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February 7, 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. 970077-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to Vanguard Cellular System's Petition for Arbitration To Establish Interconnection Agreement in the above-referenced docket. 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,

*Edward L. Rankin III*  
(RM)

Edward L. Rankin, III

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CLE \_\_\_\_\_
- (111) *Norton*
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Enclosures

cc: All Parties of Record  
A. M. Lombardo  
R. G. Beatty  
W. J. Ellenberg

RECEIVED & FILED

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DOCUMENT NUMBER-DATE  
01462 FEB-75  
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CERTIFICATE OF SERVICE  
DOCKET NO. 970077-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 7th day of February, 1997 to the following:

Gwen G. Jacobs  
Messer Law Firm  
P. O. Box 1876  
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(904) 222-J720

Philip Smith  
Vanguard Cellular Systems,  
Inc.  
2002 Pisgah Church Road  
Suite 300  
Greensboro, NC 27455

Edward L Rankin II  
(Att)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Original  
FILE COPY

In re: Petition of Vanguard ) Docket No. 970077  
Cellular Systems, Inc. for )  
Arbitration Pursuant to Sec. )  
252(b) of the Communications ) Date Filed: Feb. 7, 1997  
Act of 1934, as amended, to )  
Establish an Interconnection )  
Agreement with BellSouth )  
Telecommunications, Inc. )

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BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE  
TO VANGUARD CELLULAR SYSTEM'S PETITION FOR ARBITRATION TO  
ESTABLISH INTERCONNECTION AGREEMENT

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds to the Petition for Arbitration to Establish Interconnection Agreement filed by Vanguard Cellular Systems, Inc. and shows as follows:

I. INTRODUCTION

Even before The Telecommunications Act of 1996 (the "Act") was passed, BellSouth had conducted negotiations seeking to obtain local interconnection agreements in its region and indeed had reached such agreements with several competitive local exchange carriers. Since February 8, 1996, BellSouth has conducted negotiations pursuant to the Act with numerous companies. Currently, BellSouth has

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successfully reached agreement with forty-two (42) companies. The nature and extent of these agreements has varied depending on the individual needs of the companies, but the conclusion is inescapable. BellSouth has a record of embracing competition and has demonstrated its willingness to compromise with companies to interconnect on fair and reasonable terms.

## II. BACKGROUND

This arbitration has been filed under the Act. Pursuant to the Act, when parties cannot successfully negotiate an interconnection agreement, either party may petition a state commission for arbitration of unresolved issues between the 135th and 160th day from the date a request for negotiation was received.<sup>1</sup> Under the Act, the petitioner must identify the issues resulting from the negotiations which are resolved, as well as those which are unresolved.<sup>2</sup>

A non-petitioning party to a negotiation may respond to the other party's petition and provide such additional information as it desires within twenty-five (25) days after

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<sup>1</sup> 47 U.S.C. § 252(b) (1).

<sup>2</sup> See generally, 47 U.S.C. §§ 252(b) (2) (a) and 252(b) (4).

the respondent receives the petition.<sup>3</sup> The Act limits consideration of issues to those raised in the petition and any response thereto.<sup>4</sup> Issues or topics not specifically related to these areas are clearly outside the scope of an arbitration proceeding. Once the Commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to the Commission for approval.<sup>5</sup>

Today, any arbitration must consider the impact, if any, of the Federal Communications Commission Order<sup>6</sup> ("FCC Order") regarding the implementation of local competition provisions of the Act, adopted August 8, 1996. It is BellSouth's position, and the position of others, including this Commission through its support of the appeal of the FCC Order taken on behalf of the National Association of State Regulatory Commissions ("NARUC"), that the FCC Order is overreaching and improperly extends the jurisdiction of the

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<sup>3</sup> 47 U.S.C. § 252(b)(3).

<sup>4</sup> 47 U.S.C. § 252(b)(4).

<sup>5</sup> 47 U.S.C. § 252(a).

<sup>6</sup> See First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, released August 8, 1996.

