

September 26, 1996

**VIA HAND DELIVERY**

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

Re: Docket No. 960822-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket is an original and fifteen copies of AT&T's Motion to Compel Answers by BellSouth Telecommunications, Inc. to AT&T's First Set of Interrogatories and Requests for Production of Documents.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return a copy to me. Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,

*Robin D. Dunson*  
Robin D. Dunson

ACK  \_\_\_\_\_  
AFA \_\_\_\_\_  
APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CML  \_\_\_\_\_  
CTR \_\_\_\_\_  
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OPC \_\_\_\_\_  
ROK \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
WAS \_\_\_\_\_  
OTH \_\_\_\_\_

Attachments

cc: Michael W. Tye, Esq.  
Tracy Hatch, Esq.  
Ms. Doris Franklin  
Mr. J. P. Spooner, Jr.  
All Parties of Record

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EPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

10384 SEP 26 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
FILE COPY

In re: Petitions by AT&T Communications of the )  
Southern States, Inc., MCI Telecommunications )  
Corporation, MCIMetro Access Transmission )  
Services, Inc., American Communications Services, )  
Inc. and American Communications Services of )  
Jacksonville, Inc. for arbitration of certain terms )  
and conditions of a proposed agreement with )  
BellSouth Telecommunications, Inc. concerning )  
interconnection and resale under the )  
Telecommunications Act of 1996. )

DOCKET NO. 960833-TP  
DOCKET NO. 960846-TP  
DOCKET NO. 960916-TP

FILED: September 26, 1996

**AT&T'S MOTION TO COMPEL ANSWERS BY BELLSOUTH  
TELECOMMUNICATIONS, INC. TO AT&T'S FIRST SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

AT&T Communications of the Southern States, Inc. ("AT&T"), pursuant to Florida Rules of Civil Procedure 1.280 and 1.350, hereby submits the following motion to compel BellSouth Telecommunications, Inc. ("BellSouth") to respond to AT&T's First Set of Interrogatories and Requests for Production of Documents.

AT&T requests that the Florida Public Service Commission (the "Commission") order BellSouth to answer AT&T's interrogatories and requests for production fully and completely. BellSouth has filed numerous objections to AT&T's discovery requests, and those answers which BellSouth has submitted are evasive or incomplete. Florida law permits AT&T to request discovery relevant to the subject matter of the pending action or to seek information that "appears reasonably calculated to lead to the discovery of admissible evidence." Fla.R.Civ.P. 1.280(b)(1). Because BellSouth has failed to answer, and in some cases has failed to answer completely, AT&T's discovery requests, AT&T is

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

hereby requesting that this Commission order BellSouth to answer AT&T's discovery requests in compliance with Florida law. Fla.R.Civ.P. 1.380(a).

This arbitration seeks to resolve issues between the parties concerning interconnection, resale and unbundled network elements pursuant to the Telecommunications Act of 1996 (the "Act"). 47 U.S.C. § 252. The Act mandates that BellSouth, as an incumbent local exchange carrier, provide access to its services, network elements and facilities for new local market entrants such as AT&T. BellSouth and AT&T have engaged in negotiations to reach an agreement on terms and pricing for BellSouth's services, network elements and facilities, and have requested this Commission to arbitrate those issues which remain unresolved.

In order to support its positions on terms and pricing put forward in the arbitration, AT&T submitted interrogatories and requests for production of documents to BellSouth on August 20, 1996. On August 30, 1996, BellSouth filed objections to AT&T's interrogatories and requests for production with the Commission. On September 9, 1996, BellSouth filed responses to AT&T's interrogatories and requests for production of documents, and supplemental objections to AT&T's requests for production. The answers submitted by BellSouth fail to provide adequate responses to AT&T's discovery requests. Additionally, BellSouth's objections fall short of the standards established under Florida law to support a responsive or complete discovery response.

The Florida Rules of Civil Procedure provide that a party "may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action." Fla.R.Civ.P. 1.280(b)(1); see also Manatee County v. Estech Gen. Chems.

Corp., 402 So.2d 75, 76 (Fla. Dist. Ct. App. 1980). Discovery also is permissible “where the information sought is reasonably calculated to lead to the discovery of admissible evidence.” Simons v. Jorg, 384 So.2d 1362, 1363 (Fla. Dist. Ct. App. 1980). AT&T served on BellSouth interrogatories and requests for production of documents relevant to information regarding the terms, prices and conditions of services, network elements and interconnection for the local telecommunications market. Such discovery would provide AT&T with the information necessary to determine the nature and extent of BellSouth’s services and facilities in the local market and allow AT&T to formulate its position as a new entrant. BellSouth, however, has responded to these requests with general objections and incomplete answers in violation of the Florida discovery rules.

