

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Investigation into Appropriate)
Methods to Compensate Carriers)
for Exchange of Traffic Subject to)
Section 251 of the Telecommunications)
Act of 1996.)

Docket No.: 000075-TP
Filed: March 6, 2001 01 MAR -6 PM 4: 34

RECORDS AND REPORTING

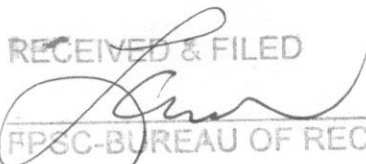
**RESPONSE OF TIME WARNER TELECOM OF FLORIDA, L.P.
TO BELL SOUTH TELECOMMUNICATIONS, INC.'S
EMERGENCY GLOBAL MOTION TO COMPEL**

Time Warner Telecom of Florida, L.P. ("Time Warner"), by and through its undersigned counsel, and pursuant to Rule 28106.204(l), Florida Administrative Code, files this Response in Opposition to BellSouth Telecommunications, Inc.'s, ("BellSouth") Emergency Global Motion to Compel which was filed on February 27, 2001. In support thereof, Time Warner states as follows:

I. GENERAL STATEMENT OF POSITION

Although the issues in this proceeding were formally established by December 7, 2000¹, BellSouth apparently made a strategic decision to delay propounding its extremely broad discovery requests until February 2, 2001, even though the deadline for completion of discovery was February 28, 2001. Then, even though Time Warner filed objections to BellSouth's discovery requests on February 12, 2001, BellSouth waited until February 27, 2001, one week before the hearing, to file its Emergency Global Motion to Compel. Clearly, BellSouth did not intend to complete discovery by February 28, 2001, since BellSouth did not indicate its intent compel responses from Time Warner until the day before the deadline (even though it was aware of Time Warner's objections for two weeks). It seems that if BellSouth truly wanted to complete discovery in a timely manner, it would

¹Order No. PSC-00-2350-PCO-TP, Order Adopting, Incorporating, and Supplementing Order No. PSC-00-2229-PCO-TP Establishing Procedure

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DOCUMENT NUMBER-DATE
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APP _____
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have filed its Motion to Compel as soon as it became aware of Time Warner's objections.

At this point, it is unclear what purpose BellSouth's discovery requests or Emergency Motion to Compel serve other than to divert the attention of Time Warner and the other ALECs, as well as the Commission, from preparing for the hearing. Perhaps BellSouth's intent is to actually delay resolution of this docket altogether on the premise that it was denied an opportunity to conduct meaningful discovery. Whatever its intent, BellSouth should not be allowed to manipulate this process in a manner that completely disregards deadlines set by the Commission and denies Time Warner the ability to prepare for hearing without the distractions inherent in responding to discovery issues the week before a hearing, a situation which the discovery deadlines were actually intended to prevent.

Notwithstanding BellSouth's disregard for the discovery deadline set by the Commission, the information requested by BellSouth appears to be superfluous at this late date in the proceeding since BellSouth filed its Direct and Rebuttal Testimony on December 1, 2000. At this point, the day before the hearing is scheduled to begin, BellSouth cannot expect to supplement its testimony with any of the information acquired through the contested discovery requests.

If the Commission grants BellSouth's motion, thereby sanctioning BellSouth's manipulation of the process, there appear to be several consequences: 1) the Commission would undermine its own orders setting discovery deadlines in this docket, with which all parties but BellSouth complied in good faith; 2) such a decision may create a "slippery slope" resulting in parties withholding discovery requests in future dockets until so late in the process that parties and staff are consumed with discovery issues up to and including the day of the final hearing; and 3) the ALECs would be in the untenable position of attempting to comply with BellSouth's voluminous discovery requests even after the hearing commences on March 7, 2001. As a practical matter, unless the hearing is

postponed, which is not an acceptable alternative, it would be impossible for Time Warner to comply with BellSouth's requests before the end of the hearing scheduled for March 7-9, 2001. Clearly, BellSouth could have avoided this situation, as have all the other parties, by propounding discovery in a timely manner.