FCC. In fact, and as this Commission is aware, the United States Court of Appeals for the Eighth Circuit on October 15, 1996 stayed the "pricing" and the so-called "pick and choose" provisions of the FCC Order. Thus, at least with respect to these two provisions, the FCC Order is not binding on this Commission. Other provisions of the FCC Order which have been appealed may be reached and affirmed or reversed by the Eighth Circuit in the due course of the appeal.

On November 1, 1996, the Eighth Circuit issued an Order Lifting Stay In Part as to Sections 51.701, 51.703 and 51.717 of the FCC's Final Rules, attached to the FCC Order as Appendix B. These sections generally address incumbent LECs' obligations to establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier. Section 51.701 specifically defines local traffic between a LEC and a Commercial Mobile Radio Service (CMRS) provider to be traffic that originates and terminates within the same Major Trading Area (MTA). Section 51.717 allows CMRS providers to renegotiate pre-existing interconnection arrangements without penalty and

assess upon incumbent LECs the same rates for transport and termination of local traffic that the incumbent LEC assesses upon the CMRS provider pursuant to any pre-existing arrangement, pending the negotiation or arbitration and approval by a state commission of a new agreement. As a result of the lifting of the Stay as to these Rules, BellSouth will compensate requesting CMRS providers for transport and termination of local traffic at existing rates effective November 1, 1996, pending the negotiation and approval of new agreements. BellSouth will continue good faith negotiations with Vanguard in an attempt to resolve pricing and other issues raised in its Petition.

### III. SPECIFIC RESPONSES

1. BellSouth admits the allegations in Paragraph 1 of the Petition.

2. BellSouth admits the allegations in Paragraph 2 of the Petition.

3. With respect to the allegations in Paragraph 3 of the Petition, BellSouth admits that Vanguard has set forth its positions on the issues raised through its Petition and admits that those issues are generally in dispute.

BellSouth has set forth its summary position on these issues

in Paragraph 16 below. Except as expressly admitted, BellSouth denies the allegations in Paragraph 3.

4. BellSouth admits the allegations in Paragraph 4 of the Petition upon information and belief.

5. BellSouth admits the allegations in Paragraph 5 of the Petition.

6. BellSouth admits the allegations in Paragraph 6 of the Petition.

7. BellSouth admits the allegations in Paragraph 7 of the Petition.

8. With respect to the allegations in Paragraph 8 of the Petition, BellSouth denies that it agreed to provide a draft agreement with a CMRS provider during the September 12, 1996 conference call. Rather, BellSouth agreed to provide and did provide copies of agreements it had entered into with ALECs. BellSouth admits that when it subsequently provided an agreement with a CMRS provider on Dec. 20, 1996, it inadvertently omitted a schedule of proposed rates for CMRS providers. This oversight was corrected by transmittal of those rates on Jan. 2, 1997.

9. BellSouth admits the allegations in Paragraph 9 of the Petition.



10. BellSouth admits the allegations in Paragraph 10 of the Petition.

11. With respect to the allegations in Paragraph 11 of the Petition, BellSouth states that its obligation to respond to the matters set forth in the Petition is governed by Section 252(b)(3) of the Act. Further, no provision in the Act allows the petitioning party the right to file a formal reply to a non-petitioning party's response and, accordingly, Vanguard's request to file such a reply should be denied.

12. With respect to the allegations in Paragraph 12 of the Petition, BellSouth shares Vanguard's desire that a final interconnection agreement be either negotiated or, if necessary, arbitrated as a result of this proceeding. BellSouth further states that Section 252 of the Act governs the procedures to be followed for negotiation, arbitration and approval of such an agreement. Section 252, not Vanguard's "reservation of rights", shall govern the disposition of issues that remain unresolved after arbitration in this proceeding.

13. With respect to the allegations in Paragraph 13 of the Petition, BellSouth shares Vanguard's desire to continue

negotiations to resolve all issues set forth in Vanguard's Petition.