Florida law recognizes an exception which limits or prohibits the discovery of relevant, non-privileged information in order to prevent “annoyance, embarrassment, oppression or undue burden or expense.” Fla.R.Civ.P. 1.280(c); see also Syken v. Elkins, 644 So.2d 539, 544 (Fla. Dist. Ct. App. 1994). The party seeking to avoid or modify discovery must demonstrate good cause. Fla.R.Civ.P. 1.280(c). “In deciding whether good cause has been shown, it is necessary to balance the opposing interests that would be served by the granting or denying of discovery.” Syken, 644 So.2d at 544. BellSouth fails to demonstrate “good cause” sufficient to warrant the avoidance of AT&T’s discovery requests. BellSouth merely provides groundless objections without providing the support necessary to substantiate them. Absent such a showing by BellSouth, this Commission must order BellSouth to answer completely each interrogatory propounded by AT&T and to produce all documents responsive to AT&T’s request.

The interrogatories propounded upon BellSouth by AT&T seek to obtain data necessary for AT&T to negotiate fair and reasonable terms for the purchase of BellSouth's network elements, interconnection and retail services as provided under the Act. The appropriateness of the pricing methodology relied upon by BellSouth and the resulting proposed rates are a primary issue being arbitrated in this proceeding. Since the interrogatories at issue were designed to elicit information that pertains directly to BellSouth's pricing methodology and the component parts included in that methodology, the interrogatories objected to by BellSouth are not only relevant, but are crucial to the resolution of issues at the center of this proceeding.

### **SPECIFIC OBJECTIONS TO INTERROGATORIES**

#### **Objection to Interrogatory No. 1**

AT&T requested the scope and market size of subscribers to all grandfathered and obsolete services. BellSouth objected on the grounds that the information sought concerned areas outside of BellSouth's regulated intrastate operations in Florida, and that to produce such information would be unduly burdensome and oppressive. Despite BellSouth's objection, it provided a document that seemingly reflects the number of customers that subscribe to the obsolete service offerings in Florida. However, BellSouth failed to answer with regard to grandfathered services.

AT&T did not limit its request to Florida due to the concern that grandfathering services can ultimately be used as a tool to isolate a segment of the market from the competition envisioned by the Federal Telecommunications Act of 1996. AT&T must be able to analyze and compare the number of subscribers of grandfathered services in the

various local markets in order to gain a better understanding of the percentage of revenues such subscribers make up for BellSouth. This information goes directly to the heart of which services are to be made available for resale in order to ensure broad range consumer choice.

With respect to BellSouth's unduly burdensome and oppressive objection, BellSouth fails to show good cause for withholding relevant information, thereby making the objection deficient. With regard to the information produced, it is incomplete and fails to provide AT&T with the information requested and therefore needs to be supplemented.

Objection to Interrogatory No. 2

AT&T requested that BellSouth provide specific market information pertaining to its existing Contract Service Arrangements, individual case basis arrangements and special assemblies. Such information has a direct bearing on the issue of which services are to be made available for resale. BellSouth has intimated to AT&T during the course of the negotiations that it plans to exclude from resale various contractual arrangements with customers because such arrangements either constitute a competitive response to perceived market threats, or involve supplying a particular customer(s) with services or service components not listed in the general retail tariff.

Given the dangers of excluding services from resale (i.e., closing off entire market segments from competition), it is important that AT&T have knowledge of the particular services to be excluded, as well as the scope and size of the market for such services, in

order to properly evaluate the number of customers BellSouth proposes to isolate from competition.

BellSouth has historically filed the contractual agreements listed above in its local, retail tariffs; therefore, its assertions that the request is vague and ambiguous is unfounded. AT&T merely asks BellSouth to provide information regarding the number of its Florida customers that are currently a party to such agreements.

The fact that BellSouth can assert in its response that the information requested is highly sensitive and unduly burdensome to produce also indicates that BellSouth does in fact have a clear understanding of the information requested by AT&T since it is able to formulate these specific objections. Furthermore, the fact that the information may be highly sensitive is not a justifiable reason for failing to disclose the information to AT&T. Since BellSouth has not classified this information as being either proprietary or confidential, for which the confidentiality agreement of April 2, 1996 serves to protect, its objection on the grounds of sensitive information is deficient.