With respect to all of its requests for company specific information, BellSouth argues that the requested information is relevant to the issue of whether ALECs are using reciprocal compensation revenue for ISP-bound traffic "to generate an unearned financial windfall." However, this proceeding is not concerned with the profits or losses of individual ILECs or ALECs; rather, the focus of this proceeding is the development of a compensation mechanism that is consistent with federal guidelines. Regardless of that fact, not once in its motion to compel did BellSouth indicate how it defines "unearned windfall" for purposes of this proceeding, nor did BellSouth adequately explain why this Commission should consider that information in its determination of an appropriate compensation mechanism for ISP bound traffic.

For the reasons set forth above, BellSouth's motion to compel responses to its discovery requests should be denied.

II. RESPONSES TO SPECIFIC INTERROGATORIES

Time Warner incorporates by reference its arguments supporting the denial of BellSouth's Motion to Compel set forth above, and further states:

A. INTERROGATORIES NOS. 7,8,9,10,11,12 AND 13

BellSouth argues that a response to the above-listed interrogatories is relevant to the issue of whether Time Warner is using reciprocal compensation revenue for ISP-bound traffic "to generate an unearned financial windfall." However, BellSouth never defines "unearned windfall" or explains how the information requested will assist the Commission in making a determination of an appropriate

compensation mechanism for ISP bound traffic. There is not an issue in this proceeding that includes ILEC or ALEC profits, supposed "unearned windfalls," or costs as factors relevant to resolving the matter of compensation for ISP traffic. Indeed, company-specific profits and losses are not appropriately considered by the Commission in its policy decisions in this generic proceeding. Instead, an appropriate compensation mechanism consistent with the requirements of federal law is the appropriate focus of this generic proceeding. Thus, BellSouth's Motion to Compel answers to the above-numbered discovery requests should be denied.

B. INTERROGATORIES NOS. 14,15,16,22,24 AND 25

Once again, BellSouth maintains, that company-specific information regarding Time Warner's total dollar investment in Florida, including its total dollar investment in switches, outside plant, and support assets, is somehow relevant to Issue 4, which focuses on the policy considerations which should inform the Commission's decisions in this docket. The information sought under these interrogatories is not only irrelevant, but appears to indicate BellSouth's desire to transform this proceeding from a generic docket to a super-detailed cost case for the ALECs. Time Warner's cost of doing business in Florida is irrelevant; the only potentially relevant ALEC cost is the cost of transporting and terminating local traffic where an ALEC seeks to establish its right to a symmetrical reciprocal compensation rate. Such costs must be reflected in a cost study which, in this case, Time Warner has conducted. For these reasons, BellSouth's motion to compel responses to the above-listed discovery requests should be denied.

C. INTERROGATORY NO. 23

Once again, BellSouth requested company specific information regarding Time Warner's ownership interest in any ISP. In an attempt to justify its request, BellSouth states that the "information sheds further light on whether any ALEC is receiving an unearned financial windfall as

a result of reciprocal compensation payments for ISP bound traffic.” However, BellSouth once again fails to offer any explanation as to how it defines “unearned windfall” and why the information should be considered by this Commission in this generic docket. For these reasons, BellSouth's motion to compel a response to the above-listed discovery request should be denied.

D. INTERROGATORIES NO. 6 AND 21

These interrogatories require Time Warner to undertake research and analysis of filings before state commissions across the nation concerning positions taken or filings on ISP/reciprocal compensation issues. This information is public record and equally available to BellSouth; however, Time Warner provided the states in which Time Warner has participated in arbitrations involving issues in this docket. For these reasons, BellSouth's motion to compel responses to the above-listed discovery requests should be denied.

