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September 11, 1996

Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Docket No. 960833-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Response to BellSouth Telecommunications Inc.'s Motion to Compel Answers to Its First Set of Interrogatories and Motion For Protective Order.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,

Tracy Hatch

Attachments

cc: Parties of Record

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09685 SEP 11 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T)
Communications of the Southern)
States, Inc., for Arbitration with)
BellSouth Telecommunications, Inc.)
Concerning Interconnection and)
Resale under the Telecommunications)
Act of 1996.)

DOCKET NO. 960833-TP

Filed: September 11, 1996

AT&T'S RESPONSE TO BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO COMPEL ANSWERS TO ITS FIRST SET OF
INTERROGATORIES

AND

AT&T'S MOTION FOR PROTECTIVE ORDER

AT&T Communications of the Southern States, Inc. (AT&T"), pursuant to Rules 25-220.034 and 25-22.035, Florida Administrative Code and Rules 1.340 and 1.380, Florida Rules of Civil Procedure, hereby submits the following response to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Compel Answers to its First Set of Interrogatories.

AT&T requests that the Florida Public Service Commission (the "Commission") deny BellSouth's motion because the interrogatories in question elicit information which is not relevant to the issues properly before the Commission in this proceeding. Under the law, BellSouth is permitted to propound interrogatories to request information only if that information is "relevant to the subject matter of the pending action" or if that information "appears reasonably calculated to lead to admissible evidence." Fla.R.Civ.P.1.280(h)(1); Manatee County v. Estech Gen. Chem. Corp., 402 So. 2d 75, 76 (D. Fla. 1981).

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FPSC-RECORDS/REPORTING

The purpose of this arbitration, conducted pursuant to the federal Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 252, is to resolve open issues between the parties concerning interconnection, resale, and unbundled network elements. Each of those issues addresses how BellSouth's duties under the Act are to be implemented. The interrogatories to which AT&T objected and did not respond¹ seek information that has no bearing upon these issues, and instead appear to challenge whether or not BellSouth must meet its statutory obligations under the Act to foster local telephone exchange market competition. Thus, BellSouth's basis for propounding such interrogatories is fundamentally flawed.

Many of BellSouth's interrogatories seek information regarding AT&T's plans and projections for entering the local market and the demand for service expected. BellSouth's position in its Motion appears to be based on its belief that AT&T is required by the Act to justify and explain its entry into the local exchange market. However, as the provisions of the Act, as well as the FCC's newly released Order and implementing regulations make clear, the purpose of the Act is to promote customer choice and technological innovation through the establishment of robust competition in the local exchange market. To ensure that new entrants' transition into a market traditionally controlled by monopolists in as transparent and rapid a manner as possible, the Act mandates that incumbent local exchange carriers such as BellSouth provide services, network elements, and interconnection under terms, prices and conditions that will enable new entrants to get up-and running at the time of entry. These obligations are in no

¹ BellSouth's Motion ignored the fact that AT&T answered sixteen of the sixty interrogatories to which AT&T objected on August 12, 1996, without waiver of those objections. In addition, because one of the sixteen included a response to an ambiguously drafted interrogatory (number 64), AT&T will supplement its answer, if necessary, based upon the clarification contained in BellSouth's Motion.

way contingent upon a requesting telecommunications carrier justifying or explaining its intent or plan for entry. The ultimate issue in this proceeding is not why or if BellSouth must meet its statutory duties, but simply the particulars of how those duties will be met. Discovery beyond this scope is improper.

An example of how BellSouth inappropriately shifts the focus from the genuine issue of its obligations under the Act is BellSouth's question: "Is the need for AT&T's version of 'operational parity' consistent with its projections of demand for its services once it enters the local exchange market?" (BellSouth Mot. at 4.) AT&T's projections regarding demand for services is not an issue under the Act. BellSouth's obligation to provide operational parity (i.e., providing services for resale that allow consumers to have the same experience as customers of AT&T as they would if they were customers of BellSouth), is absolute and is not conditioned upon AT&T showing that a certain demand exists as justification for requiring parity.

Another example of BellSouth's improper discovery attempt lies in its questions "Has [AT&T's] experience as a reseller been consistent with the experience that it predicts BellSouth will have?" and "Has AT&T ever taken a position contrary to that as a reseller of its own long-distance services?" (BellSouth Mot. at 5.) Beyond the fundamental differences between the local and long-distance markets that renders these inquiries of no value to this Commission, these two questions are completely irrelevant to the issues before the Commission regarding BellSouth's duty, under 47 U.S.C. § 251(c)(4) and its implementing regulations, to sell AT&T any of its services at parity with those provided to BellSouth customers. Accordingly, any discovery of AT&T's reselling experiences in the long distance market is improper.

