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January 27, 2004

VIA OVERNIGHT MAIL

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

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Re: Docket No. 030851-TP

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Extension of Time to file Response in Opposition to AARP's Motion for Reconsideration, which we ask that you file in the above 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,

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Nancy B. White

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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy White
519157

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January 27, 2004

Via Electronic and Overnight Mail

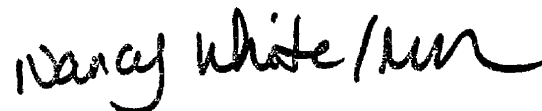
Michael Twomey
AARP
8903 Crawfordville Road,
Tallahassee, FL 32305

Re: Docket No. 030851-TP

Dear Mr. Twomey:

Enclosed is a copy of BellSouth Telecommunications, Inc.'s Motion for Extension of Time to file Response in Opposition to AARP's Motion for Reconsideration, in the above referenced matter.

Sincerely,



Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy White
524235

CERTIFICATE OF SERVICE
Docket No. 030851-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, Hand Delivery* and FedEx® this 27th day of January 2004 to the following:

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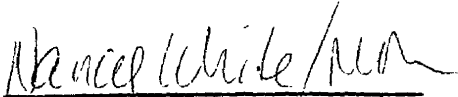
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Nancy B. White

(+)signed Protective Agreement
(*) via Hand Delivery
(⊗) via FedEx

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising) from Federal Communications Commission) triennial UNE review: Local Circuit Switching) for Mass Market Customers)	Docket No. 030851-TP Served: January 27, 2004 Filed: January 28, 2004
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**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION FOR EXTENSION OF TIME TO FILE RESPONSE IN OPPOSITION TO
AARP MOTION FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion for Extension of Time to File Response in Opposition to the AARP's Motion for Reconsideration. In support of this Motion, BellSouth states as follows:

1. On January 2, 2004, this Commission issued Order No. PSC-04-0008-PCO-TP ("Order"). This Order denied AARP's Petition to Intervene as a party in this docket. On January 12, 2004, AARP filed its Motion for Reconsideration of the Order. Consistent with applicable Commission rules, BellSouth's response to the AARP's Motion for Reconsideration was due on January 19, 2004. On January 16, 2004, BellSouth electronically served all parties of record, including counsel for AARP with its Response in Opposition to AARP's Motion for Reconsideration. BellSouth also followed its normal filing procedures to timely file this Response with the Commission. With the exception of BellSouth's Response to AARP, BellSouth's remaining filings from January 16, 2004 were recorded without incident with the Commission. Attached as Exhibit 1 is the email transmittal as well as a copy of BellSouth's Response to AARP's Motion for Reconsideration, which was included in the electronic transmittal.

2. On January 27, 2004, BellSouth became aware that its Response in Opposition to AARP's Motion for Reconsideration was not recorded as filed with the Commission. As a result, BellSouth is now filing this Motion. BellSouth has advised counsel for AARP of this motion by voicemail and by electronic mail. As of the time of this filing, BellSouth has not heard a response from AARP and is thus unaware of AARP's position on this motion.


3. This Commission has authority to grant extensions of time to file responses to Motions for Reconsideration. See Order Nos. PSC-97-0957-PCO-WS, and Order No. PSC-95-0928-PCO-WS.

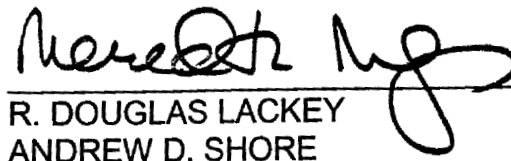
4. Because all parties were electronically served with copies of BellSouth's response in opposition to AARP's Motion for Reconsideration, no prejudice would occur if this Motion were granted.

For the foregoing reasons, BellSouth respectfully requests that the Commission grant its Motion for Extension of Time. BellSouth also requests that the Commission allow its Response in Opposition to AARP's Motion for Reconsideration, attached as Exhibit 1, to be accepted as timely filed with the Commission.

