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J. PHILLIP CARVER
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06 MAY -8 PM 4:30

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RECORDS AND
REPORTING

May 8, 2000

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

Re: Docket Nos. 000501-TP and 000500-TP

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Response In Opposition to Rhythms' Motion to Bifurcate and Expedite Proceedings and Response to Rhythms' Motion to Consolidate, which we ask that you file in the above-referenced 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 to the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver
J. Phillip Carver
(cc)

- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG I _____
- MAS S _____
- OPC _____
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- SEC I _____
- WAW _____
- OTH _____

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

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[Signature]
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05734 MAY-88

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket Nos. 000500-TP and 000501-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this 8th day of May, 2000 to the following:

Staff Counsel
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Commission
Division of Legal Services
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Tallahassee, FL 32399-0850

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J. Phillip Carver (28)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Rhythms Links Inc. for an Expedited Arbitration Award Implementing Line Sharing With BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996)	
)	Docket No. 000501-TP
)	
)	
In re: Petition of Rhythms Links Inc. for an Expedited Arbitration Award Implementing Line Sharing With GTE Florida Incorporated Pursuant to the Telecommunications Act of 1996)	
)	Docket No. 000500-TP
)	
)	Filed: May 8 , 2000
)	

BELLSOUTH TELECOMMUNICATIONS, INC. RESPONSE IN OPPOSITION TO RHYTHMS' MOTION TO BIFURCATE AND EXPEDITE PROCEEDINGS AND RESPONSE TO RHYTHMS' MOTION TO CONSOLIDATE

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 25-22.037 , Florida Administrative Code, its Response In Opposition To Rhythm's Motion to Bifurcate and Expedite Proceedings and to Rhythm's Motion to Consolidate, and states the following:

1. The Motion of Rhythm Links Inc. ("Rhythm's) to bifurcate and to expedite should be denied because the motion is based on the single premise that expediting the hearing is the only means whereby line sharing would be available to Rhythms by June 6, 2000. Since there are other viable alternatives, as described below, to make available line sharing by this date, and since these alternatives would be considerably less of a burden on the Commission's time and resources than an expedited hearing, Rhythms' Motion should be denied.

2. In its Petition (if not in its Motion) Rhythms' paints a picture of the

current situation as one in which it has been unable to negotiate arrangements to obtain line sharing through some fault of BellSouth's. BellSouth disputes this rendition of the facts, and will set forth accurately the correct facts in its answer. For now, however, it will suffice to note the following: on April 14, 2000, BellSouth sent to Rhythms a proposed agreement under which Rhythms could have obtained Line Sharing by June 6, 2000. Rather than responding to BellSouth's proposal, Rhythms, instead, filed the Petition for Arbitration twelve (12) days later. Also, during this time period, BellSouth negotiated and entered into an Amendment to its Interconnection Agreement with Covad that addresses line sharing.

3. After Rhythms filed the subject Motion, Rhythms contacted BellSouth and requested that Rhythms be allowed to immediately adopt the Covad agreement for interim purposes (i.e. to be in place until the arbitration between BellSouth and Rhythms is concluded). Also, all rates would be subject to true-up to rates set in the subsequent arbitration. On May 11, 2000, BellSouth agreed to this proposal. Rhythms stated, however, that its previous request notwithstanding, it would not accept this proposal in lieu of an expedited hearing.

4. Rhythm Links does not claim either in its Petition or in its Motion that it is entitled to an expedited proceeding as a matter of right. Instead, it readily acknowledges that it is within the discretion of the Commission to grant such a hearing and case schedule, or not. Instead, Rhythms' Motion is premised entirely upon the idea that an expedited hearing is "contemplated" by the FCC's recent Line Sharing Order, and that bifurcation coupled with expedited proceeding is the only way that line sharing can be

made available by June 6, 2000. This is not the case, however. As set forth above, BellSouth has offered to make available to Rhythms as an interim agreement, the agreement that BellSouth has entered into with COVAD.¹ Under the terms of this offer, the COVAD agreement would be only an interim agreement with Rhythms and Rhythms would retain the right to arbitrate every issue in its Petition, including rate issues. In its Petition, Rhythms acknowledges that even under the expedited proceeding it seeks, the Commission's Order arising out of this proceeding would necessarily be interim. (Motion, p. 9). Thus, BellSouth has offered Rhythms a currently available Agreement that would accomplish everything that Rhythms claims is necessary for Phase One to accomplish. Since this is only an interim agreement (and all rates are subject to true-up), and Rhythms would have the ability to continue to arbitrate all issues, the acceptance of this proposal would not in any way prejudice Rhythms in this action.

5. The alternative, i.e., granting Rhythms Motion, would require that the Commission alter its schedule to accommodate filing of testimony, any necessary discovery, hearing, briefing, and a ruling in an extraordinarily compacted time frame. The fact that to do so would be a burden upon the Commission is obvious. It is equally obvious that this burden can be avoided if Rhythms accepts BellSouth's proposal.

6. Rhythms Motion also contains a request that the Commission set a particular procedural schedule for Phase II. First, BellSouth notes that Rhythms has proposed an unnecessarily short schedule because Rhythms incorrectly contends that the

¹ Once the COVAD agreement is approved, of course, Rhythms would always have the ability to opt in to that agreement. However, as an accommodation to Rhythms, BellSouth has offered to make that agreement immediately available.

statutory nine month period ends in August 2000. To arrive at this date, Rhythms has calculated the nine month period as starting well before the FCC Order, which provides the legal basis for Rhythms request to negotiate, was even released. Instead, the nine month calculation should begin when the FCC's Order is legally effective.

7. This point aside, the "Phase II" request is for an arbitration that is precisely like any other arbitration. The Commission has always set these proceedings according to a time frame that it deems appropriate. There is no reason that Rhythms should be allowed to dictate to the Commission a schedule for the arbitration.

8. As to Rhythms' request for consolidation, BellSouth has no objection to consolidating the arbitrations between Rhythms and BellSouth and Rhythms and GTE of the permanent rates, terms and conditions that will apply to Line Sharing. For the reasons set forth above, there is no need, at least as to BellSouth, to have a Phase One hearing to set interim rates, terms and conditions. Therefore, if this Commission were to grant Rhythms' Motion for an expedited proceeding as to GTE, BellSouth should not be part of that proceeding. However, BellSouth does not object to the Commission consolidating the hearings to arbitrate the permanent rates, terms and conditions that apply to line sharing.

WHEREFORE, BellSouth respectfully requests the entry of an order denying Rhythm Link's Motion for an expedited procedure and to bifurcate.

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