BellSouth's position that it is entitled to discovery concerning "how AT&T has handled operational and service parity issues when it has resold services" (BellSouth Mot. at 6), is misplaced for the same reasons articulated above. Since information regarding the parity of services resold by AT&T in the long distance market sheds no light on the Congressional mandate that BellSouth must resell its services in the local market, such information falls outside the scope of proper discovery.

BellSouth also challenges AT&T's objections to questions regarding the negotiations. AT&T and BellSouth have been in negotiations since March 4, 1996. The persons who have been negotiating on behalf of AT&T, the information and data that has been the subject of those negotiations, and AT&T's positions during the numerous meetings are well known to BellSouth. To require AT&T to provide this information again and again, especially in light of the fact that this information has been available to BellSouth for over 5 months, is improper for the reasons set forth in AT&T's Objections. Moreover, to the extent that BellSouth seeks information regarding AT&T's good faith during negotiations, under the law "information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings." Krypton Broadcasting Inc. v. MGM PATHE Communications Co., 629 So.2d 852, 854 (Fla. Dist. Ct. App. 1993). Not only was the issue of AT&T's good faith not raised in either AT&T's petition or BellSouth's response thereto, but the list of issues to be decided by this Commission does not include any issue of AT&T's good faith. BellSouth did not raise this issue in the proposed list of issues that it submitted to this Commission nor at any of the issue identification conferences. Thus, because good faith is not before the Commission, such discovery is improper.

In sum, none of the interrogatories objected to by AT&T seek any information pertaining to the issues before the Commission in this proceeding. Therefore the interrogatories at issue seek information that is not discoverable under the law.

Section 90.506, Florida Statutes, provides that a person has a privilege to refuse to disclose a trade secret. The scope of trade secret includes proprietary business information that would be commercially valuable to BellSouth. As noted below, BellSouth has sought such information in many of its interrogatories. Discovery of such information is improper except as provided in Section 90.506. To the extent that BellSouth seeks such information, AT&T moves this Commission to issue a protective order pursuant to Rule 1.280(c)(7), Florida Rules of Civil Procedure directing that discovery not be had.

ARGUMENT REGARDING SPECIFIC INTERROGATORIES

Interrogatory No. 1

Interrogatory No. 1 seeks estimates of demand for services that AT&T intends to resell broken down by number of residence and business lines, accounts and average revenue per minute. As noted above Section 251(c)(4) requires that BellSouth offer for resale services that it provides to its own customers. There is no place in the Act that contemplates a requirement that a requesting ALEC demonstrate that it will cross some threshold of demand in order to qualify to purchase any such service for resell. The number of access lines that AT&T projects to be sold is not related in any way to any issue identified in this proceeding. The number of accounts and the average revenue per minute is even more remote from the identified issues. BellSouth's suggestion that AT&T's projections of demand are somehow relevant to AT&T's request for operational parity is grossly misplaced. BellSouth is apparently suggesting that if there is not

enough demand for the services AT&T will be reselling, then AT&T does not have a "need" and is not, therefore, entitled to operational parity. Nothing in the Act, the Order, the Rules or in the issues identified in this proceeding supports such a notion.

AT&T's request for operational parity is based on its belief that the customers of AT&T are entitled to the same level and quality of service as BellSouth provides to its customers; anything less is to relegate all ALEC customers to second class status. Moreover, the Act in no way contemplates or endorses the notion that there should be a demand threshold which must be crossed before a "need" for parity exists and fair treatment will be accorded to AT&T's customers. As to AT&T's "strident" demands for operational parity upon entering the local market, whether AT&T is able to resell to one customer or a million, operational parity is a necessary prerequisite to establish fair and equitable treatment to AT&T's customers.

As shown, the information sought by BellSouth in this interrogatory is in no way relevant to the issues in this case. Moreover, it is clear that this interrogatory is carefully calculated to elicit from AT&T the essential basis of its business plan to enter the local market. The nature and extent of this information is extremely sensitive proprietary business information that is privileged pursuant to the trade secrets privilege created by Section 90.506, Florida Statutes. Finally, it should be noted that, notwithstanding the above objections, AT&T, in the spirit of negotiation, provided to BellSouth during the course of negotiations, extensive projected demand information for resold services as well as unbundled elements. See Tab 329, Volume XVI of AT&T's supporting documentation filed July, 17, 1996. To produce the information yet again for BellSouth is the epitome of burdensome and oppressive.