This 27th day of January, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


NANCY B. WHITE
JAMES MEZA III
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

A handwritten signature in black ink, appearing to read "Meredith Mays", is written over a horizontal line.

R. DOUGLAS LACKEY
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MEREDITH E. MAYS
Suite 4300
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524167

Barclay, Lynn

From: Postmaster
Sent: Friday, January 16, 2004 4:50 PM
To: Barclay, Lynn
Subject: Delivery confirmation



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January 16, 2004

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

Re: Docket No. 030851-TP

Dear Ms. Bayó:

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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,



Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy White
522186

Nancy B. White
General Counsel - Florida

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January 16, 2004

Via Electronic

Michael Twomey
AARP
200 West College Street
Tallahassee, FL 32301

Re: Docket No. 030851-TP:

Dear Mr. Twomey:

Enclosed is BellSouth Telecommunications, Inc.'s Response in Opposition to AARP's Motion for Reconsideration.

Sincerely,



Nancy B. White

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

522186

CERTIFICATE OF SERVICE
Docket No. 030851-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
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(+)signed Protective Agreement
(*) via Hand Delivery
(⊗) via FedEx

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of requirements arising)	
from Federal Communications Commission)	Docket No. 030851-TP
triennial UNE review: Local Circuit Switching)	
for Mass Market Customers.)	Filed: January 16, 2004
_____)		

**BELLSOUTH TELECOMMUNICATION, INC.'S RESPONSE IN OPPOSITION
TO AARP'S MOTION FOR RECONSIDERATION**

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") files this response in opposition to the Motion for Reconsideration ("Motion") filed by AARP. AARP's Motion is devoid of a single point of fact or law that would justify reconsideration, and the Commission should summarily reject it. The AARP's Motion, when reduced to its key points, consists of the following: (1) the AARP provides an overview of various paragraphs contained in the FCC's *Triennial Review Order* ("TRO") and in Florida statutes that refer to consumers or customers but that do not govern the issues in this proceeding; and (2) the AARP suggests that its petition for intervention has been held to a different standard than that of telecommunications carriers. Each point fails to satisfy the AARP's obligation under Florida law to prove standing - not just allege standing - when standing has been contested. *See Agrico Chem. Co. v. Dept. of Env't'l. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

II. DISCUSSION

The gist of AARP's argument - that the TRO and Florida statutes contain various provisions addressing consumers or customers - has no bearing on whether the AARP, as an organization, has the requisite standing and substantial interests in this proceeding to obtain full party status (which it does not). The AARP is quick to quote to various provisions in the TRO and Florida statutes mentioning consumers, while at the same time, ignoring other provisions

concerning, for example, the impact of unbundling on investment.¹ The AARP's selective reliance provides no basis that justifies reconsideration of Order No. PSC-04-0008-PCO-TP. This Commission must create sustainable competition through application of all aspects of the TRO and the Florida statutes, and a handful of quotations that include the word "consumer" fail to meet the AARP's obligation to prove standing.

Instead, the AARP attempts to draw a parallel in this proceeding to Docket No. 030869. There, the AARP vigorously contested BellSouth's efforts to raise basic local service rates closer to cost in a proceeding in which end user retail customers would be directly impacted by the rates charged to them. Here, the AARP's explains its "associational representative role" as created by its members' status as customers of the *ILECs*, while its alleged substantial interests stem from the question of the what prices *the ILECs are charging CLECs*. It is patently obvious from the AARP's own pleadings that any so-called interest bears no direct relationship to the issues in this proceeding. None of the issues suggest that current customers of the ILECs will have changes made to their rates; likewise, this Commission has already set rates that apply to the unbundled network elements charged to CLECs. The position of the AARP membership notwithstanding, this proceeding is not and cannot be, an open forum for every Florida citizen to proffer his or her opinion about the possible impact of the TRO on an individualized customer basis. This Commission has been delegated with specific authority to engage in fact-finding, which fact-finding will ultimately result in a decision that governs relationships between *carriers*. The Commission has exercised its authority by establishing the issues to be decided in