14. With respect to the allegations in Paragraph 14 of the Petition, Section 252 of the Act and this Commission's procedural guidelines will govern the ability of any party to submit additional information in this proceeding, not Vanguard's "reservation of rights."

15. With respect to the allegations in Paragraph 15 of the Petition, BellSouth admits that Issues A, B, and C remain unresolved. BellSouth further admits that other issues may remain unresolved and are not limited to the issues identified in Exhibit 2 to the Petition.

16. With respect to the allegations in Paragraph 16 of the Petition, BellSouth admits that Vanguard has set forth its position on Issues A, B, and C. BellSouth denies that Vanguard has completely and accurately summarized BellSouth's position on these issues and, therefore, sets forth below a summary statement of its position on Issues A, B, and C.

**Issue A: Local Area Definition**

The MTA defines the local calling area for CMRS providers such as Vanguard for purposes of reciprocal

compensation. BellSouth's local calling areas are those defined in the General Subscriber Services Tariff.

BellSouth should not terminate calls outside a traditional wireline local calling area but inside the MTA at a rate identical to that which has been negotiated between wireline carriers for termination of traditional local calls.

Furthermore, BellSouth may not lawfully transport calls across LATA boundaries.

**Issue B: Price for Local Transport and Termination**

Interconnection rates for CMRS providers when the MTA is considered the local calling area should recognize, through use of a combined rate, both the local interconnection rates that have been negotiated with wireline carriers (and traditional local calling areas) and full switched access rates. The Commission is not bound by the FCC's pricing standards and proxy rates which have been stayed by the Eighth Circuit. Neither would it be appropriate for the Commission to use the interim rates adopted by it in Order No. PSC-96-1579-FOF-TP on Dec. 31, 1996. BellSouth has proposed a rate based on the tandem switching and end office switching rates found in agreements reached with wireline carriers for termination of calls in

the traditional local calling area, plus an additive to each call to account for the calls terminating outside the local calling area but inside the LATA. The additive shall be subject to a true-up mechanism.

**Issue C: Right to Obtain Same Terms and Conditions as Other Carriers**

BellSouth cannot discern from Vanguard's discussion of this issue whether Vanguard is advocating the FCC's "pick and choose" interpretation of Section 252(i) of the Act. If Vanguard is asserting such an interpretation, BellSouth responds as follows. The Eighth Circuit has stayed the FCC's "pick and choose" interpretation of Section 252(i) of the Act. This interpretation would allow Vanguard to select any individual rate, term or condition of any particular service from any given agreement negotiated or arbitrated by BellSouth with another carrier at any time, including after Vanguard has executed a final agreement with BellSouth.

BellSouth submits that Section 252(i) allows a party like Vanguard that has not yet executed an agreement with BellSouth to adopt for itself the entire rates, terms and conditions of an agreement BellSouth has executed with another company. Furthermore, Vanguard can elect to adopt

all of the provisions of an entire category of service contained in another agreement. Any other interpretation of Section 252(i) would eviscerate the statutory scheme of final agreements freely negotiated and arbitrated by the parties.

**Issue D: Other Interconnection Issues**

Without further clarification of precise issues that Vanguard asserts may be unresolved between the parties and further explanation of Vanguard's precise position on these issues, BellSouth is unable to frame a response to the "issues" listed on Exhibit 2.

17. With respect to the allegations in Paragraph 17 of the Petition, said paragraph constitutes a prayer for relief and as such requires no response. To the extent that Vanguard has restated its positions on the merits of its Petition, BellSouth incorporates by reference its responses to those positions as set forth in Paragraphs 1-16 above.

18. All other allegations contained in the Petition that have not been specifically admitted are denied.

**III. CONCLUSION**

WHEREFORE, BellSouth requests the entry of an Order at the conclusion of this proceeding accepting and approving

each of its positions in this Arbitration Proceeding as set forth above and in the evidence tendered by BellSouth in this matter.

Respectfully submitted this 7th day of February, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

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