Interrogatory No. 2

BellSouth's arguments regarding this interrogatory suffer from the same flaws as those made for No. 1. The general arguments set forth above as well as the arguments set forth in AT&T's response regarding Interrogatory No. 1 are included herein by reference.

Interrogatory No. 7

See response to Interrogatory No. 2.

Interrogatory No. 10

See response to Interrogatory No. 2.

Interrogatory No. 40

AT&T responded to this interrogatory. BellSouth's Motion does not seek clarification or further response.

Interrogatory No. 11

To the extent that AT&T purchases any services from BellSouth, BellSouth has the information it seeks within its possession. To the extent that AT&T purchases any services from any other LEC, such information is not relevant to any issue in this proceeding. The scope of this proceeding is, *inter alia*, to determine BellSouth's obligations under the Act, the FCC's Order and the Rules to resell its services. Further, nothing sought in this interrogatory is related to the calculation of the avoided cost discount mandated by the Act or the FCC's Order. This information is also proprietary business information concerning AT&T's business relations with other LECs which is not relevant to this proceeding and is otherwise protected by the trade secret privilege.

Interrogatory 12

See response to Interrogatory No. 11.

Interrogatory 13(d)

AT&T responded to this Interrogatory. BellSouth has not mentioned or sought clarification or asked for further information.

Interrogatory 14(d)

AT&T responded to this request noting that to the extent that the information sought is a matter of public record, BellSouth may acquire such information through its own efforts. In addition, AT&T's plans to purchase local telecommunications services in other jurisdictions as well as its strategies in pursuing such plans is not relevant to any of the issues identified in this proceeding. This proceeding seeks a determination of BellSouth's obligations under the Act and the FCC's Order implementing the Act. Further, this interrogatory seeks information that is privileged pursuant to Section 90.506, Florida Statutes.

Interrogatory 17

The information sought is not within the scope of this proceeding. The scope of this proceeding is, *inter alia*, to determine the BellSouth's avoided costs pursuant to the Act and the FCC's implementation Order. AT&T's experience in the long distance market is not relevant to the requirements of the Act and the FCC's Order to establish an avoided cost discount for purposes of resale of BellSouth. BellSouth appears to be suggesting that there should be some sort of symmetrical sort of regulatory treatment for AT&T before the requirements of the Act and the FCC's Order may be imposed on BellSouth. As noted above neither the Act nor the FCC's Order contemplate, let alone impose, any sort of threshold test prior to requiring BellSouth to fulfill the Act's clear requirements. BellSouth's attempt to create such a test to justify irrelevant requests for information is improper. Moreover, BellSouth continues to attempt

to delve into the operations of AT&T in pursuit of information that is protected as a trade secret protected by Section 90.506, Florida Statutes.

Interrogatory 18

See response regarding Interrogatory 17.

Interrogatory 20

See response regarding Interrogatory 17.

Interrogatory 21

Leaving aside the issue of redundancy, not only is the information requested beyond the scope of this proceeding as noted above, this request is the epitome of overbroad and burdensome. Moreover, it is the clearest example yet of BellSouth's persistent attempts to obtain AT&T's fundamental business plans which are not relevant to any issue in this proceeding as well as privileged and protected by Section 90.506, Florida Statutes.

Interrogatory 46

See Response regarding Interrogatory 21.

Interrogatory 54 and 55

See response regarding Interrogatory 17. The scope of this proceeding is set forth by the issues identified and by the Act and the FCC's Order. AT&T's business practices are not relevant to the determination of BellSouth's obligations under the Act and the FCC's Order.

Interrogatory 60

See Response to Interrogatory 17. AT&T's position and support regarding resale discounts is set forth in its testimony, exhibits, petition and supporting documentation filed in

this proceeding. To the extent BellSouth seeks AT&T's litigation theories and strategies, this interrogatory is another blatant attempt to delve into privileged material.

Interrogatory 61

AT&T responded to Interrogatory 61. BellSouth has not mentioned nor sought either clarification of AT&T's response or further explanation.

Interrogatory 62

AT&T responded to Interrogatory 62. BellSouth has not mentioned nor sought either clarification of AT&T's response or further explanation.

