the hearing in this case has been postponed, none of the delays were caused by any inaction in prosecuting or defending this case. As a result, BellSouth's request for a continuance based on witnesses' conflicts is reasonable.

This Commission issued an Order on April 9, 2003, granting the parties' Joint Motion for Continuance, which Order is the subject of this Motion. BellSouth appreciates the Commission's willingness to grant the Motion. When the Joint Motion for Continuance was filed, however, the parties' preferred option was to proceed to hearing no later than June 30, 2003, obviously subject to the restrictions of this Commission's calendar. The parties also requested an opportunity to consult with the Commission to avoid previously scheduled commitments.

The Commission granted the Motion and set a new hearing date. The Commission set the new hearing date on its own, indicating that by setting a hearing beyond the June 30, 2003 date requested by the parties there would be "sufficient time to adjust schedules." BellSouth is grateful for the Commission's consideration and has diligently attempted to have the appropriate adjustments made to witness schedules so as to proceed to hearing on August 6, 2003.

Regrettably however, two of BellSouth's witnesses had previously scheduled commitments that conflict with the August 6, 2003 hearing date, which commitments cannot be adjusted. BellSouth witness John A. Ruscilli is scheduled to testify before the North Carolina Utilities Commission in an arbitration proceeding, which hearing was scheduled prior to the Commission's issuance of its Order. BellSouth witness Bill Smith has a family commitment, with travel outside of the country scheduled for the entire week of August 4 – August 8. Mr. Smith's travel arrangements were scheduled on a nonrefundable basis prior to the time the Commission issued its Order. BellSouth remains willing and able to reschedule the hearing to occur earlier than August 6, 2003 with input into the precise date; however, it is BellSouth's understanding that the restrictions of this Commission's calendar prevent an earlier hearing. In the event the Commission's calendar changes, BellSouth remains committed to work with the Commission and parties of record to schedule an alternative hearing date.


Because BellSouth would be prejudiced in the presentation of its case without the live participation of witnesses Ruscilli and Smith, BellSouth asks that the Commission continue and/or reschedule the hearing that is scheduled for August 6, 2003. BellSouth witness John Ruscilli is BellSouth's primary policy witness, and his knowledge of both company and regulatory policy relating to the issues in this proceeding is unique, and cannot be adopted by another BellSouth employee. BellSouth witness Bill Smith is a BellSouth officer, and he has primary responsibility over decisions concerning broadband investment, deployment, and strategy. No other BellSouth employee can express Mr. Smith's knowledge, experience, nor opine with authority as to broadband investment matters – which matters BellSouth desires to present to this Commission through live witness testimony.

BellSouth respectfully requests that the parties and the Commission work cooperatively to reschedule the August 6, 2003 hearing to a mutually agreeable date for all parties. Due to pending arbitration proceedings throughout its region, a number of hearings have been scheduled to take place within the upcoming months that require the live testimony of one or more of BellSouth's witnesses in this case, and, in the event the Commission grants this Motion and sets a new hearing date *sua sponte* similar scheduling conflicts could occur.


### **III. CONCLUSION**

BellSouth acknowledges the restrictions of this Commission's calendar and concomitant challenges in setting hearing dates. The challenges faced by the Commission are challenges that BellSouth shares, as it is subject to regulation within eight other states as well as at the federal level. In this instance, because BellSouth's employees have both professional and family commitments that conflict with this Commission's Order, BellSouth is placed in the precarious circumstance of either proceeding to hearing without crucial witnesses or having to burden this Commission by seeking its indulgence in resetting a hearing that has been delayed as a result of now resolved discovery disputes. Because BellSouth has been unable to adjust the schedules of two of its witnesses, and since BellSouth's presentation of its case would be prejudiced without the live testimony of these witnesses, BellSouth respectfully requests that the Commission grant its Motion for Continuance and/or Rescheduling.

Respectfully submitted this 29th day of April 2003.

  
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