¹ See, TRO, ¶ 3, "we have come to recognize more clearly the difficulties and limitations inherent in competition based on the shared use of infrastructure through network unbundling. While unbundling can serve to bring competition to markets faster than it might otherwise develop, we are aware that excessive network unbundling requirements tend to undermine the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology" and subsections (e) and (f), Section 364.01, Florida statutes (subsections require the Commission to "encourage all providers of telecommunications services to introduce new or experimental

this docket. In contrast to Docket No. 030869, the wording of the issues does not include “consumers.” (*Compare* Issue 1 and Issue 1(c) in Docket No. 030869 *with* Issues, Appendix A, Order No. PSC-03-1265-PCO-TP). Thus, despite the AARP’s contentions, this proceeding is not intended to include the public hearings and active public participation that took place in Docket No. 030869.

The AARP, also contends, apparently disgruntled by oppositions to its petition to intervene, that it has been held to a higher standard than other participants in this case. This contention is meritless. Intervening carriers, both ILECs and CLECs, have the “obvious interest” in this docket the AARP and its membership lacks. At the conclusion of this proceeding, the Commission will address each of the six issues, and subparts, established in Order No. PSC-03-1265-PCO-TP. Regardless of the outcome, it is clear that every ILEC and CLEC in Florida will be impacted to some degree by the Commission’s decision. In contrast, the AARP membership will not be directly impacted. Any impact upon AARP members is uncertain, speculative, and remote, as the Prehearing Officer correctly concluded in Order No. PSC-04-0008-PCO-TP, and fails to establish standing under Florida law.

In seeking reconsideration, the AARP fails, as it did in its initial intervention, to show any injury in fact, much less an injury of the type or degree that the proceeding is designed to protect. *See Agrico Chem. Co. v. Dept. of Env’tl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Aside from the AARP’s selected quotations from the TRO and the Florida statutes, which neither require nor contemplate the “participation of all consumers”, the AARP has not identified a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering his Order. *See Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962);

telecommunications services free of unnecessary regulatory restraints” and to “eliminate any rules and/or regulations which will delay or impair the transition to competition”).


Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981); *Sherwood v. State*, 111 So.2d 96 (Fla. 3rd DCA 1959) (citations omitted) (it is inappropriate for a motion for reconsideration to reargue matters that have been considered and rejected); and *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974) (a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review"). The AARP brushes aside the authority relied upon by BellSouth, suggesting with no explanation that the law is "inapplicable." Such an arbitrary disregard to legal precedent cannot be countenanced. Even assuming that cases relating to electric utilities are distinguishable (which is not the case), the AARP fails to address Order No. PSC-00-0421-PAA-TP, *In re: Joint Application of MCIWorldCom, Inc. and Sprint Corporation for Acknowledgment or Approval of Merger*, Docket No. 991799-TP, which BellSouth cited in its opposition and which both (1) involved telecommunications providers; and (2) was decided after the 1995 Florida legislation opening this state to competition.

When opposition to a petition to intervene has been made, the obligation to prove standing – and not merely allege standing - is squarely placed on the AARP. See *NAACP, Inc. ex rel. NAACP v. Florida Bd. Of Regents*, 2002 Fla. App. Lexis 2012 (Fla. 1st DCA 2002); *Agrico Chem. Co. v. Dept. of Env't'l. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). Because no other party has had opposition filed to its intervention, the reality is that the AARP has an independent obligation – which it has not met – that other carriers have not faced. That the AARP considers this unfair treatment is irrelevant. The AARP's failure to prove standing in both its Petition and its Motion, when coupled with the AARP's omission of any mistake of law or fact justifying reconsideration leads to the inescapable conclusion that its Motion should be denied.


III. CONCLUSION

BellSouth respectfully requests that the Commission deny AARP's Motion for Reconsideration.

Respectfully submitted this 16th day of January 2004.



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