Legal Department

J. PHILLIP CARVER
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
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(404)335-0710

June 23, 1997

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

RE: Docket Nos. 960833-TP and 960846-TP

Dear Mrs. Bayo:

Enclosed is an original and fifteen copies of BellSouth's Response and Memorandum In Opposition To AT&T's Motion To Compel Compliance, which we ask that you file in the captioned 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 on the parties shown on the attached Certificate of Service.

Sincerely,

J. Phillip Carver (AM)

J. Phillip Carver

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
W. J. Ellenberg

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions by AT&T Communications of the Southern States, Inc.; MCI Telecommunications Corporation; MCI Metro Access Transmission Services, Inc. for arbitration of 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 Filed: June 23, 1997

BELLSOUTH'S RESPONSE AND MEMORANDUM IN OPPOSITION TO AT&T'S MOTION TO COMPEL COMPLIANCE

BellSouth Telecommunications, Inc. ("BellSouth"), hereby files, pursuant to Rule 25-22.037, Florida Administrative Code, its response and memorandum in opposition to AT&T's Motion to Compel Compliance, and states the following:

AT&T's Motion to Compel Compliance should be denied because it is based upon fundamental mischaracterizations of Orders of the Florida Public Service Commission ("Commission") and of the current status of the "rebundling" issue. Further, the arguments raised by AT&T in its Motion present perhaps the most obvious example to date of AT&T's attempts to misconstrue to its benefit any issue left unresolved by the Commission's previous Orders. For these reasons, AT&T's Motion should be denied and this Commission should further issue unavoidable directions to

AT&T as to what it may (and may not) do pursuant to the Orders that have been entered.

The current situation is that AT&T has, as set forth in its motion, requested a trial in which it would be allowed to purchase unbundled network elements ("UNEs") in combinations that replicate existing BellSouth services. AT&T proposes to pay for the trial service (and later all BellSouth services recreated through rebundling) at the total price of the UNEs that are utilized. To date, BellSouth has declined to allow AT&T to do this because, contrary to AT&T's assertions, the Commission has not authorized (and, in fact, has expressed concern about the prospect of) recombination of UNEs at the prices AT&T requests. Again, AT&T is not simply purchasing UNEs, but rather the preassembled combination of UNEs that comprise a BellSouth service. AT&T's request/demand, thus, does not involve any real unbundling. Instead, AT&T desires to simply buy the service at the price of the total UNEs that comprise the service.

The proper resolution of this matter turns upon three aspects of this Commission's previous Orders: (1) the price for UNEs has been set; (2) the Commission has ordered that AT&T may recombine UNEs in any way that it wishes; (3) the Commission has also stated that it has not ruled upon the price of a rebundled service, i.e., UNEs that are combined to replicate an existing BellSouth retail service. AT&T would, no doubt, agree that the first two Commission decisions set forth above are pertinent to this dispute. In fact, AT&T relies upon both decisions in its Motion. Inexplicably, AT&T has simply decided to act as if the third conclusion reached by this Commission does not exist.

In its Motion, AT&T implies that this Commission's Final Order On Motions For Reconsideration (Order No. PSC-97-0298-FOF-TP, Issued March 19, 1997) somehow supports AT&T's claim that the price for rebundled network elements has been set. To the contrary, the Commission's Order contained the following language on this point:

> In our original arbitration proceeding in this docket, we were not presented with the specific issue of the pricing of recombined elements when recreating the same service offered for resale . . . .
>
> Furthermore, we set rates only for the specific unbundled elements that the parties requested. Therefore, it is not clear from the record in this proceeding that our decision included rates for all elements necessary to recreate a complete retail service. Thus, it is inappropriate for us to make a determination on this issue at this time.

(Order, p. 7).

The Commission, however, further stated that it "would be very concerned if recombining network elements to recreate a service could be used to undercut the resale price of the service." (Order, p. 8).

In an effort to avoid any confusion on this point, BellSouth submitted to the Commission for approval a final arbitrated agreement that included language to reflect both the Commission's pronouncement that it had not ruled upon the price of recombined elements and the Commission's stated concern. Specifically, the language proposed by BellSouth would have stated that "[f]urther negotiations between the parties should address the price of a retail service that is recreated by combining UNEs," and that this price should not undercut the resale price of any retail service.

AT&T responded to this proposed language in its Motion to Approve Final Arbitrated Interconnection Agreement by, first, making a passing mention of this

"Commission's concerns expressed in the Reconsideration Order about the possibilities that the price of the combination of UNEs used to provide a service may be less than the equivalent resale price". AT&T then coyly observed (without stating its own belief) that the Commission "does not believe that it is possible to have this situation because not enough UNEs have been approved to fully duplicate a BellSouth service". (Motion, p. 4). AT&T then characterized the Commission's concerns regarding this pricing issue as simply "speculative". Id. AT&T further stated that "if it ever arises", the language in the agreement is adequate to resolve the point.[1] BellSouth, believed to the contrary, and stated so in its Response to AT&T's Motion.