Interrogatory 68 and 69

The information sought is not within the scope of this proceeding. The scope of this proceeding is, *inter alia*, to require BellSouth to resell its services in accordance with the Act and the FCC's Order and Rules. AT&T's experience in the long distance market is not relevant to the requirements of the Act and the FCC's Order that require BellSouth to resell each of its services that are provided on a retail basis. BellSouth appears to be again suggesting that there should be some sort of symmetrical sort of regulatory treatment for AT&T before the requirements of the Act and the FCC's Order may be imposed on BellSouth. As noted above neither the Act nor the FCC's Order contemplates, let alone imposes, any sort of threshold test prior to requiring BellSouth to fulfill the Act's clear requirements. BellSouth's attempt to create such a test to justify irrelevant requests for information is improper. Moreover, BellSouth continues to attempt to delve into the operations of AT&T in pursuit of information that is protected as a trade secret protected by Section 90.506, Florida Statutes.

Interrogatories 70 and 71

See response regarding Interrogatory No. 68.

Interrogatory 93

See response regarding Interrogatory No. 68. Whether AT&T can resell any service at a profit is not related to the determination of the avoided cost discount as required by the Act and the FCC's Order. BellSouth continues to persist in seeking AT&T's internal proprietary business information that is irrelevant to this proceeding and privileged as a trade secret under Section 90.506, Florida Statutes.

Interrogatories No. 22-24, 26, 28, 32-39, 41, 42

Generally with respect to these interrogatories, the information sought is not in any way relevant to any of the issues identified in this proceeding. As noted above, neither AT&T in its petition nor BellSouth in its response made any allegations regarding a lack of good faith negotiations. Moreover, no issue has been identified in this proceeding alleging a lack of good faith. BellSouth's fishing expedition for information related to an issue that does not exist should not be condoned.

No. 22 - The name or names of any individuals participating in the drafting of AT&T's proposed Interconnection Agreement are in no way relevant to any issue identified in this proceeding. Moreover, this interrogatory also seeks information that is subject to the attorney/client and work product privileges.

No. 23 - *It is more than a little bit difficult to imagine how the date and location of the drafting of AT&T's proposed Interconnection Agreement or its arrival in any location is relevant or reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Discovery of this sort is clearly burdensome bordering on harassing.*

No. 24 - See responses to Nos. 22 and 23.

No. 26 - See responses to Nos. 22 and 23.

No. 28 - AT&T responded to Interrogatory 28. BellSouth has not mentioned or sought either clarification of AT&T's response or further explanation. More importantly, BellSouth strains credulity in attempting to argue that any mediation in another state or any information regarding such mediation is somehow relevant to any matter within the scope of this proceeding.

No. 29 - Notwithstanding the obvious redundancy with No. 26, see response to Nos. 22, 23 and 28.

Nos. 30-36 - See responses to Nos. 22, 23 and 28.

No. 37 - AT&T responded to this interrogatory. BellSouth has not mentioned or sought either clarification or further explanation. In addition, it is more than a little difficult to see how the information sought regarding mediation in another state not involving AT&T Communications of the Southern States, Inc. is in any way relevant to any issue in this proceeding or remotely calculated to lead to the discovery of admissible evidence. Notwithstanding any lack of relevance, this interrogatory seeks information protected by the attorney/client and work product privileges.

No. 38 - See response to No 37.

No. 39 - See response to No 37.

No. 41 and 42 - This interrogatory is another classic case of being overbroad, burdensome, oppressive and particularly not relevant. Moreover, this interrogatory seeks information protected by the attorney/client and work product privileges.

Interrogatories 47, 48, 50 and 51

The information sought is not within the scope of this proceeding. The scope of this proceeding is, *inter alia*, to determine the obligations of BellSouth pursuant to the Act, the FCC's Order and the rules implementing the Act. AT&T's business practices regarding branding are not relevant to any issue in this proceeding. BellSouth is again suggesting the imposition of some sort of symmetrical regulatory treatment for AT&T before the requirements of the Act, the FCC's order and the rules implementing the Act, may be imposed on BellSouth. As noted above, nothing in the Act, the Order or the Rules contemplates any sort of threshold test prior to requiring BellSouth to fulfill the Act's clear requirements. BellSouth's attempt to create such a test to justify irrelevant requests for information is improper. BellSouth continues to attempt to delve into the operations of AT&T in pursuit of information that is protected as a trade secret by Section 90.506.