#### Objection to Interrogatory No. 3

AT&T requested information pertaining to the recurring and nonrecurring costs incurred by BellSouth in providing the items listed in Document Request No. 6 as a residential or business service. BellSouth objects to this Interrogatory on the grounds that the request "applies to areas other than BellSouth's regulated intrastate operations in Florida," and that it "is overly broad, unduly burdensome and oppressive." To the extent that BellSouth has no Florida cost data regarding these costs, similar data generated in

another jurisdiction remains relevant to what costs are avoided/avoidable by BellSouth in providing the particular items to AT&T.

One issue to be addressed in this arbitration is the appropriate wholesale discount to be granted AT&T in the purchase of BellSouth's retail services. To aid AT&T in calculating that figure, AT&T must know what costs are incurred by BellSouth in providing the items listed in Document Request No. 6. This information will allow AT&T to determine what costs are likely to be avoided by BellSouth when selling its retail services at wholesale to AT&T.

Objection to Interrogatory No. 4

AT&T requested BellSouth to provide the current TSLRIC for the designated items provided by BellSouth in each of the states in which BellSouth operates. BellSouth objects to this Interrogatory on the grounds that the request "applies to areas other than BellSouth's regulated intrastate operations in Florida," and that it is "not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding." It is without question that the information requested as it pertains to Florida is relevant to this proceeding. Therefore, at a minimum BellSouth should be required to answer this interrogatory as it pertains to Florida. However, AT&T seeks the same information as it relates to other states because the cost methodologies utilized by BellSouth may differ state-to-state. If there are disparities between the methodologies relied upon in the various states, then that information becomes extremely important to AT&T in evaluating the appropriateness of BellSouth's proposed costs for Florida.



Like the appropriate wholesale discount, the pricing of unbundled network elements is an issue to be arbitrated in this proceeding. In order to determine the reasonableness of BellSouth's proposed rates for network elements, AT&T must be able to analyze the various figures relied upon by BellSouth in reaching its prices. Since TSLRIC is the pricing tool utilized by BellSouth to arrive at its proposed rates, the TSLRIC for the items listed is fundamental to the issue of appropriate rates.

Objection to Interrogatory Nos. 7 and 43a

BellSouth has objected to the information sought in Interrogatory Nos. 7 and 43a based on "some of the information requested [being] proprietary." This objection is groundless in light of the Confidential Agreement entered into by both parties on April 2, 1996. The agreement covers confidential information produced either in "Negotiations" or "Related Pleadings," including arbitrations. BellSouth should have produced this information to AT&T subject to the terms and conditions of the agreement. Since the parties have already created a safeguard to protect the exchange of confidential information, no danger exists that proprietary information will be disclosed by AT&T. Therefore, BellSouth should be ordered to produce the information to AT&T as requested.

Florida law provides an additional procedural mechanism to prevent proprietary information from being introduced into evidence and becoming part of the arbitration record. BellSouth can request confidential classification for its proprietary information which would require BellSouth to prove to the Commission, line-by-line, that the material in fact warrants such classification. Florida Admin. Code § 25-22.006(4). Thereafter,

BellSouth may request confidential treatment of documents containing proprietary information that may be admitted into evidence. Florida Admin. Code § 25-22.006(5)(a).

With respect to information requested that is not proprietary (BellSouth only indicated that “some” of the information requested was proprietary), BellSouth has no justifiable basis for withholding the information. As such, the information must be made available to AT&T in response to the interrogatory.

Objection to Interrogatory No. 15

AT&T requested information regarding BellSouth’s 1995 non-recurring costs and revenues for Florida. BellSouth objects to this Interrogatory on the ground that it is “not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of the proceeding.” It is critical that AT&T receive this information in light of BellSouth’s intent not to apply a discount to nonrecurring costs. AT&T must have access to BellSouth’s nonrecurring costs and revenues in order to assess whether BellSouth’s pricing decision is appropriate.

Objection to Interrogatory Nos. 37, 41, 42 and 49

BellSouth objects to the above Interrogatories, which request cost information, on the grounds that the requests are overly broad, unduly burdensome, oppressive and/or irrelevant. AT&T considers the information requested to be crucial to understanding the costs BellSouth incurs in providing services and network elements in Florida. The information regarding retail services offered by BellSouth at a price below TSLRIC relates to revenue and pricing issues raised by BellSouth.

The information requested in Interrogatory No. 41 regarding BellSouth's most recent rate of return is an element of the TSLRIC calculation that BellSouth has indicated to AT&T that it has performed. Indeed, BellSouth has submitted cost studies in this proceeding which presumably contain a rate of return calculation. Unless BellSouth is willing to admit that its Florida cost studies do not incorporate a rate of return element, the Commission should require BellSouth to produce this information which is clearly relevant and probably easily obtainable. To the extent that such information does not exist with respect to Florida in particular, such information calculated for rates in other states remains relevant for purposes of analyzing BellSouth's proposed prices for Florida.