Nevertheless, on May 27, 1997, the Commission entered an Order (Order No. PSC-97-0602-FOF-TP) in which it required both parties to sign an agreement that included exactly the language prescribed in the Commission's previous Final Order Approving Arbitrated Agreement. As to the language that BellSouth sought to insert into the contract concerning the price of rebundled elements, the Commission stated the following:

> we expressed concerns with the potential pricing of UNEs to duplicate a resold service at our Agenda Conference, and we expressed our concerns in our Order in dicta; however, we stated that the pricing issue associated with the rebundling of UNEs to duplicate a resold service <u>was not arbitrated</u>. . .Accordingly, BellSouth's proposed language shall not be included in the agreement.
>
> (Order, p. 7) (emphasis added).

[1] The language referred to by AT&T was the extremely limited language of § 36.1 that referred to negotiations to eliminate duplicate charges that might result from purchasing multiple UNEs.

On June 9, 1997, less than fourteen days after the entry of the above-referenced Order, the situation that BellSouth sought to avoid has come to pass. AT&T has selectively utilized the language from the Commission's original Order, as well as this Commission's decision not to clarify that language in subsequent orders, to argue that it is entitled to order combinations of UNEs that replicate BellSouth services and to have this reconstituted service at the total of the UNE prices. Amazingly, in arguing for this, AT&T has characterized all of the Commission's Orders, including those quoted above, as supporting the singularly misguided proposition that it is entitled to recombine UNEs in a way that replicates BellSouth's retail service and to thereby undercut the resale prices of those services. It is interesting that after relying so heavily on this Commission's uncertainty as to whether this recombination is currently possible, AT&T has definitively demonstrated that it believes it can be done by demanding that it immediately be done. It is also noteworthy that so soon after AT&T characterized the eventuality of this pricing conflict as remote and speculative, it acted to make it come to pass.

AT&T's mischaracterizations notwithstanding, the fact remains that this Commission has not ruled on the price of elements that are recombined to recreate BellSouth services. For this reason, AT&T should not be allowed to attempt to utilize the portions of this Commission's rulings that are favorable to its position while ignoring the portions of this Commission's Orders that contradict its argument to bring about a result that is clearly not intended by this Commission's Orders.

Again, this Commission has stated that it has not ruled on the price of services recreated by rebundling. If AT&T wants to purchase recombined services in this manner, it should negotiate with BellSouth to arrive at the appropriate price. Because BellSouth believes that this is the proper result, BellSouth sent to AT&T a letter on June 10, 1997[2] in which it invited AT&T to negotiate this currently unresolved issue. (attached as Exhibit A). AT&T responded to BellSouth's invitation with a letter dated June 16, 1997 (attached as Exhibit B). In this letter, AT&T states that its position on the price of rebundled elements is set forth in the subject Motion. For this reason, AT&T asserts that any further negotiations should be limited to "eliminating any duplicate charges when two or more UNEs are combined." (letter, p. 1). This letter is telling in two respects: First, once again, AT&T has acted in precisely the manner that BellSouth was concerned it would. In the Motion to Approve cited above, AT&T contended that the language of § 36.1 could be used as a basis to negotiate the price of recreated services, "if [the issue] ever arises". Now AT&T declines to negotiate anything under the provisions of 36.1 other than the elimination of duplicate charges.

Second, AT&T appears now to categorically refuse to negotiate the price of services recreated through sham unbundling. Instead, AT&T contends, in effect, that the pricing issue is moot. AT&T has a price at which it may purchase individual UNEs, and it plans to replicate existing services with these UNEs in a way that undercuts the resale price of these services. The only difference in AT&T's previous position and its current position is that before it made token acknowledgment of this Commission's

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[2] This letter was sent by BellSouth the day after it signed the Interconnection Agreement, and before being served with a copy of AT&T's Motion.

concerns before dismissing them. Now AT&T ignores these concerns altogether while blatantly acting in a manner that contradicts the clear language of this Commission's prior Orders.

This Commission has specifically noted in at least two previous Orders that it has not set the price for recombined services. AT&T should not be allowed to misuse a part of this Commission's previous Orders to dictate the result of an issue that this Commission has not addressed. Instead, AT&T's Motion should be denied, and it should be directed to negotiate with BellSouth the price of the service.

