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August 12, 1996

(VIA FACSIMILE)

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

RE: Docket No. 960786-TL

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to a Request for Official Recognition. Please file these documents 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 on the parties shown on the attached Certificate of Service.

Sincerely,

William J. Ellenberg II (SR)

William J. Ellenberg II

ACK _____

AFA _____

APP _____ Enclosures

CSE _____

CMU *Gulesa* cc: All Parties of Record
A. M. Lombardo
R. G. Beatty

CTR _____

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CERTIFICATE OF SERVICE
DOCKET NO. 960786-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by (facsimile) and Federal Express this 12th day of August, 1996 to the following:

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William J. Ellenberg II (BL)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of BellSouth)	
Telecommunications, Inc. entry)	
into InterLATA services pursuant)	Docket No. 960786-TL
to Section 271 of the Federal)	
Telecommunications Act of 1996)	Filed: August 12, 1996
)	

BELLSOUTH'S RESPONSE TO A
REQUEST FOR OFFICIAL RECOGNITION

COMES NOW, BellSouth Telecommunications, Inc. ("BellSouth") and responds to the Request for Official Recognition of an order of the Public Utilities Commission of Ohio (the "Ohio PUC"), and shows the following:

1. The Florida Interexchange Carriers Association ("FIXCA") filed its request for official recognition in the context of the discovery dispute between BellSouth and FIXCA in this proceeding. This proceeding was initiated for the purpose of investigating BellSouth's provision of interLATA services in Florida under the provisions of the Telecommunications Act of 1996 (the "Act"). FIXCA is an association of interexchange carriers. Its only apparent interest in this proceeding could be protecting its interest in the interexchange market, i.e. delaying or preventing BellSouth's entry into the interLATA in competition with FIXCA's members.

2. FIXCA had served three sets of interrogatories (and has now served a fourth) and one request for production of documents. BellSouth objected to many of the interrogatories and most of the request for production of documents, on a number of grounds, but primarily because FIXCA's discovery requests went to matters well outside the scope of this proceeding, and were therefore

DOCUMENT NUMBER-DATE
08437 AUG 12 88
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irrelevant. Apparently, FIXCA now offers an order of the Ohio PUC in support of its argument that its interrogatories and request for production are relevant to this proceeding. The Ohio order is no help to FIXCA.

3. The scope of this proceeding is set by the Telecommunications Act of 1996 (the "Act") and the issues list formulated by the Commission Staff. Under the Act, the Federal Communications Commission ("FCC") is required to consult with a state commission to verify that a BellSouth Operating Company (BOC) applying for authority to provide interLATA services has complied with § 271(c)(1). The Commission has formulated a list of issues focused on that inquiry. The interrogatories and request for production of documents to which BellSouth has objected are not relevant to a resolution of those issues.

4. Many of FIXCA's interrogatories seek information related to the respective local exchange market share of BellSouth and new entrants, e.g. interrogatories numbers 5-13. The federal Act does not contain a market share test for BellSouth's entry into the interLATA market in Florida. The Act clearly contemplates that BellSouth can obtain such authority in the complete absence of competition. See 47 U.S.C. § 271(c)(1)(B). BellSouth may obtain relief under § 271(c)(1)(A) or § 271(c)(1)(B), or a combination of the two.

5. Specifically, § 271 provides that BellSouth may enter the interLATA market if an actual facilities-based competitor has emerged and is providing telephone exchange service to

residential and business subscribers predominately over its own facilities. 47 U.S.C. § 271 (c) (1) (A). Under § 271(c) (1) (B) BellSouth may enter the interLATA market if, after ten months after the date of the enactment of the Telecommunications Act of 1996, no such provider has requested the access and interconnection described in subparagraph (a) before the date which is three months before the date the Company makes its application..." 47 U.S.C. § 271(c) (1) (b).

6. The term "such provider" in § 271 (c) (1) (B) clearly refers back to a facilities-based carrier providing service to residence and business customers predominantly over its own facilities. In other words, if a competitor emerges and satisfies these criteria within the seven months after the enactment of the Act, BellSouth can apply for relief immediately. Hence, § 271(c) (1) (A) was intended to provide an opportunity to BellSouth and other BOC's to provide interLATA services sooner, if an actual competitor emerged, not to act as a limitation on its ability to use § 271(c) (1) (b) to satisfy the requirements for entry into the interLATA business. All this goes to demonstrate that the Act contains no market share requirement.

7. There are other good reasons not to read a market share test into the Act. For example, antitrust authorities clearly recognize that focusing on market share can be extremely misleading in assessing the state of competition in a market. See e.g., Hunt-Wesson Foods, Inc. v. Ragu Foods., 627 F.2d 919,924 (9th Cir. 1980), cert. denied, 450 U.S.421 (1981).

8. Likewise a market share test should not be brought in through the back door through the public interest determination. First and foremost, the Act does not impose a duty on this Commission to make a public interest determination with regard to any interLATA relief sought by BellSouth. Even if it did, that determination does not involve a market share test. The issue is, and the focus of the Commission should be on, the benefits to the interLATA market if BellSouth is allowed to compete. These benefits, and there will be many, will be experienced by consumers regardless of the relative market share of BellSouth and other providers of local exchange service. Hence, the public interest surrounding BellSouth's provision of interLATA service is unrelated to its market share in the local exchange, or any other, market.

9. Importantly, the Ohio order offers no support for all of FIXCA's discovery requests. The Ohio PUC has not inquired at all into the structure, operation, plans, or any aspect of a separate affiliate formed for the purpose of providing interLATA service. FIXCA has - for example in interrogatories 20, 21, and 36-44. The Ohio PUC has not inquired at all into the out-of-region activity of Ameritech in the local exchange or interLATA markets. FIXCA has - in, for example, interrogatory 52. While the Ohio PUC may be misguided on the matters of market share and public interest, not even it is straining and stretching to go as far as FIXCA in its interrogatories and request for production.

10. In conclusion, BellSouth submits that simply because

the Ohio PUC has apparently made the mistake of launching off on a mission of inquiring into matters extraneous to its duties under the Act is no justification or authority for this Commission to make the same mistake. Matters addressed in FIXCA's discovery are no more relevant as a result of the Ohio PUC's decision, to the focused inquiry which this Commission has undertaken in this docket than they were without it. The Commission's role under the Act is limited to a verification of BellSouth compliance with the provisions of § 271(c)(1). 47 U.S.C. § 271(d)(2)(B). Neither FIXCA nor the Ohio PUC should persuade this Commission to allow parties to inquire into matters irrelevant to that focused proceeding.

Respectfully submitted this 12th day of August, 1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

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