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OFFICE OF GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Enterprises, Inc. v. FCC & USA, No. 94-1707. Filing of a new Petition for Review in the United States Court of Appeals for the District of Columbia Circuit.

DATE: November 22, 1994

Docket No(s). GEN 90-314

File No(s). RM-7140, RM-7175, RM-7618

This is to advise you that on November 17, 1994, BellSouth Corporation, et al., filed a Section 402(a) Petition for Review in the United States Court of Appeals for the D.C. Circuit of the FCC decision: In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services (Third MO&O), FCC 94-265, released October 19, 1995.

Petitioners challenge the Order that modified the table of frequency allocations, the requirements for isochronous devices operating in the 1920-1930 MHz sub-band, the cellular eligibility and the emission limits in the broadband PCS rules and policies.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed this case as No. 94-1707 and the attorneys assigned to handle the litigation are John Ingle and James Carr.

Daniel M. Armstrong

cc: General Counsel
Office of Public Affairs
Shepard's Citations

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CLERK OF THE UNITED
STATES COURT OF APPEALS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BellSouth Corporation, BellSouth Telecommunications,)
Inc., and BellSouth Enterprises, Inc.)

Petitioners,)

v.)

Federal Communications Commission and United States)
of America,)

Respondents.)

94-1707

Case No. _____

PETITION FOR REVIEW

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Enterprises, Inc. (collectively "BellSouth"), pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, hereby petition this Court for review of the Federal Communications Commission's *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Third Memorandum Opinion and Order*, FCC 94-265 (Oct. 19, 1994), 59 Fed. Reg. 55372 (Nov. 7, 1994), reconsidering *Memorandum Opinion and Order*, 9 FCC Rcd. 4957 (1994). A copy of this decision is attached.

The *Memorandum Opinion and Order* amended the spectrum allocation for broadband personal communications services ("PCS"), as well as various aspects of the regulatory structure governing broadband PCS, including ownership and eligibility rules, construction requirements, and technical standards. On reconsideration, the *Third Memorandum Opinion and Order* modified certain aspects of the broadband PCS rules and policies adopted in the *Memorandum Opinion and Order*. Specifically, the Commission modified its cellular attribution rules, certain requirements for isochronous devices, rules governing emission limits, and its Table of Frequency Allocations. Reversal of the *Third Memorandum Opinion and Order* is sought on the grounds that

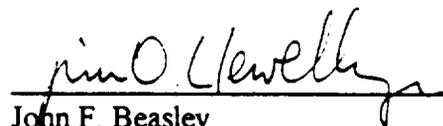
the decision (1) is arbitrary and capacious, (2) lacks substantial evidence, and (3) is otherwise contrary to law. Venue is proper under 28 U.S.C. § 2343.

BellSouth previously petitioned this Court for review of the Commission's *Memorandum Opinion and Order*. That case has been transferred to the United States Court of Appeals for the Sixth Circuit and remains pending before that court. *See BellSouth Corporation v. FCC*, Case No. 94-4113 (6th Cir. appeal docketed Oct. 27, 1994). BellSouth is filing the instant petition for review of the Commission's *Third Memorandum Opinion and Order* in the event that the Sixth Circuit Court of Appeals determines that the *Third Memorandum Opinion and Order* falls outside of the scope of, and is therefore not included within, the appeal currently pending before that court.

Respectfully submitted,

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BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH ENTERPRISES, INC.

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Dated: November 17, 1994