Legal Department

J. PHILLIP CARVER
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404)335-0710

August 26, 1997

Mrs. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Docket No. ~~920260-TI~~ 960786-TL

Dear Mrs. Bayo:

Enclosed is an original and fifteen copies of BellSouth's Memorandum in Opposition to the Motion to Compel of the Florida Competitive Carriers Association. We ask that this be filed in the captioned matter.

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 on the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver (KR)

J. Phillip Carver

Enclosures

cc: A. M. Lombardo
R. G. Beatty
W. J. Ellenberg

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996	)	Docket No. 960786-TL Filed: August 26, 1997

BELLSOUTH'S MEMORANDUM IN OPPOSITION TO THE MOTION TO COMPEL OF THE FLORIDA COMPETITIVE CARRIERS ASSOCIATION

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Memorandum in Opposition to the Motion to Compel of the Florida Competitive Carriers Association ("FCCA"), and states the following:

1. In its Amended Third Request for Production of Documents and Amended Seventh Set of Interrogatories, FCCA demanded copies of (and information relating to), interconnection agreements between BellSouth and other incumbent local exchange companies ("ILECS"). BellSouth timely responded on August 4, 1997 by filing objections.

2. In these objections, BellSouth pointed out that in Docket 960290-TP, AT&T made a similar request that the Florida Public Service Commission ("Commission") require BellSouth to file interconnection agreements with other ILECs. In making its arguments, AT&T contended that these agreements were required to be filed pursuant to the process set forth in Section 252 of the Act,

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and that if they were not filed, the result could well be "discriminatory treatment". (Order No. PSC-96-0959-FOF-TP, entered July 24, 1996). The Commission rejected AT&T's contention and held, instead, that "a better interpretation of the plain meaning of Section 252(a)(1) in context to reading part II of the Act is that the agreements to be filed are those negotiated for purposes of interconnection in a competitive market. " (Order No. PSC-96-0959-FOF-TP, entered July 24, 1996, pp. 3-4) (emphasis added). In its objection filed August 4, 1997, BellSouth also pointed out that since the Eight Circuit Court of Appeals vacated on July 18, 1997, the FCC's subsequent requirement that these Orders be filed, this Commission is now free to return to its original ruling, as set forth above.

3. In its Motion to Compel, filed August 19, 1997, FCCA does not contend that this Commission has misinterpreted Section 252.[1] Instead, FCCA makes the rather amazing claim that the Commission's interpretation of Section 252 does not apply to define the type of carrier discussed by Congress in Section 251 of the Act. A reading of the plain words of the Act, however, are enough to reject this frivolous contention that Section 252 refers to one group of interconnectors, while Section 251 refers to some different group of interconnectors. Specifically, Section 252(a)(1) states that "upon receiving a request for interconnection, services, or network elements pursuant to Section

[1] In its Motion, FCCA complains that it has somehow been prejudiced in the preparation of its case by not having the requested information on August 7, 1997. For the reasons set forth below, FCCA is not entitled to this information, and therefore cannot possibly be prejudiced. Nevertheless, its contention that it has been damaged by some delay it is difficult to square with the fact that BellSouth filed its objection on August 7 but, for some reason, FCCA elected not to file its Motion to Compel until fifteen days later (i.e., less than two weeks before the hearing on this matter is set to commence.

251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier . . . ". It is these agreements that are to be filed, and this Commission specifically held this group of agreements to be limited to those that address "interconnection in a competitive market". FCCA simply ignores this language and, instead, argues that Section 251 prohibits discrimination among a broader class of interconnectors (including other ILECs) than those addressed by Section 252. FCCA also appears to claim that its interpretation of 251 and 252 is consistent with this Commission's ruling in Order No. PSC-96-0959-FOF-TP. A reading of this order, however, quickly dispenses with that contention.

4. In fact, this Commission responded to AT&T's interpretation of 252 by stating that "AT&T's interpretation of the language at issue does not consider the broader context of Sections 251 and 252." (Order, p. 4)(emphasis added). The Order then stated:

> Read in conjunction with the other sentences in that paragraph and in the context of Sections 251 and 252, the Act only requires that the types of interconnection agreements that are required to be filed with the state commissions are all of those interconnection agreements which an incumbent local exchange carrier has entered into pursuant to the Act. This Section, read in the context of Part II of the Act, means the types of existing interconnection agreements that must be filed are those interconnection agreements between competitive carriers in the same markets that were entered into before or after the enactment of the Act.
>
> (Order, p. 4)(emphasis added).