The information requested in Interrogatory No. 42 concerning the BellSouth unbundled loop cost study, particularly with regard to requests at 42e, 42f and 42g, concern elements to be used by AT&T in Florida and are relevant to its approach to the local market. The cost component information sought in Interrogatory No. 49 is relevant because the information reflects TSLRIC "plus" pricing, inclusive of joint and common costs. Cost and pricing information constitutes a critical component to AT&T's ability to enter the local market, and BellSouth's objections to these requests are mere roadblocks to prohibit new entrants from developing entry plans.

### **INCOMPLETE RESPONSES TO OBJECTIONS**

#### **Response to Interrogatory Nos. 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 28**

BellSouth's responses to the referenced Interrogatories are incomplete and violate the Florida discovery rules which require BellSouth to provide non-privileged information relevant to the issues in the proceeding. Fla.R.Civ.P. 1.280(b)(1). AT&T

asked BellSouth to list and describe specific component costs likely to be relied upon by BellSouth in calculating its prices for network elements, interconnection and retail services. Instead of providing the detailed information requested, BellSouth offered little or no explanation of the component costs identified. BellSouth additionally provided only one or two examples rather than the relevant factors in their entirety. BellSouth's responses are inadequate and must be supplemented.

Response to Interrogatory Nos. 34a, 36, 43b and 43d

Both Interrogatory Nos. 34a and 43b requested BellSouth to provide cost information relevant to its proposed prices for certain unbundled network elements. BellSouth's answers, however, are non-responsive. Instead of providing the information requested, BellSouth merely provided a very generic statement that offered no insight into the factors considered by it in determining its proposed rates. Given BellSouth's failure to respond appropriately, it must supplement its answers to include the information requested.

**SPECIFIC OBJECTIONS TO REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

BellSouth initially made blanket objections to AT&T's requests for production, none of which addressed a specific request. When BellSouth did cite specific requests, it relied on objections based on vagueness, relevancy and overly burdensome. Such objections do not constitute the good cause necessary to alter the manner of discovery, and should be ignored by the Commission.

BellSouth's supplemental objections repeatedly object on grounds that the responses should be limited to Florida. AT&T recognizes that information held or produced by BellSouth for Florida is relevant to this proceeding. However, information relating to BellSouth services, network elements and facilities in other states serves as an important reference point to allow the Commission to measure BellSouth's compliance with its duties under the Telecommunications Act of 1996. BellSouth also seeks to limit the extent of its responses, claiming that such requests are not reasonably calculated to lead to the discovery of admissible evidence. The standard regarding relevant evidence is broad, and AT&T has tailored requests that concern the services and elements BellSouth offers in Florida, issues clearly relevant to this proceeding.

Objection to Request No. 4

BellSouth has objected to Request No. 4 on the grounds that it is overly broad, burdensome, oppressive and not permitted by applicable discovery rules. Request No. 4 seeks documents referring to services or programs that BellSouth has not agreed to offer for resale to AT&T. The Telecommunications Act of 1996 requires BellSouth not to place unreasonable restrictions on the resale of services, and the FCC has interpreted many of these services that are the subject of this interrogatory as available for resale. The parties have discussed the availability of these services and programs during negotiations, and AT&T's ability to offer such services and programs is a critical element to its ability to compete in the Florida market. BellSouth's refusal to produce relevant documents, after the parties engaged in prolonged negotiations on the subject, is

insupportable. Moreover, the FCC's Order interpreting the Act also does not support BellSouth's objections.

Objection to Request No. 7

BellSouth has objected to Request No. 7 on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of the proceeding. The request asks for all documents and studies relating to the TSLRIC for providing switched or non-switched (special) access services. This information is directly relevant to the cost of these services or elements. The cost and subsequent price to AT&T for these services directly impacts AT&T's ability to purchase BellSouth's switched and nonswitched access services and to provide service to AT&T local customers in Florida. This information is highly relevant to AT&T's effectiveness as a competitor in the local market, and this proceeding generally.