Further, AT&T's Motion brings into focus a related problem. Although certainly the parties should negotiate this point, AT&T, to date, has refused to do so. Thus, a resolution of this issue by the parties is highly unlikely, which presents a quandary. Even if this Commission properly denies AT&T's attempt to obtain services through sham unbundling at a price that undercuts the resale price, there is nothing to stop AT&T in the future from purchasing the elements separately and then recombining them without BellSouth's knowledge. By doing this, AT&T would be able to ignore the concerns of this Commission and the clear language of the Order on Reconsideration to obtain in a different manner that which it is not entitled to, i.e., recreated services at a price that undercuts the resale price. Thus, in order to prevent action by AT&T that contravenes the Orders of this Commission and the clear statement that the price of recreated service has not been set, AT&T must be prevented from taking the next step and rebundling separately purchased UNEs to undercut resale prices.

Finally, in Paragraph 7 of AT&T's Motion, there is a brief and cryptic description of an alleged failure by BellSouth "to record and to provide the requested UNE data." Although it is difficult to know from Paragraph 7 the precise nature of AT&T's complaint, BellSouth believes that AT&T has requested that BellSouth conduct a trial of the ability to bill services purchased by AT&T at the sham rebundled price. In other words, AT&T not only wants to purchase services at the rebundled UNE price despite the lack of authority to do so, it also wants a trial of the ability of BellSouth to render a bill to AT&T at the unauthorized UNE price. Since this Commission has not authorized AT&T to recombine UNEs to undercut resale prices, BellSouth should not be required to conduct a trial of its ability to render a bill at the improper price.[3]

WHEREFORE, BellSouth respectfully requests the entry of an Order denying AT&T's Motion, and further ordering that AT&T may not rebundle elements in a manner that replicates existing services unless and until a price is set for this rebundling through negotiation or arbitration.

[3] Moreover, BellSouth does not currently have the ability to bill in this manner. That capacity would have to be developed, and this development should not be ordered for the reasons set forth above.

RESPECTFULLY SUBMITTED this 23rd day of June, 1997.

BELLSOUTH TELECOMMUNICATIONS, INC.

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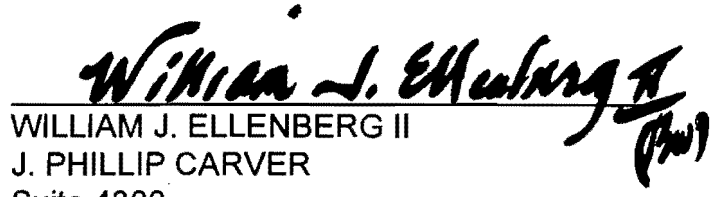

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(404) 335-0710

CERTIFICATE OF SERVICE
DOCKET NOS. 960833-TP and 960846-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal Express this 23rd of June, 1997 to the following:

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J. Phillip Carver (BW)
J. Phillip Carver

EXHIBIT A

BELLSOUTH
TELECOMMUNICATIONS

VIA Facsimile and U.S. Mail

June 10, 1997

William J. Carroll
AT&T of the Southern States
Suite 4170
1200 Peachtree St., NE
Atlanta, GA 30309

Dear Jim:

As you probably know by now, BellSouth executed AT&T's proposed Interconnection Agreement and filed it on June 10, 1997 for approval by the Commission. As you also know, there are two open issues relating to Section 36.1 of the Agreement, Charges for Multiple Network Elements, in need of further negotiation and resolution.

One, under the Agreement, the parties are to negotiate the total non-recurring and recurring charge(s) to be paid by AT&T when ordering Multiple Network Elements. Two, the Commission stated in its Order of March 19, 1997 that it has not ruled on the appropriate rate to be charged for unbundled network elements that are recombined to replicate an existing BellSouth retail service. I believe that we should turn our attention to both of these pricing issues as soon as possible.

As to this second issue, the Commission noted that it is unclear from the record whether its decision "included rates for all elements necessary to recreate a complete retail service" (p. 7). At the same time, the Commission stated that it would be concerned if the recombination of network elements is used to undercut resale service prices. Of course, you and I are both aware that (the state of the hearing record notwithstanding) AT&T does now have, once the agreement is approved, the means to order UNEs that can be rebundled to replicate BellSouth's retail services. In fact, AT&T is proposing to test the UNE platform, including the ordering, provisioning and billing of combinations, in Florida. Also, I understand that AT&T has told us, at least informally, that it intends exclusively to purchase unbundled network elements, and not resell BellSouth's services. Given this, I am sure that AT&T is as eager as BellSouth to resolve this issue. Further, if we are unable to reach an agreement, it is in the best interests of both companies to bring the issue before the Commission as soon as possible.

