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October 15, 1996

Ms. Blanca S. Bayo  
Director, Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

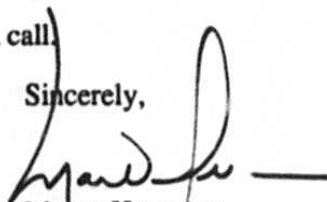
Re: Consolidated Docket No. 96-1130-TP

Dear Ms. Bayo:

On behalf of BellSouth Advertising & Publishing Corporation, enclosed for filing in the above docket is the original and 15 copies of the Response of BAPCO to the Sprint Petition for Arbitration and Motion to Dismiss Those Portions of the Sprint Petition Seeking Arbitration of Directory Publications Issues and Special Appearance and Petition to Intervene of BellSouth Advertising & Publishing Corporation.

If you have any questions, please give me a call.

Sincerely,

  
MARK HERRON  
E. GARY EARLY

cc: Parties of Record  
MH/EGE/clt  
Enclosures

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2 \_\_\_\_\_
- LIN 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH *by Don* \_\_\_\_\_

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of: Petition of Sprint  
Communications Company Limited  
Partnership for Arbitration of Proposed  
Interconnection Agreement with BellSouth  
Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1990.

Docket No. 96-1150-TP

Filed: October 15, 1996

**SPECIAL APPEARANCE AND PETITION TO INTERVENE  
OF BELLSOUTH ADVERTISING & PUBLISHING CORPORATION**

COMES NOW, BellSouth Advertising & Publishing Corporation ("BAPCO"), and pursuant to Sections 120.569 and 120.57(1), Florida Statutes, as amended by Chapter 96-159, Laws of Florida, and Rules 25-22.036, 28-5.111, and 28-5.201, Florida Administrative Code, hereby requests that the Commission grant it a special appearance and intervention in the above-referenced proceeding for the purpose of presenting its "Motion to Dismiss Those Portions of the Sprint Petition Seeking Arbitration of Directory Publication Issues" ("Motion to Dismiss"), filed contemporaneously herewith, and for the purpose of protecting its legal, property and other interests directly affected by the proceedings in Docket No. 96-1150-TP.

BAPCO makes the following showing in support of its Special Appearance and Petition to Intervene.

1.

On or about September 20, 1996, Sprint Communications Company Limited Partnership ("Sprint"), acting in reliance upon and pursuant to the Telecommunications Act of 1996 ("Federal Act"), filed with this Commission its Petition for Arbitration of Interconnection with BellSouth Telecommunications, Inc. under the Telecommunication Act of 1996. ("Petition").

2.

BAPCO is the publisher of alphabetical and classified advertising directories in the Southeastern United States, including Florida. BAPCO is a company separate and distinct from BellSouth Telecommunications, Inc. ("BST"), an existing party to this proceeding. BAPCO is not under the ownership or control of BST. BAPCO is publisher of white pages and Yellow Pages directories. BAPCO, not BST, publishes directories. Portions of the Petition appear to seek arbitration of matters on issues directly related to directory publication. See, the Petition, pp.36-38. See also, Exhibit 2 of the Petition, pp. 21-23; Exhibit 3 of the Petition, pp. 20-22; and Exhibit 4 of the Petition, pp. 23-26.

3.

The Petition intends that this compulsory arbitration process will apply to BAPCO. Exhibit 2 of the Petition, at Section 1X, which identifies a wide range of directory publication matters included in the Petition under the heading "White/Yellow Page Directory Listing," states that for the purposes of Section 1X the term "ILEC" means also the ILEC's directory publishing affiliate. Thus, it appears that Sprint seeks to bind BAPCO in these proceedings notwithstanding the previous orders of the Commission that only "the party requesting the interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding, and bound therefore...." Order No. PSC-96-1238-PHO-TP at p. 62. See also, Order No. PSC-96-0933-PCO-TP at p. 2. The Petition seeks arbitration of contractual relationships between BAPCO and Sprint regarding the content and format of directories published by BAPCO. See, the Petition, pp. 36-38. See also, Exhibit 2 of the Petition, pp. 21-23; Exhibit 3 of the Petition, pp. 20-22; and Exhibit 4 of the Petition, pp. 23-26. Any arbitration that would limit or restrict BAPCO's existing contract, or that would restrict BAPCO from freely negotiating contracts for its services constitutes an unlawful impairment of BAPCO's rights to freely contract for its services, and affects BAPCO's legal, property and other interests. BAPCO has submitted a proposed agreement with Sprint to cover directory issues following negotiations between

the two companies, but Sprint has not responded other than through its Petition. Accordingly, BAPCO cannot determine whether it has disagreement with Sprint as to any specific listed issue. For purposes hereof, BAPCO must therefore assume such disagreement in order to protect its rights as described herein.

4.

