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July 15, 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 Response in Opposition to 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 the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

  
Meredith E. Mays (KA)

Enclosure

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

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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 U.S. Mail this 15<sup>th</sup> day of July 2003 to the following:

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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: July 15, 2003 |

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

BellSouth Telecommunications, Inc. (“BellSouth”) files this response in opposition to the Motion in Limine filed by the CLEC parties in this case. BellSouth will withdraw its opposition to the CLEC parties’ motion on the condition that the CLECs agree that BellSouth has no obligation to provide its FastAccess service to end users served via UNE-L (or alternatively, if the CLECs modify their Notice of Partial Dismissal to dismiss *with prejudice* and not without prejudice). Without such a stipulation or dismissal, excluding issues that are ripe for hearing prejudices BellSouth. *See generally, Barrios v. Darrach*, 1993 Fla. App. LEXIS 9605 (Fla. 3<sup>rd</sup> DCA 1993) (granting of motion in limine constituted reversible error; delay in allowing party to raise argument clearly prejudiced that party).

The CLECs in this case were apparently not satisfied with prior arbitration rulings of this Commission. Rather than accept the rulings that limited BellSouth’s obligation to provide its FastAccess to migrating voice customers, the CLECs chose to pursue regulatory action.<sup>1</sup> This choice is similar to the dilemma posed by the CLECs’ Motion –the CLECs have chosen to delay resolving issues surrounding UNE-L, notwithstanding that (1) at some point BellSouth will likely no longer be obligated to provide switching to these CLECs and (2) the UNE-L issue has

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<sup>1</sup> The CLECs decision to file an action demonstrates the Pandora’s box opened by the Order Nos. PSC-02-0878-FOF-TP (BellSouth/Supra arbitration) and PSC-02-0765-FOF-TP (FDN/BellSouth arbitration). Notwithstanding BellSouth’s fundamental disagreement that the Commission had jurisdiction to enter the foregoing orders, the orders

been fully developed in testimony and discovery. Consequently, if the Commission grants the CLECs' request, it is likely that instead of holding just one hearing to resolve all issues – both UNE-P and UNE-L - the Commission will ultimately have two hearings, at two separate times, one addressing UNE-P issues, the other addressing UNE-L issues.<sup>2</sup> The end result will be that twice the amount of time and resources will be spent to resolve an issue that is ripe for adjudication now.

BellSouth does not object, in principle, to the notion that hearings should address clearly defined issues. The CLECs Motion in Limine and Notice of Partial Withdrawal, however, does little to simplify anything. For example, the CLECs have filed also a Notice of Withdrawal of Motion to Strike, claiming that rather than proceed with an attempt to exclude certain testimony of BellSouth's witness W. Keith Milner, the Motion in Limine addresses their concerns. However, the portion of Mr. Milner's testimony the CLECs have complained of is not "relate[d] to UNE-L" and therefore BellSouth fully intends to introduce this testimony at the hearing. Thus, the CLECs' motion is more likely to engender confusion about what "testimony and discussion [is] related to the provision of FastAccess service to end-users who are served via UNE-L" than to simplify anything. Notably, the CLECs have not included with their Motion a full listing of the testimony at issue with the alleged "UNE-L" portions highlighted that they seek to preclude from consideration.

The CLECs' Motion should also be denied because it fails to meet the standard for such motions. The purpose for a Motion in Limine is to "prevent the introduction of improper evidence, the mere mention of which at trial would be prejudicial." *Saunders v. Alois*, 604 So.2d

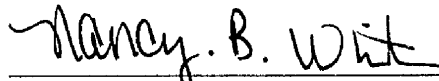
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clearly do not require BellSouth to provide FastAccess to *any* CLEC end user customers, which is precisely what the CLECs seek here. Now, the CLECs also want to pick and choose which topics will be addressed during hearings.

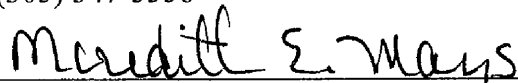
18, 20 (Fla. 4<sup>th</sup> DCA 1992) (citations omitted). Even if the Commission allows the CLECs to withdraw any claims relating to UNE-L from consideration (which the Commission should not allow), the “mere mention” of UNE-L related issues would not be prejudicial – the CLECs would be free to point out that UNE-L relief is not requested and the Commission could weigh the evidence in its discretion. However, to modify opening statements and witness summaries (drafts of which BellSouth has already prepared) solely because the CLECs have at this late date opted to file a Notice of Partial Dismissal is overkill and should be rejected.

As set forth above, BellSouth respectfully requests the Commission deny the CLEC parties’ Motion In Limine. In the alternative, BellSouth requests the Commission require the CLECs to Dismiss, with prejudice, any aspects of their complaint that address UNE-L.

Respectfully submitted this 15th day of July 2003.



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<sup>2</sup> Even assuming that BellSouth raises the affirmative defenses of res judicata and collateral estoppel to any future docket based on the fact that the CLECs could and should litigate the UNE-L issue now, that would not prevent, at a minimum, the need to file motions and address this issue in a later proceeding.