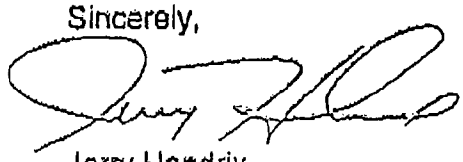
I propose that we meet at the earliest time that is convenient for you, or the appropriate persons for AT&T, to discuss this matter. In order to get the ball rolling, I

will say that BellSouth shares the Commission's concerns. Thus, we propose that the price for a service that is constructed by recombining UNEs be the same as the retail price of the service minus the applicable discount. It might be useful to know your position on this issue before we sit down to talk.

Lastly, turning to another issue, I was surprised when I read the content of Pam Nelson's May 30, 1997 letter to me regarding the access to customer service records issue. In the numerous meetings I have attended regarding the issues of access to customer records and performance measurements, I never heard any significant opposition, other than BellSouth's proposal to access AT&T's database for the same information, to BellSouth's plans for access to customer records. BellSouth has always agreed that the permanent interface would operate differently than the LENS system and that the specifications on the access to customer records would be worked out between the companies pursuant to Attachment 15 of the interconnection agreements. Specifically, regarding the issue of the data elements, Jim Childress singled out that aspect of BellSouth's plan and gained concurrence from AT&T. AT&T's position, that it should have access to whatever information is contained in the CSR, is contrary to AT&T's representations during our discussions and is contrary to section 5.2 of Attachment 4 of the interconnection agreements executed between BellSouth and AT&T.

At any rate, I look forward to hearing from you, and setting up a meeting soon.

Sincerely,



Jerry Hendrix

cc: Greg Follensbee
Pam Nelson
Scott Schaefer
Mary Jo Peed
David Eppsteiner

EXHIBIT B

Pamela A. Nelson

Room 12W54
Promenade II
1200 Peachtree St., NE
Atlanta, GA 30309
404 810-3100

June 16, 1997

Mr. Jerry Hendrix
Director of Interconnection Services
BellSouth Telecommunications, Inc.
675 West Peachtree St., Room 29L65
Atlanta, GA 30375

Dear Jerry:

This responds to your letter of June 10, 1997, to Jim Carroll concerning (1) negotiations on the establishment of nonrecurring and recurring charges when AT&T orders multiple network elements in Florida and (2) AT&T's position on access to customer service records.

Regarding the first issue, I agree that we should get together as early as possible to commence these negotiations. However, I do not agree with your view as to what the commission ordered regarding the scope of these negotiations. AT&T's position on this point is set forth most recently in its motion filed in Florida early last week. Our negotiations should focus on eliminating any duplicate charges when two or more UNEs are combined.

In this regard, I also must comment on your statement that "it might be useful to know [AT&T's] position on this issue before we sit down to talk" about the price to be charged for a service "that is constructed by recombining UNEs." You also seek AT&T's agreement "that the price be the same as the retail price of the service minus the applicable discount" in Florida.

Jerry, AT&T has made its position clear on countless occasions throughout the arbitration process and most recently in the motion discussed above. Frankly I am perplexed that you, a key participant in negotiations between our companies and the signatory of all of the BellSouth/AT&T Interconnection Agreements to date, lack understanding of AT&T's position and would seek AT&T's agreement that recombined UNE's will be available at the retail price less the wholesale discount. AT&T has never wavered in its position on this issue and there is no reason for BellSouth to assume that AT&T would now do otherwise. If this is BellSouth's starting point, we are very far apart indeed.

Regarding your statement that you were told by AT&T "at least informally", that AT&T does not intend to resell BellSouth's services in Florida, that is simply not accurate. AT&T's position is, and always has been, that we require the ability to order both UNE's and resold services in all nine states including Florida.

As to the second issue concerning access to customer service records, some clarification on the status of this issue is needed. We have accepted that your plans for providing access to a finite set of data elements contained in a CSR through the LENS system matches up with the set of data elements included in the specifications we provided to BellSouth to establish permanent electronic interfaces pursuant to our interconnection agreements. My letter dated May 30, 1997, sought to assure that AT&T maintains the ability to request access to additional data elements if needed in the future. We understand the specific data elements excluded in BellSouth's proposal, and we agree that at this time AT&T does not require data elements beyond those in your proposal

In addition, while we have agreement on the CSR data elements AT&T will receive at this time, our companies have not yet resolved how the data elements will be formatted. Our teams continue to work the formatting issue.

Finally, BellSouth brought to our attention that when AT&T is the customer of record, we may wish to request data elements that are not available when accessing a BellSouth customer's service record. We appreciate BellSouth's input and will plan for having this ability in the long term pre-ordering interface.

Sincerely,

Pamela A. Nelson

cc: Jim Carroll
Mary Jo Peed, Esq.