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March 31, 2000

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

Re: Docket No. 990874-TP (US LEC)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response to US LEC of Florida, Inc.'s Motion to Strike or, in the Alternative, to Stay Portion of Pending 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 on the parties shown on the attached Certificate of Service.

Sincerely,



Bennett L. Ross (BN)

AFA _____ Enclosures
APP _____

GAF _____

CMW Mark _____

QTR _____

EAG _____

LEG 1 _____

MAS 3 _____

OPC _____

RRR _____

SEC 1 _____

WAW _____

CTH _____

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

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Mark
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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORIGINAL

Complaint of US LEC of Florida, Inc. against)
BellSouth Telecommunications, Inc. for)
Breach of Terms of Florida Interconnection)
Agreement under Sections 251 and 252 of the)
Telecommunications Act of 1996, and Request)
For Relief)
_____)

Docket No. 990874-TP

Filed: March 31, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO US LEC OF FLORIDA, INC.'S MOTION TO STRIKE
OR, IN THE ALTERNATIVE, TO STAY PORTION OF PENDING HEARING**

I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully opposes the motion filed by US LEC of Florida, Inc. ("US LEC") seeking to strike portions of the prefiled rebuttal testimony of Jerry Hendrix or, in the alternative, for a stay of a limited portion of the pending hearing in this matter. US LEC has not articulated any legitimate grounds for striking that portion of Mr. Hendrix's rebuttal testimony that addresses a dispute between BellSouth and US LEC about the appropriate reciprocal compensation rates under the parties' June 1999 interconnection agreement. As to US LEC's alternative relief, staying only a portion of the hearing is a waste of time and resources, since under US LEC's proposal the Commission would be required to conduct two hearings rather than one. Accordingly, US LEC's motion should be summarily denied.

II. DISCUSSION

US LEC has moved to strike several pages of the rebuttal testimony of Jerry Hendrix that relate to a dispute between US LEC and BellSouth about the appropriate reciprocal compensation rates under an interconnection agreement executed by the parties in June 1999.

This testimony was in response to statements in the pre-filed direct testimony of US LEC witness Gary Grefrath. Mr. Grefrath has testified that the difference in the amount US LEC has invoiced to BellSouth for reciprocal compensation and the amount BellSouth has paid is limited solely to the dispute over Internet-bound traffic and late payment charges, which, as Mr. Hendrix has testified, is not the case. *See* Direct Testimony of Gary Grefrath at 7. Because Mr. Hendrix's testimony properly rebuts the direct testimony of Mr. Grefrath, US LEC has no basis for seeking to have any portion of Mr. Hendrix's testimony stricken.

US LEC takes an unduly restrictive view of the issues in dispute in this case, claiming that its Complaint was limited solely to whether reciprocal compensation should be paid for Internet-bound traffic and "did not address and does not request any finding with respect to rates applicable to local traffic." US LEC Motion ¶ 1. US LEC overlooks the allegations in Paragraphs 26 and 27 of its Second Amended Complaint, in which US LEC identified the amount of reciprocal compensation that it had invoiced BellSouth through September 30, 1999 and the amount that BellSouth had paid. US LEC alleged that "the reason given by BellSouth for its refusal to pay the unpaid amounts invoiced is that they represent ISP traffic and late charges." BellSouth denied these allegations, at least to the extent they suggested that the only reason BellSouth had not paid the amounts US LEC had invoiced was because of internet traffic and late payment charges. *See* BellSouth's Answer to Second Amended Complaint, ¶¶ 26 & 27.

While BellSouth did not raise the rate dispute as a "defense" or "an affirmative counter-claim," there was no requirement that BellSouth do so. US LEC Motion ¶ 3. US LEC is the party seeking relief, and US LEC is the party that wants the Commission to order BellSouth to pay more than \$5 million in reciprocal compensation. That these amounts were calculated using the wrong rates is not "an affirmative defense" that BellSouth must raise under Florida law, nor

would it be the basis for an affirmative counter-claim since BellSouth is not seeking relief in its own right.

