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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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RECORDS AND REPORTING

In the Matter of:)
Global NAPS SOUTH, INC.)
)
For Arbitration of Interconnection Rates,)
Terms and Conditions and Related Relief of)
Proposed Agreement with BellSouth)
Telecommunications, Inc. under the)
Telecommunications Act of 1996)
)

Docket No. 991220-TP
Filed May 24, 2000

GLOBAL NAPS SOUTH, INC.'S RESPONSE TO BELLSOUTH'S
MOTION TO STRIKE EXHIBITS TO GLOBAL NAPS WITNESSES,
SELWYN AND GOLDSTEIN

Global NAPS, pursuant to Rule 28-106.204 Florida Administrative Code, responds the motion to strike exhibits to rebuttal testimony of Global NAPS witnesses Selwyn and Goldstein filed by BellSouth Telecommunications, Inc. ("BellSouth") as follows:

1. Nearly all of the testimony of Global NAPS experts Selwyn and Goldstein filed in the Complaint case between BellSouth and Global NAPS, (Docket No. 99-1267-TP) related to policy issues attendant to reciprocal compensation. Rather than recreating the wheel, Global NAPS believed it would be convenient for the Commission to be provided with that testimony as an attachment to the rebuttal testimony filed in the arbitration case (Docket No. 99-1220).

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Therefore, witnesses Selwyn and Goldstein prepared and filed rebuttal testimony in this case, and attached as exhibits their testimony that was offered in an earlier proceeding before the Commission. While the Commission would be well within its rights to take official recognition of their testimony recently filed in the complaint case, Global NAPS, for information and convenience, attached the testimony as an exhibit.

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2. In opposing Global NAPS efforts to streamline the resolution of this case, BellSouth cites to no Commission Rule, Florida Statute, or precedent of any type to support its position. It simply does not believe that the attachments are appropriate. However, Florida Statutes and the Uniform Rules of Procedure give ample support to including and accepting the exhibits filed with the testimony of Global NAPS two witnesses.

3. The Florida Evidence Code, Chapter 90, Florida Statutes, supports the inclusion of the exhibits in question. Specifically, section 90.401 defines relevant evidence as "evidence tending to prove or disprove a material fact." Section 90.402 provides that "All relevant evidence is admissible, except as provided by law. Clearly, the exhibits in question, both of which relate to a key issue in the instant case, the treatment of reciprocal compensation, are relevant. Moreover, as mentioned, BellSouth failed to point out any law that would support its motion to strike the exhibits. As such, the exhibits should be admitted and duly considered.

4. The Florida Administrative Procedures Act, Chapter 120, requires the admission of the exhibits in question. Section 120.569(2)(g) states: "Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida." Clearly, the exhibits in question are not irrelevant, immaterial or unduly repetitious nor has BellSouth alleged such. Sworn testimony for which cross examination has been offered is precisely the type of evidence that reasonable people should rely. Therefore, the exhibits in question are admissible and BellSouth's motion to strike should be denied.

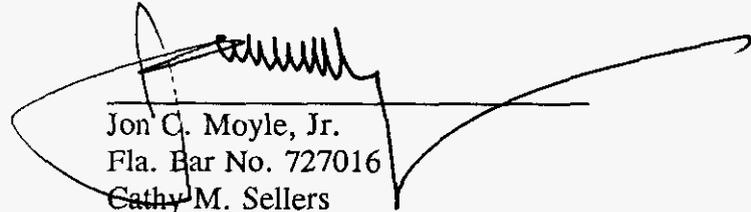
5. Florida case law support the admissibility of the exhibits in question. While the

exhibits would be properly admissible under the Florida evidence code in a civil or criminal proceeding, courts have indicated that the admissibility of evidence in an administrative proceeding are to be relaxed and liberally construed. Kasha v. Department of Legal Affairs, 375 So.2d 43 (Fla. 3rd DCA, 1979) ("First, the evidence before the hearing examiner on a probable cause hearing is not required to be of the same degree as that necessary in either a criminal or civil proceeding.") See also State v. Wolff, 310 So.2d 729 (Fla. 1975); Sheff v. State, 301 So.2d 13 (Fla. 1st DCA 1963). Consistent with repeated rulings by Florida courts regarding the liberal construction of the rules of evidence in administrative proceedings, the exhibits in question should be admitted and the motion to strike denied.

6. Finally, the Uniform Rules (which govern the PSC unless an express exception to the Uniform Rule is obtained) support Global NAPS position with respect to the exhibits in question. Specifically, Rule 60Q-2.026(3) provides in pertinent part: "Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their affairs." The Uniform Rules are expansive and seek to allow evidence rather than to exclude it. Indeed, the above-cited rule compels the admission of evidence, such as the exhibits in question, if someone would be accustomed to reasonably relying on such evidence. Obviously, it is reasonable for someone to rely on sworn testimony that was subject to cross-examination. Judges and juries rely on this type of evidence every day. Therefore, the exhibits in question more than satisfy the criteria of Rule 60Q-2.026(3) and should be allowed.

WHEREFORE, for the reasons set forth above, BellSouth's Motion to Strike Exhibits to Global NAPS Witnesses Selwyn and Goldstein should be denied.

Respectfully submitted this 24th day of May, 2000.

A large, stylized handwritten signature in black ink, appearing to read 'Jon C. Moyle, Jr.', is written over a horizontal line. The signature is highly cursive and extends significantly to the right of the line.

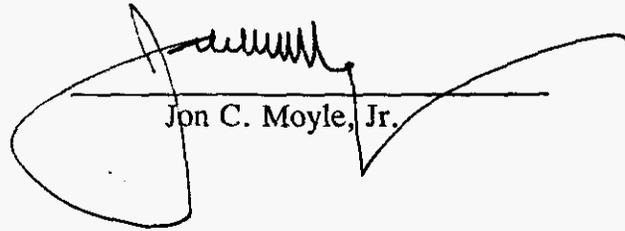
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished this 24th day of May, 2000 by U.S. Mail to Nancy White, General Counsel, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, FL 32301, Michael P. Goggin, BellSouth Telecommunications, Inc., Museum Tower, Suite 1910, 150 West Flagler Street, Miami, FL 33130, Phil Carver, BellSouth Telecommunications, Inc., BellSouth Center, Suite 4300, 675 W. Peachtree Street, N.E., Atlanta, GA 30375, and Beth Keating, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399.



Jon C. Moyle, Jr.