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RECORDS AND
REPORTING

March 3, 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 No. 990874-TP (US LEC Complaint)

Dear Ms. Bayó:

Enclosed please find the original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to File Surrebuttal Testimony or, in the alternative, to Strike, 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,

Bennett L. Ross

Bennett L. Ross

(RM)

- AFA _____
- APP _____
- CAF _____
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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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DOCUMENT NUMBER-DATE

02881 MAR-38

FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Complaint of US LEC of Florida, Inc. against)
 BellSouth Telecommunications, Inc. for)
 Breach of Terms of Florida Interconnection) Docket No. 990874-TP
 Agreement under Sections 251 and 252 of the)
 Telecommunications Act of 1996, and Request)
 For Relief) Filed: March 3, 2000
)

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO FILE
SURREBUTTAL TESTIMONY OR, IN THE ALTERNATIVE, TO STRIKE**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Commission for leave to file the surrebuttal testimony of Robert C. Scheye in order to respond to statements raised for the first time in the "rebuttal" testimony of Wanda Montano filed on February 18, 2000 by US LEC of Florida, Inc. ("US LEC"). A copy of Mr. Scheye's surrebuttal testimony is attached. In the alternative, BellSouth moves to strike Ms. Montano's "rebuttal" testimony. As grounds for this Motion, BellSouth states as follows:

1. On February 18, 2000 US LEC filed "rebuttal" testimony of Wanda Montano. As set forth in her testimony, Ms. Montano joined US LEC in January 2000, which means that she was not even employed by US LEC when US LEC and BellSouth executed the three (3) interconnection agreements at issue in this proceeding. While Ms. Montano's testimony reflects that she previously worked for Teleport Communications Group ("TCG") and was involved in negotiating TCG's interconnection agreement with BellSouth in the spring of 1996, there is nothing in her testimony which indicates that Ms. Montano has any first hand knowledge of the specific issues in this proceeding.

2. According to Ms. Montano, the purported purpose of her testimony is to “rebut testimony from Mr. Jerry Hendrix, at page 14 of his direct testimony, suggesting that BellSouth had no reason to know that US LEC, or any other CLEC, for that matter, ‘considered calls bound for Internet service providers (“ISPs”) to be local traffic’ under an interconnection agreement and eligible for reciprocal compensation under the terms of interconnection agreements that were being negotiated in the summer of 1996, which is when US LEC was negotiating its first interconnection agreement with BellSouth.” Rebuttal Testimony of Wanda Montano, p. 2. However, the statements that Ms. Montano is allegedly rebutting appear nowhere in Mr. Hendrix’s direct testimony.

3. Specifically at pages 13 and 14 of his direct testimony, Mr. Hendrix is discussing the negotiations between BellSouth and US LEC as they relate to the definition of local traffic in the parties’ interconnection agreements. According to Mr. Hendrix, US LEC did not take issue with BellSouth’s definition of local traffic or propose a different definition during negotiations. Mr. Hendrix also testifies that US LEC did not indicate that it considered ISP-bound traffic to be local traffic. Furthermore, according to Mr. Hendrix, “Considering the FCC’s rules in effect at the time of the negotiation and execution of the Agreement dating back to 1983, BellSouth would have had no reason to consider ISP-bound traffic to be anything other than jurisdictionally interstate traffic.” Mr. Hendrix’s direct testimony on page 14, which Ms. Montano is allegedly rebutting, only relates to US LEC; it never discusses what ALECs other than US LEC may have thought about ISP-traffic. Because Mr. Hendrix’s direct testimony on page 14 relates to BellSouth’s negotiations with US LEC and the reasons BellSouth

considered ISP-bound traffic to be interstate, Ms. Montano's testimony about TCG's negotiations with BellSouth does not rebut Mr. Hendrix's testimony.

4. US LEC apparently wants Ms. Montano to testify about the TCG negotiations as evidence that BellSouth allegedly knew that at least TCG purportedly considered ISP-bound traffic to be local subject to the payment of reciprocal compensation. Even assuming such testimony were relevant to US LEC, US LEC should have presented Ms. Montano's testimony as part of its direct case. Had US LEC done so, BellSouth would have filed rebuttal testimony about the TCG negotiations, since, as one would imagine, BellSouth has a different recollection of the TCG negotiations than does Ms. Montano. By electing to present Ms. Montano's testimony through rebuttal, however, US LEC is improperly attempting to prevent the Commission from hearing both sides of the story. BellSouth should be entitled to rebut Ms. Montano's testimony that should properly have been submitted, if at all, in direct testimony.

5. In the alternative, BellSouth moves that the Commission strike Ms. Montano's "rebuttal" testimony. As set forth above, her testimony is improper in that it does not rebut anything in Mr. Hendrix's direct testimony. Furthermore, her recollection of BellSouth's negotiations with TCG has absolutely no relevance to the issues before the Commission in this proceeding, which involve the interpretation of three interconnection agreements between BellSouth and US LEC, all of which predate Ms. Montano's employment with US LEC. Allowing Ms. Montano to testify will bog down the Commission in the details of negotiations between BellSouth and a different ALEC culminating in the execution of a different interconnection agreement that have nothing to do with the three agreements that are the subject of US LEC's complaint.

For the foregoing reasons, the Commission should grant BellSouth's Motion for leave to file the surrebuttal of Robert C. Scheye, which is attached hereto, or, in the alternative, to strike Ms. Montano's "rebuttal" testimony.

Respectfully submitted, this 3rd day of March, 2000.

Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 990874-TP (US LEC Complaint)

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


U.S. Mail this 3rd day of March, 2000 to the following:

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