Objection to Request No. 21

BellSouth has objected to Request No. 21 on the grounds that the responsive documents are not within its custody. Request No. 21 seeks documents relating to the policies, procedures, practices or training given to BellSouth Advertising and Publishing Company ("BAPCO") sales personnel on the issue of communications with customers of local exchange carriers other than BellSouth. The Telecommunication Act of 1996 requires that BellSouth as an incumbent local exchange carrier not impose discriminatory conditions on resale, and AT&T believes that BellSouth must handle inquires and communications from customers of carriers other than BellSouth, including AT&T, in a fair and reasonable manner. BellSouth has taken the position that BAPCO is not under

its control; however, BAPCO is a part of the BellSouth family of companies and actively participated in the negotiations. Moreover, BAPCO communicates with BellSouth's local customers. For BellSouth to claim that it does not know or have copies of the materials BAPCO uses when communicating with BellSouth's customers appears disingenuous.

Objection to Request No. 40

BellSouth has objected to Request No. 40 on similar grounds to Request No. 7. Request No. 40 seeks agreements between BellSouth and BAPCO regarding directory listing orders, preparation and publishing of Customer Call Guide Pages, and distribution and recycling of directories. The parties have reached agreement on this issue, and AT&T accordingly waives its request for this information.

Objection to Request No. 42

BellSouth has objected to Request No. 42 on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence, and that it is overly broad and burdensome. Request No. 42 seeks documents relating to the wholesale resale market for telecommunications services. Information on the wholesale resale market is crucial for AT&T to formulate pricing guidelines to compete in the Florida local market. Such information is highly relevant to the present proceeding, and given the importance of the subject during negotiations the production of such information would not impose a great burden on BellSouth.

### Objection to Request No. 43

BellSouth has objected to Request No. 43 on similar grounds to Request No. 42. The request seeks documents relating to the costs that would be incurred by BellSouth by developing wholesale telecommunications services. As with the information relating to the wholesale resale market, AT&T requires this information to gain an adequate understanding of wholesale telecommunications services in the Florida local market. Refusal by BellSouth to furnish such information would deprive AT&T of an element necessary to develop competitive services for Florida consumers.

### Objection to Request No. 47

BellSouth has objected to Request No. 47 on multiple grounds, including the overly burdensome nature of the request and the highly sensitive nature of the documents sought. Request No. 47 seeks documents relating to Interrogatories 34-40, including supporting materials. BellSouth has answered partially some of these interrogatories, while objecting to others. To the degree that BellSouth has complied with the interrogatories, the information supporting the answers should be readily accessible for disclosure. As previously stated, adequate mechanisms exist to allow for the protection of any arguably protected material. The remaining requests relate to BellSouth's network elements, interconnection and retail services, and AT&T requires the supporting documentation to the interrogatories to prepare its plan to enter and compete in the Florida local market.



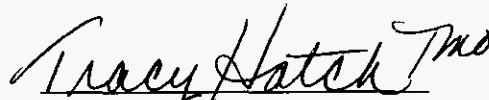
Objection to Request No. 51

BellSouth has objected to Request No. 51 on the grounds that the subject request does not apply to the Florida market. Request No. 51 seeks documentation submitted by BellSouth on June 25, 1996 to the Louisiana Public Service Commission on the subjects of cable pair/strand utilization factors for copper/DLC, copper/distribution and copper/feeder. This information is relevant to this proceeding or may lead to the discovery of admissible evidence. Clearly BellSouth has cable pair/strand utilization factors for Florida. To the extent there are significant disparities between these factors, such information is relevant to this proceeding..

**CONCLUSION**

For the foregoing reasons, AT&T respectfully requests that this Commission ORDER BellSouth to COMPLY fully and completely with AT&T's First Set of Interrogatories and Requests for Production of Documents.

Respectfully submitted this 26th day of September, 1996.

Handwritten signature of Tracy Hatch in cursive, with a horizontal line underneath the name.

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Handwritten signature of Robin D. Dunson in cursive, with a horizontal line underneath the name.

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**ATTORNEYS FOR AT&T  
COMMUNICATIONS OF THE  
SOUTHERN STATES, INC.**

**CERTIFICATE OF SERVICE**

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

**I HEREBY CERTIFY** that a true copy of AT&T's Motion to Compel Answers by BellSouth Telecommunications, Inc. to AT&T's First Set of Interrogatories and Production of Documents has been furnished by either Hand Delivery or U.S. Mail to the following parties of record this 26th day of September, 1996:

BellSouth Telecommunications  
c/o Nancy H. Sims  
150 S. Monroe Street, Suite 400  
Tallahassee, FL 32301

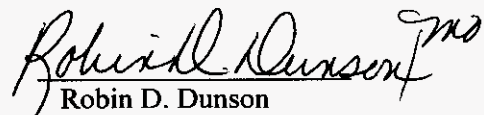
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