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November 19, 1999

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. 990149-TP

Dear Ms. Bayó:

Enclosed are an original and 15 copies of BellSouth Telecommunications, Inc.'s Response to MediaOne's Motion to Stay Proceedings. Please file this document in the captioned 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 (ke)

J. Phillip Carver

Enclosures

cc: All parties of record
M. M. Criser, III
N. B. White
R. D. Lackey

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of)
Petition by MediaOne Florida)
Telecommunications, Inc. for)
Arbitration of an interconnection)
Agreement with BellSouth)
Telecommunications, Inc. pursuant)
to Section 252(b) of the)
Telecommunications Act of 1996)
_____)

Docket No. 990149-TP

Filed: November 19, 1999

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO MEDIAONE'S MOTION TO STAY PROCEEDINGS**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Response to the Motion to Stay Proceedings filed by MediaOne Florida Telecommunications, Inc. ("MediaOne"), and states the following:

MediaOne's Motion to Stay fails to set forth a legal basis for granting a stay, and should be rejected for this reason.

MediaOne's Motion is premised upon two assertions: 1) that its previously filed Motion for Reconsideration is based upon a recent ruling from the Federal Communications Commission; 2) that there is some question as to whether the Commission's Final Order on Arbitration is stayed pending a ruling upon MediaOne's Motion for Reconsideration. As to the first point, MediaOne's assertion is not entirely correct. The Motion for Reconsideration encompasses two aspects of the Commission's Order: 1) the ruling that Calling Name Database ("CNAM") is not a UNE, and need not be priced according to the

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guidelines that apply to UNEs under the Federal Telecommunications Act; 2) the Commission's rulings on the terms under which MediaOne can make use of BellSouth's network terminating wire ("NTW"). Although a recent FCC decision does relate to the CNAM issue, this Order has no effect whatsoever on the portion of this Commission's Order that relates to network terminating wire.

As to MediaOne's second point, BellSouth believes that there is no question as to whether the Commission's Order has been stayed. Clearly, it has not been stayed and it is currently effective.¹ According to MediaOne, this question as to whether or not a stay is in effect arises from a "mixed direction" in the provisions of Rule 25-22.060(c). BellSouth submits that there is no ambiguity in this rule, and no reason for MediaOne to be confused. The pertinent portion of this Rule states the following:

A final order shall not be deemed rendered for the purpose of judicial review until the Commission disposes of any motion and cross-motion for reconsideration of that order, but this provision does not serve automatically to stay the effectiveness of any such final order.

(Rule 25-22.060(c), F.A.C.)

Far from creating any uncertainty, the rule clearly provides that a motion for reconsideration does not stay the effectiveness of a final order. In fact, MediaOne concedes in its Motion that this provision does not "constitute an automatic stay." (Motion, p. 3). Thus, a stay can only properly be granted if MediaOne sets forth an adequate legal basis for doing so. MediaOne's Motion

¹ For this reason, BellSouth has executed the Arbitrated Agreement as the Final Order on Arbitration requires, but MediaOne has declined to do so.

fails entirely to even address the appropriate standard, much less satisfy that standard.

The gravament of MediaOne's Motion is that it believes it should prevail on reconsideration, therefore, in order to "conserve the time and resources" of the parties, a stay should be granted. (Motion, p. 2). Again, this fails entirely to satisfy the requirements for a stay. Rule 25-22.061 states these legal requirements for a stay (albeit in the context of a stay pending judicial review). This Rule sets forth three factors for the Commission to consider in determining whether to grant a stay:

- a) whether the petitioner is likely to prevail on appeal;
- b) whether the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and
- c) whether the delay will cause substantial harm or be contrary to the public interest.

Again, this standard is set forth specifically in the context of an application for a stay pending an appeal, but there is no basis to draw a distinction between that situation and the instant one. In order to obtain a stay, MediaOne should be required to satisfy the above-identified requirements. Because MediaOne has not only failed to satisfy the standard for a stay, but even to address that standard, the Motion should be summarily rejected.

Moreover, even if MediaOne had attempted to sustain the burden of demonstrating some basis for a stay, the facts simply will not support such an effort. Two examples illustrate this point. One, as to network terminating wire, MediaOne has no argument that it will likely succeed on the merits of its Motion for Reconsideration. BellSouth will not reiterate at length here its response to

MediaOne's Motion for Reconsideration, but it will suffice to say that MediaOne has simply reargued the case that it presented as to NTW, which this Commission rejected in the Final Order. MediaOne's Motion for Reconsideration raised nothing new, and therefore failed to state a basis for reconsideration.

Two, as to CNAM, MediaOne has also failed to demonstrate in its Motion for Reconsideration that this Commission has made some error that would require reconsideration. Instead, MediaOne argued that the FCC's recent order (when effective) will preempt this Commission's decision. So, MediaOne contends, this Commission should effectively preempt its own ruling by setting aside the Arbitration Order prior to the effective date of the FCC's Order. For the reasons set forth at length in BellSouth's Response to the Motion for Reconsideration, this argument should fail.

However, even if MediaOne had a basis to establish a likelihood of success on the merits, it has no basis to argue that irreparable harm will result if the Commission's Order is not immediately stayed. Whether CNAM is (or is not) a UNE essentially answers the question of how it is to be priced. MediaOne's request for reconsideration will either be rejected (affirming the Commission's decision that BellSouth may set market-based rates for CNAM) or granted (i.e., a decision that CNAM must be priced at UNE rates). Either way, CNAM is currently available to be purchased by MediaOne and will continue to be available. If MediaOne ultimately prevails and obtains a decision that it is entitled to a lower price, its relief will come in the form of BellSouth refunding to it the amount of any overpayment. At that point, MediaOne would be made whole.

By definition, this situation cannot constitute one in which irreparable harm will result if the Commission's decision is not stayed pending a ruling on the Motion for Reconsideration.

It is clear that there is no uncertainty as to whether the Commission's Order has been stayed; it has not. It is also clear that if MediaOne wants a stay, it must satisfy the legal requirements. MediaOne has failed to even attempt to do so and, given the facts of the current situation, it could not do so even if it tried. For this reason, MediaOne's Motion for Stay should be denied.

WHEREFORE, BellSouth respectfully requests the entry of an order denying MediaOne's Motion for Stay.

Respectfully submitted this 19th day of November, 1999.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE
Docket No. 990149-TP

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

U.S. Mail this 19th day of November, 1999 to the following:

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