US LEC's suggestion that it did not have the opportunity to seek discovery on the dispute over reciprocal compensation because it did not know about that dispute until Mr. Hendrix filed his rebuttal testimony on February 18, 2000 is false. US LEC Motion ¶¶ 4 & 8. Whenever BellSouth disputes an invoice from another carrier, it routinely sends a letter identifying the reasons for withholding payment. BellSouth sent such letters to US LEC identifying the rate dispute months before Mr. Hendrix's rebuttal testimony was filed. Furthermore, the dispute over the appropriate reciprocal compensation rate to be billed by the parties was raised in a similar proceeding in Georgia more than three months ago. *See Complaint of US LEC of Georgia, Inc. Against BellSouth Telecommunications, Inc. in Request for Immediate Relief*, Docket No. 9577-U (GPSC). In fact, Mr. Hendrix filed similar rebuttal testimony in that case in December 1999 (which US LEC also moved to strike). Thus, US LEC was fully aware of the rate dispute between the parties long before February 18, 2000 and could readily have sought discovery on this issue had it been so inclined.

BellSouth acknowledges that the June 1999 interconnection agreement was the result of US LEC's decision to adopt the existing interconnection agreement between BellSouth and Intermedia. While BellSouth and Intermedia have a similar dispute over appropriate reciprocal compensation rates under their interconnection agreement, which is the subject of a complaint presently pending before the Commission, US LEC Motion ¶ 9, this case involves the interpretation of US LEC's agreement with BellSouth. US LEC's argument that a decision in the Intermedia case is determinative of the dispute between BellSouth and US LEC under Section 252(i) of the Telecommunications Act of 1996 has already been considered and rejected by the

Florida Public Service Commission. Specifically, the Commission rejected a similar argument when ITC^DeltaCom sought to intervene in a dispute between BellSouth and Global NAPs over the interpretation of the parties' interconnection agreement. Even though Global NAPs had adopted the ITC^DeltaCom agreement with BellSouth, the Commission determined that the only issue concerned the interpretation of Global NAPs' agreement with BellSouth, and not the ITC^DeltaCom agreement:

Furthermore, even though GNAPs may have adopted the ITC/BellSouth agreement, the agreement at issue is now the GNAPs/BellSouth agreement. Nothing in the Act indicates an intent to treat complaints regarding agreements adopted pursuant to Section 252(i) any differently than other complaint cases. In many aspects, adoption of an agreement pursuant to Section 252(i) is simply a shortening of the negotiation process. There are still ultimately only two parties to the agreement. Although many or all of the terms in the agreement may be the same as those found in the ITC/BellSouth agreement, our decision in this case will consider only the GNAPs/BellSouth agreement and evidence relevant to that agreement.

Order No. PSC-99-2526-PCO-TP, Docket No. 991267-TP at 5 (Dec. 23, 1999). The Florida Commission's reasoning in the Global NAPs case is equally applicable here and is fatal to US LEC's argument.

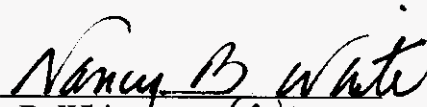
As an alternative to striking Mr. Hendrix's rebuttal testimony (which has no basis in law or fact), US LEC asks the Commission "to delay taking any testimony on the [rate dispute] issue until after the Intermedia case, and any separate US LEC case, has been decided." US LEC Motion ¶ 13. As explained above, any decision in the Intermedia case would not be determinative of BellSouth's and US LEC's intent in executing their interconnection agreement. Furthermore, US LEC's attempt to parse the Internet traffic dispute and the rate dispute into two separate hearings makes no sense. Under US LEC's proposal, the Commission would convene two different hearings involving the same witnesses and the same lawyers and would issue two different orders when the entire case can and should be resolved with a single hearing.

Although BellSouth denies that there has been any "prejudice" to US LEC, BellSouth has no objection to the extent US LEC wants to continue the hearing in this matter until sometime after the Intermedia case has been resolved. Furthermore, BellSouth would have no objection in the event the hearing is continued until after the Intermedia case to the extent US LEC seeks leave to file surrebuttal testimony on the rate dispute issue. However, if US LEC wants this case to proceed to hearing on April 17, 2000, all of the issues in dispute should be heard at the same time.

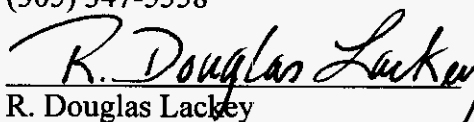
III. CONCLUSION

For the foregoing reasons, US LEC's motion should be denied.

Respectfully submitted this 31st day of March, 2000.



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COUNSEL FOR BELL SOUTH
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CERTIFICATE OF SERVICE
Docket No. 990874-TP (US LEC Complaint)

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

U.S. Mail and telecopier (*) this 31st day of March, 2000 to the following:

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