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December 3, 1996

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

RE: Docket No. 960833-TP; 960846-TP; 960916-TP

Dear Mrs. Bayo:

We have received a copy of Chairman Clark's memorandum dated November 25, 1996, filed in the referenced dockets. This letter is BellSouth's response to the memorandum and a copy will be served on the other parties.

BellSouth and the Florida Public Service Commission are currently both litigants in proceedings against the Federal Communications Commission, specifically in an appeal of the FCC's Order and Rules issued August 8, 1996, now pending before the United States Court of Appeals for the Eighth Circuit.

ACK	_____	BellSouth, in its appeal, has taken issue with a number of the
AFA	_____	findings and conclusions of the FCC, as has the Florida Public
APP	_____	Service Commission. Further, briefs will be filed in that case
CAF	_____	and oral arguments have been scheduled for January, 1997. In
CMU	_____	BellSouth's opinion, the direction of competition in this
CTR	_____	country, and the seminal question of whether such competition
EAG	_____	will be directed by the FCC or by state regulatory authorities,
LEG	<u>3</u>	will depend on the outcome of the litigation. Therefore,
LIN	<u>5</u>	BellSouth believes the Florida Public Service Commission and
OPC	_____	BellSouth have a common interest in that litigation.
RCH	_____	Consequently, it is entirely proper and appropriate to bring
SEC	<u>1</u>	matters to the attention of the Florida Public Service Commission
WAS	_____	which bear on that appeal. Indeed, the very documents provided
OTH	_____	to Chairman Clark's aide were copies of matters filed with the
		Court of Appeals and which the Florida Public Service Commission
		would routinely be served. BellSouth thought it noteworthy that

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leading members of Congress, who filed a brief with the Court of Appeals, felt that the FCC had overstepped its bounds in the Order and Rules which are the subject of the appeal mentioned above.

Chairman Clark, of course, is correct that there are matters pending before the Florida Public Service Commission which stem from the new federal act which the FCC interpreted in its Order and Rules. Specifically, under the Federal Telecommunications Act of 1996, the Florida Public Service Commission acts as an arbitrator to resolve disputes between new entrants and incumbent local exchange companies. In fact, the dockets referred to by Chairman Clark are arbitrations between BellSouth and MCI and AT&T (ACSI and BellSouth having resolved the issues they were arbitrating) being conducted under that new federal law, not under state law. Nevertheless, BellSouth acknowledges that the decision to make the communication between BellSouth and Chairman Clark a matter of public record, even though it pertained to the federal appeal and not the pending arbitrations, was solely within the discretion of Chairman Clark. We note that she did not characterize the contact as an ex parte communication and assume that she placed the matter on the public record in order to avoid even an appearance of impropriety regarding the matter. We have no disagreement with her decision to allow anyone who chose to do so to comment on the communications. That does not change the fact that the contact was made in connection with the appeal and not with regard to any matter pending before the Florida Public Service Commission.

Again, the contact Chairman Clark reported was made as she indicated and the documents she identified, which were matters of public record, were provided to her aide. This was done in connection with appeal pending in federal court regarding the jurisdiction and authority of the FCC. The contact with Chairman Clark did not constitute an improper contact or a contact regarding a pending matter before the Florida Public Service Commission.

Sincerely,

Robert G. Beatty (RW)

Robert G. Beatty
General Counsel - Florida

cc: All parties of record

CERTIFICATE OF SERVICE
DOCKET NOS. 960833-TP, 960846-TP and 960916-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 3rd day of December, 1996 to the following:

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