5. It is obvious that the interconnection agreements referred to in Section 251 are the same ones that are referred to in Section 252. Section 251

requires ILECs to negotiate interconnection agreements with competing carriers (Section 251(c)(1)). The Act requires that these interconnection agreements provide interconnection on terms that are "nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section [251] and Section 252" (Section 251(c)(2)). In other words, the incumbent LEC is bound to negotiate interconnection agreements with competing carriers in the same market that are comparable to the other agreements negotiated with the same group of carriers. Finally, Section 252 requires that these agreements be filed.

6. Despite all of the above (and just as importantly this Commission's previous ruling on the precise issue of identifying the subject interconnection agreements in the context of both Sections 251 and 252) FCCA contends that it is entitled to receive not just agreements with competitive carriers, but also agreements with incumbent LECs that have not requested or negotiated interconnection with BellSouth pursuant to Sections 251 of the Act. For all of the reasons set forth above, this claim has no validity whatsoever and should be rejected. Instead, BellSouth's objections should be sustained based on the prior ruling of this Commission interpreting the requirements of Sections 251 and 252.

WHEREFORE, BellSouth respectfully requests the entry of an order denying FCCA's Motion to Compel.

Respectfully submitted this 26th day of August, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

Robert G. Beatty (KR)

ROBERT G. BEATTY
NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, #400
Tallahassee, Florida 32301
(305) 347-5555

William J. Ellenberg II (KR)

WILLIAM J. ELLENBERG II
J. PHILLIP CARVER
675 West Peachtree Street, #4300
Atlanta, Georgia 30375
(404) 335-0710

CERTIFICATE OF SERVICE
DOCKET NO. 960786-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 26th day of August, 1997 to the following:

Mr. Brian Sulmonetti
LDDS WorldCom Communications
Suite 400
1515 S. Federal Highway
Boca Raton, FL 33432
(407) 750-2529

Floyd R. Self, Esq.
Norman H. Horton, Esq.
Messer, Caparello, Madsen,
Goldman & Metz, P.A.
215 South Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Atty. for LDDS WorldCom Comm.
(904) 222-0720

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Atty. for FCCA
(904) 222-2525

Thomas K. Bond
MCI Telecommunications Corp.
780 Johnson Ferry Road
Suite 700
Atlanta, GA 30342
(404) 267-6315

Richard D. Melson
Hopping Green Sams & Smith
123 South Calhoun Street
P.O. Box 6526
Tallahassee, FL 32314
(904) 222-7500

C. Everett Boyd, Jr.
Ervin, Varn, Jacobs,
Odom & Ervin
305 South Gadsden Street
P.O. Drawer 1170
Tallahassee, FL 32302
Atty. for Sprint
(904) 224-9135

Benjamin W. Fincher
3100 Cumberland Circle
Atlanta, Georgia 30339
Atty. for Sprint
(404) 649-5145

Monica Barone
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Patrick K. Wiggins, Esq.
Donna L. Canzano, Esq.
Wiggins & Villacorta, P.A.
501 East Tennessee Street
Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302
Tel. (904) 222-1534
Fax. (904) 222-1689
Attys. for Intermedia

Patricia Kurlin
Intermedia Comm., Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309
(813) 829-0011

Peter M. Dunbar, Esq.
Robert S. Cohen, Esq.
Pennington, Culpepper, Moore,
Wilkinson, Dunbar &
Dunlap, P.A.
215 South Monroe Street
2nd Floor
Post Office Box 10095
Tallahassee, FL 32302
(904) 222-3533

Sue E. Weiske, Esq.
Time Warner Communications
160 Inverness Drive West
2nd Floor North
Englewood, Colorado 80112
(303) 799-5513

Tracy Hatch, Esq.
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
(904) 425-6364

Marsha E. Rule, Esq.
c/o Doris M. Franklin
AT&T
101 North Monroe Street
Suite 700
Tallahassee, FL 32301

Andrew O. Isar
Director - Industry Relations
Telecomm. Resellers Assoc.
4312 92nd Avenue, N.W.
P.O. Box 2461
Gig Harbor, WA 98335-4461
(206) 265-3910

Richard M. Rindler
Swindler & Berlin, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Tel. (202) 424-7771
Fax. (202) 424-7645

Kenneth A. Hoffman, Esq.
William B. Willingham, Esq.
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 South Monroe Street
Suite 420
Tallahassee, FL 32301-1841
(850) 681-6788

Mr. Paul Kouroupas
TCG-Washington
2 Lafayette Centre
1133 Twenty First Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 739-0030

Laura L. Wilson
Vice President
Regulatory Affairs
Florida Cable Telecomm. Assoc.
310 North Monroe Street
Tallahassee, FL 32301
Tel. (904) 681-1990
Fax. (904) 681-9676

J. Phillip Carver (RE)
J. Phillip Carver