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September 30, 1996

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Rm. 110
Tallahassee, Florida 32399-0850

RE: Docket No. ~~960658-TP~~
InterLATA Prescription

Dear Mrs. Bayo:

Enclosed please find an original and fifteen copies of BellSouth Telecommunication, Inc.'s Motion To Strike, 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 to the parties shown on the attached Certificate of Service.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- EVV _____
- GTG _____
- HTH _____
- WAS _____

Sincerely yours,

J. Phillip Carver (BJ)
J. Phillip Carver

Enclosures

cc: All Parties of Record
5 R. G. Beatty
A. M. Lombardo
William J. Ellenberg II

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

10480 SEP 30 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida)
Interexchange Carriers)
Association, MCI Telecommunications)
Corporation, and AT&T Communica tions)
of the Southern States, Inc., against)
BellSouth Telecommunications, Inc.)
_____)

Docket No. 960658-TP

Filed: September 30, 1996

MOTION TO STRIKE

BELLSOUTH TELECOMMUNICATIONS, INC., ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its Motion to Strike Portions of the Prehearing Statement of the Joint Complainants¹ and of the rebuttal testimony of Sandra Seay, and states in support thereof the following:

1. On August 6, 1996, the parties attended a noticed meeting with the Staff of the Florida Public Service Commission ("Commission") for the purpose of identifying the issues in this proceeding. At the conclusion of this meeting, seven issues had been identified. These were subsequently included as Appendix A to the Order Establishing Procedure issued August 13, 1996. (Order No. PSC-96-1044-PCO-TP). The Order establishing procedure also provided that direct testimony and exhibits were to be filed September 3, 1996, and rebuttal testimony and exhibits were to be filed September 17, 1996.

¹ The Joint Complainants are Florida Interexchange Carriers Association ("FIXCA"), MCI Telecommunications Corporation ("MCI"), and AT&T Communications of the Southern States, Inc. ("AT&T")

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2. On September 17, 1996, the Joint Complainants filed both their Prehearing statement and the rebuttal testimony of Sandra Seay. In their Prehearing statement, the Joint Complainants set forth the seven properly identified issues to this docket and stated their position as to each. However, the Joint Complainants added an eighth issue that had not been identified through the process described above, which they designated as a mixed question of fact and policy. The Joint Complainants further listed two additional issues that had not previously been listed and identified these as legal issues. Thus, the Joint Complainants have attempted to improperly inject into this proceeding three issues that they did not raise previously, and that have not been approved by the prehearing officer or otherwise properly made a part of this proceeding.

3. At the same time, the Joint Complainants filed in the testimony of their witness, Ms. Seay, a question and answer (pp. 8, 9 and 10) that appears to relate to its new issue number 8. (Seay Testimony, pp. 8-10) This testimony states on its face that it relates to matters that are not raised in the testimony of any BellSouth witnesses. (Seay Testimony, p.10, lines 8-10) The Joint Complainants attempt to improperly add issues to this hearing as described above should not be allowed. Neither should the Joint Complainants be allowed to improperly inject into their witness' rebuttal testimony a discussion that is outside of the proper scope of this proceeding as defined by the identified issues and that, further, is not even proper rebuttal testimony.

4. The process whereby issues are identified at the beginning of the prehearing period and approved by the prehearing officer obviously serves a purpose. This process gives each party the opportunity to know what the issues in the case are and to address these issues appropriately through testimony. Likewise, the standards that apply to limit rebuttal testimony to matters that are truly offered in rebuttal are equally important to an orderly and fair proceeding. This process ensures that issues are raised timely and fairly, and that neither party is subjected to surprise.

5. The Joint Complainants have ignored these procedural requirements in a manner that is manifestly unfair and that should not be allowed. Again, the Joint Complainants have added to the prehearing statement three issues that are not identified in the order establishing procedure. They have attempted to do so under the portions of their brief in which they identify questions of fact, policy and of law. While it is true that a party may identify issues as falling into one of these three categories, the clear prescription of the order establishing procedure is that parties are to categorize the existing issues, not use this language as a pretense to attempt to improperly add issues that are not otherwise part of the proceedings.

6. Also, issues can be added until the time the Prehearing Order is issued, but issues must be added in the appropriate manner. Put differently, it would make no sense to require parties to go through the process of identifying issues and having them approved by the prehearing officer, only to allow the

parties later to go beyond the appropriately identified issues and add other issues as they see fit. To the contrary, if a party believes that there is some legitimate reason to add an issue after the issue identification process is complete, then it should file a motion to request leave from the Prehearing Officer to do so. This would allow the Prehearing Officer the opportunity to consider whether there is a basis to add issues, whether doing so will prejudice other parties, and whether there are any other pertinent concerns.

7. The Joint Complainants have simply ignored the entire issue identification process and unilaterally added extra issues. Likewise, Joint Complainants have taken the liberty of inserting into the ostensible rebuttal testimony of their witness, a discussion that is not only related to an issue that is not properly identified, but also obviously not offered to rebut the testimony of any BellSouth witness. As stated previously, Ms. Seay specifically states in her testimony that her discussion of the improperly added issue number 8 is not in response to anything raised in the testimony of BellSouth witnesses.

8. Moreover, if Ms. Seay's above-referenced testimony is related to the proper issues in this docket, that is one thing. However, FIXCA appears to take the position that this testimony is outside of the scope of this proceeding, which is precisely the reason that FIXCA has added a new issue (albeit improperly). If a party desires to add testimony that is outside of the scope of the proceeding, then (just as with an amendment to the issues list) a party should file a motion requesting leave of the Prehearing Officer to do so. Instead, the

Joint Complainants have made an affirmative election to ignore the applicable rules and place into their witnesses' rebuttal testimony improper direct testimony regarding a matter that even they appear to consider to be outside of the proper scope of this proceeding, and to which, consequently, BellSouth does not now have an opportunity to respond.

9. If the Joint Complainants had properly requested leave to amend the issue list and testimony, then it would have been appropriate for the Prehearing Officer to consider the effect of granting this request and to weigh the equities of the matter. Instead, the Joint Complainants have simply taken it upon themselves to attempt unilaterally to force into this proceeding issues that do not belong. The Joint Complainants have elected to violate the procedural Order in this case and the established procedures of this Commission. They have absolutely no excuse for this violation. Given this, the Commission should not now consider whether an amendment to the issues list should be allowed. Instead, the proper action is to strike immediately the three issues that the Joint Complainants have added in their Prehearing Statement as well as the "rebuttal" testimony of Ms. Seay on matters outside of the proper scope of this proceeding (i.e., page 8, line 19 through page 10, line 6).

CERTIFICATE OF SERVICE
Docket Nos. 930330-TP and 960658-TP

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S.

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J. Phillip Carver (02)
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WHEREFORE, BellSouth respectfully requests the entry of an order granting its motion to strike as set forth above.

Respectfully submitted this 30th day of September, 1996.

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