Interrogatory 49

The information sought is not within the scope of this proceeding. The scope of this proceeding is, *inter alia*, to determine the obligations of BellSouth pursuant to the Act, the FCC's Order and the rules implementing the Act. AT&T's business practices regarding licensing agreements for AT&T's services by resellers are not relevant to any issue in this proceeding. BellSouth is again suggesting the imposition of some sort of symmetrical regulatory treatment for AT&T before the requirements of the Act, the FCC's order and the rules implementing the Act, may be imposed on BellSouth. As noted above, nothing in the Act, the Order or the Rules contemplates any sort of threshold test prior to requiring BellSouth to fulfill the Act's clear requirements. BellSouth's attempt to create such a test to justify irrelevant requests for

information is improper. BellSouth continues to attempt to improperly delve into the operations of AT&T in pursuit of information that is protected as a trade secret by Section 90.506.

Interrogatory 52 and 53

The information sought is not within the scope of this proceeding. The scope of this proceeding is, *inter alia*, to determine the obligations of BellSouth pursuant to the Act, the FCC's Order and the rules implementing the Act. AT&T's business practices regarding operational interfaces for resellers are not relevant to any issue in this proceeding. BellSouth is again suggesting the imposition of some sort of symmetrical regulatory treatment for AT&T before the requirements of the Act, the FCC's order and the rules implementing the Act, may be imposed on BellSouth. As noted above, nothing in the Act, the Order or the Rules contemplates any sort of threshold test prior to requiring BellSouth to fulfill the Act's clear requirements. BellSouth's attempt to create such a test to justify irrelevant requests for information is improper. BellSouth continues to attempt to improperly delve into the operations of AT&T in pursuit of information that is protected as a trade secret by Section 90.506.

Interrogatory 64

AT&T responded this request to the best of its ability given the ambiguous verbiage of the request. Recognizing the potential for incorrect interpretation of the request, AT&T further asked for clarification in its initial response to this request. BellSouth now moves to compel a response to an ambiguous request while chastising AT&T for being "obtuse" because of AT&T's failure to divine that "network interface" really means "network interface device." The location of each of AT&T's network interface devices, if any, is not relevant to any issue in this proceeding. The location of AT&T's network interface devices is extremely sensitive proprietary

business information which in essence would constitute a roadmap of the extent of AT&T's ability to compete on a facilities basis. BellSouth continues to attempt to improperly delve into the operations of AT&T in pursuit of information that is protected as a trade secret by Section 90.506.

Interrogatories 72, 73, 74, 75, 76, 77, 78 and 79

AT&T responded to these interrogatories. BellSouth has not mentioned or sought either clarification of AT&T's response or further explanation.

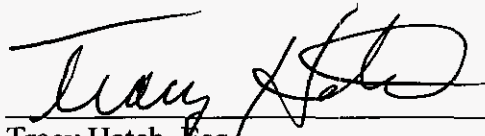
Interrogatory 102

AT&T submits that BellSouth possesses within its own records each end office and tandem to which AT&T is connected as well as the type of facility employed. Production of information that BellSouth already possesses is burdensome and oppressive. In addition, the information sought is not within the scope of any issue in this proceeding. The scope of this proceeding is, *inter alia*, to determine the obligations of BellSouth pursuant to the Act, the FCC's Order and the rules implementing the Act. The nature and deployment of AT&T's network transmission facilities is not relevant to any issue in this proceeding. BellSouth again is suggesting that there is some sort of threshold need that must be established before the requirements of the Act, the FCC's order and the rules implementing the Act, may be imposed on BellSouth. As noted above, nothing in the Act, the Order or the Rules contemplates any sort of threshold test prior to requiring BellSouth to fulfill the Act's clear requirements. BellSouth's attempt to create such a test to justify irrelevant requests for information is improper. Finally, the nature and deployment of AT&T's network transmission facilities is extremely sensitive proprietary business information which in essence would constitute a roadmap of AT&T's ability

to compete on a facilities basis. BellSouth continues to attempt to improperly delve into the operations of AT&T in pursuit of information that is protected as a trade secret by Section 90.506.

Wherefore, for the reasons stated above, AT&T respectfully requests the Commission deny BellSouth's motion to compel and to grant AT&T's Motion for Protective Order denying discovery of information subject to the trade secrets privilege.

Respectfully submitted this 11th day of September, 1996.



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**ATTORNEYS FOR AT&T
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SOUTHERN STATES, INC.**

CERTIFICATE OF SERVICE

DOCKET NOS. 960833-TP, 960846-TP and 960916-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 11th day of September, 1996:

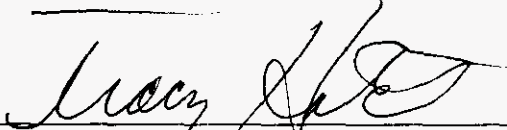
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