BAPCO respectfully submits that it has substantial legal, property and other interests that are affected by the Petition. BAPCO's right to maintain control of its directory publications and to receive compensation for the directory functions it performs is a property interest which evokes the procedural due process protections of the United States and Florida Constitutions. See, e.g., United States v. James Daniel Good Real Property, 510 U.S. 43, 114 S.Ct. 492, 126 L.Ed 2d 490 (1993); Brickell Station Towers, Inc. v. JDC (America) Corporation, 549 So.2d 203 (Fla. 3rd DCA 1989). BAPCO, at a minimum, is entitled to a hearing and opportunity to be heard. See, e.g., United States v. James Daniel Good Real Property, supra; Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed. 2d 494 (1985). Zerillo v. Snapper Power Equipment, 562 so.2d 819 (Fla. 4th DCA 1990); rev. den. 576 so.2d 291 (Fla.); and Department of Environmental Regulation v. Monico Research Products, Inc., 489 So.2d 711 (Fla. 5th DCA 1986), rev. den. 494 So.2d 1152 (Fla.).

5.

Sections 120.569 and 120.57, Florida Statutes, as amended by Chapter 96-159, Laws of Florida, set forth the procedure which must be followed when "...the substantial interests of a party are determined by an agency..." Those procedures include, at a minimum, notice of the proposed action and an opportunity for the party to participate in the proceeding and present evidence in support of its interest. See, Sections 120.569, 120.57(1)(b) and 120.57(2)(a), Florida Statutes, as amended by Chapter 96-159, Laws of Florida. An entity can attain status as a party by, among other things, being a named party, having a statutory right to participate, or having its substantial interests affected by the

proposed agency action. See, Section 120.52(12), Florida Statutes, as amended by Chapter 96-159, Laws of Florida; Gregory v. Indian River County, 610 So.2d 547, 553-554 (Fla. 1st DCA 1992). This Commission is an "agency" for the purposes of Chapter 120, Florida Statutes. Van Gorp Van Service, Inc. v. Mayo, 207 So.2d 425 (Fla. 1968) and ASI, Inc. v. Florida Public Service Commission, 334 So.2d 594 (Fla. 1976).

6.

BAPCO requests that it be permitted a special appearance and intervention in this proceeding for the limited purpose of protecting its legal, property, and other interests in its directory publication business that are or may be directly affected by the directory publication matters raised in the Petition filed by Sprint, that it be entered on the Commission's service list, and that it receive notice of all further matters pertaining to this Docket. Service may be made upon BAPCO through its counsel of record in this case, as follows:

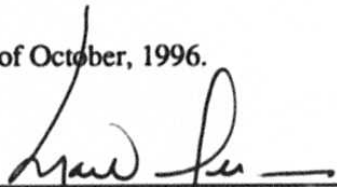
Mark Herron, Esquire  
E. Gary Early, Esquire  
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7.

BAPCO states that its special appearance and intervention will not unduly delay or hinder the proceedings in this Docket. BAPCO's special appearance and intervention injects no new issues in this proceeding. The Petition filed by Sprint is the source of the directory publication issues about which BAPCO is entitled to be heard. The directory publication issues raised by the Petition can be authoritatively addressed only by BAPCO. BAPCO is the only entity that publishes white pages and Yellow Pages directories and provides directory publication services that are the subject of the Petition.

WHEREFORE, BAPCO, without conferring jurisdiction on the Commission with regard to it or waiving any defense or claim it may have with respect to such jurisdiction, hereby respectfully requests that it be permitted a special appearance and intervention in this Docket, be designated as a party of record to this proceeding, and that it be extended all rights of a full party, including, but not limited to, the right to present and cross-examine witnesses, submit appropriate briefs and other pleadings, and otherwise be heard in this matter.

Respectfully submitted this 15th day of October, 1996.



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MARK HERRON, ESQUIRE  
FLORIDA BAR NO. 199737  
E. GARY EARLY, ESQUIRE  
FLORIDA BAR NO. 325147  
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(904)222-3471

Attorneys for BellSouth Advertising &  
Publishing Corporation

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties this 15~~th~~ day of October, 1996:

By delivery to:

Donna Canzano  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

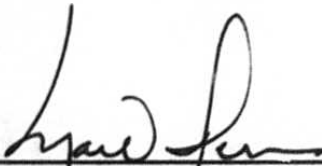
Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications  
150 South Monroe St., Suite 400  
Tallahassee, Florida 32301

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs & Ervin  
305 South Gadsden Street  
Tallahassee, Florida 32301

and by Federal Express to:

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Atlanta, Georgia 30375

Benjamin W. Fincher  
Sprint Communications Company  
Limited Partnership  
3100 Cumberland Circle  
Atlanta, Georgia 30339

  
\_\_\_\_\_  
MARK HERRON  
E. GARY EARLY