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RECORDS AND
REPORTING

September 25, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: 000084-TP (US LEC Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to US LEC of Florida's Motion for Continuance and Abatement and Alternative Motion for Extension of Time for Filing Testimony and Prehearing Statements and to Reschedule Prehearing Conference and Final Hearing, 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,

Michael P. Goggin

Michael P. Goggin

(SG)

- APP _____
- CAE _____
- CMP _____
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- SEC 1 _____
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Enclosures

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

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 000084-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 25th day of September, 2000 to the following:

Diana Caldwell
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Aaron Cowell
Executive Vice President and
General Counsel
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Michael P. Goggin
(2)

to US LEC which they could adopt pursuant to 47 U.S.C. § 252(i). In the interests of resolving the remaining issues without resorting to litigation, BellSouth has twice consented to US LEC's requests for delay. Even after twice agreeing to continuances, BellSouth consented, at the August 9 issue identification meeting, to extend the deadlines for the filing of testimony for an additional thirty days. Now US LEC has come to the Commission again, 72 hours before testimony was, finally, to be filed, to request further delay. As US LEC noted in its Motion, BellSouth opposes further delay.

US LEC offers two purported justifications for its Motion for yet another continuance. Each serves to justify only denial of the Motion. The first purported reason why the arbitration should not go forward, according to US LEC, is that the FCC or Congress might someday make a decision about whether carriers should be entitled to demand reciprocal compensation for delivering internet traffic, and this Commission plans to address the issue in a generic docket. Motion at 3-5. US LEC suggests, therefore, that the parties continue to operate under the terms of their expired agreement with respect to the treatment of internet traffic until the issue is definitively settled by the Commission, the FCC or the Congress. *Id.* at 4-5. Handling this issue in the manner US LEC suggests would not in any way necessitate delaying the resolution of the other issues to be decided in this docket, however. Indeed, as BellSouth stated in its timely-filed direct testimony, it, agrees with US LEC that the parties should continue to operate under the terms of their expired agreement until the matter has been settled. See, Direct Testimony of Cynthia Cox (Filed September 21, 2000). This Commission has incorporated similar requirements in numerous other arbitrated agreements and there is no reason why US LEC and BellSouth cannot put such


language in their new agreement, as each agrees that this is the appropriate manner in which to handle the issue. Far from justifying a halt in the proceedings, US LEC's agreement with BellSouth's position on this issue helps to speed the arbitration to a conclusion.

US LECs other purported justification is that despite spending months poring over agreements BellSouth has signed with other carriers, US LEC hasn't found any language relating to the remaining issues in dispute that it would prefer to adopt. *Motion at 2-3.* US LEC would prefer to keep the outmoded provisions of the expired agreement until another agreement comes along that it might like better. *Id.* The Telecommunications Act, though, does not permit US LEC to unilaterally impose the outmoded terms of the expired agreement on BellSouth. BellSouth has properly requested arbitration of the terms upon which the parties could not agree. Under the act, the Commission has an obligation to decide them.

If US LEC truly preferred to save the Commission and the parties the time and expense of arbitration, it could easily adopt provisions from one or more of the hundreds of agreements currently in effect between BellSouth and other ALECs. If another agreement, such as the Global NAPs agreement, subsequently were approved, and a given provision seemed preferable to one in its agreement, US LEC could substitute the Global NAPs provision at that time. US LEC's Motion is merely an attempt to have the Commission aid US LEC in its attempt to prolong an expired agreement. The Commission should refuse to do so. US LEC's Motion should be denied.

It should also be noted that US LEC unilaterally decided not to file direct testimony on the date ordered by the Commission. US LEC maintains that the mere filing of a contested motion seeking a continuance "should serve to postpone the current controlling date for filing prefiled direct testimony and exhibits." Motion at 1-2, fn 1. Apparently US LEC believes that by filing a contested motion seeking continuance, it may unilaterally *grant itself a continuance, for at least as long as it takes the Commission to dispose of its Motion.* US LEC is able to offer no authority for this rather original take on motions practice. Incredibly, US LEC goes on to note that it has informed BellSouth that, in view of the Motion, BellSouth should act as if a continuance had been granted already, ignore the Commission's order and not file its direct testimony on the date due. This should be done "[t]o avoid any prejudice to BellSouth." *Id.* To the extent that BellSouth is prejudiced, it cannot be because BellSouth complied with the Commission's procedural order in this matter.¹ Rather, the only possible prejudice to BellSouth would arise from US LEC's unilateral refusal to comply with that order, and its request for additional delay. BellSouth is confident that the Commission will decline to permit US LEC to prejudice BellSouth in this manner.

Respectfully submitted this 25th day of September 2000.


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¹ BellSouth would more likely be prejudiced if, like US LEC, it had waived its right to present evidence on the issues by refusing to file testimony on the date that it was due.


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