E. INTERROGATORY NO. 4

BellSouth seeks "all documents that refer to relate to any issue raised in Phase I of the Generic ISP Proceeding." It is difficult to imagine a discovery request that is more overbroad, unduly burdensome, or expensive than this request. The request is not limited to any specific issue nor is it limited to any specific period of time. This request, more than any other, clearly indicates the unreasonableness of BellSouth's discovery requests, and BellSouth's apparent attempt to disrupt these proceedings with irrelevant and unduly burdensome discovery requests with which Time Warner cannot comply. For these reasons, BellSouth's motion to compel a response to the above-listed discovery request should be denied.

III. SPECIFIC REQUESTS FOR PRODUCTION

Time Warner incorporates by reference its arguments supporting denial of BellSouth's Motion to Compel set forth in the General Statement of Position above, and further state:

A. REQUEST FOR PRODUCTION NOS. 6,7,8,9,10,11,12,13,16 AND 17

Time Warner adopts and incorporates by reference its arguments set forth under Sections I and II above concerning the supposed relevancy of determining whether an ALEC is receiving an "unearned windfall." As previously stated, the issue of whether Time Warner is earning an "unearned windfall" is not a relevant consideration in establishing an appropriate and lawful reciprocal compensation mechanism for ISP traffic. For these reasons, BellSouth's motion to compel responses to the above-listed discovery requests should be denied.

B. REQUEST FOR PRODUCTION NOS. 2, 14, 15, 17 AND 22

Time Warner adopts and incorporates by reference the relevancy arguments set forth in Sections I and II above regarding Time Warner's supposedly "unearned windfall" and, for those reasons, Time Warner requests denial of BellSouth's Motion to Compel responses to the above numbered requests for production of documents.

C. REQUESTS FOR PRODUCTION NOS. 18, 19 AND 20

These interrogatories seek information relating to Time Warner's ownership, affiliation or interest, if any, with an ISP. Once again, BellSouth claims the information is relevant to determine whether Time Warner is receiving an "unearned financial windfall". Time Warner adopts and incorporates by reference the arguments set forth in Sections I and II above regarding BellSouth's "unearned windfall" contention and, for those reasons, requests denial of BellSouth's Motion to Compel responses to the above numbered requests for production of documents.

D. REQUEST FOR PRODUCTION NO. 23

BellSouth requests copies of any agreements to which Time Warner is a party that involve the sharing of reciprocal compensation received by Time Warner from BellSouth. Again, BellSouth claims the information is relevant to determine if Time Warner is receiving an "unearned financial

windfall". Time Warner adopts and incorporates by reference the arguments set forth above in Sections I and II regarding BellSouth's "unearned windfall" allegation and, for those reasons, requests denial of BellSouth's Motion to Compel responses to the above numbered request for production of documents.

E. REQUEST FOR PRODUCTION NO. 4

Time Warner adopts and incorporates by reference the relevancy arguments under Section I and II above concerning BellSouth's allegations of "unearned windfall" and, for those reasons, requests denial of BellSouth's Motion to Compel a response to this request for production.

V. CONCLUSION

BellSouth chose to delay propounding its discovery requests, and failed to complete discovery by the deadline established by the Commission even though BellSouth knew well in advance the issues to be addressed by the Commission at the hearing. BellSouth's motion to compel contains nothing but conclusory allegations that company-specific information is relevant to this docket for purposes of establishing the existence of an "unearned windfall" supposedly earned by Time Warner and other ALECs. BellSouth failed to explain why company-specific information concerning profits and costs is necessary to the determination of a compensation mechanism in this docket, and did not justify its failure to comply with the prehearing officer's order to complete discovery by February 28, 2001. As such, Time Warner respectfully requests denial of BellSouth's Emergency Global Motion to Compel.

Respectfully submitted this 6th day of March, 2001.

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CERTIFICATE OF SERVICE
DOCKET NO. 000075

I HEREBY CERTIFY that a true and correct copy of the foregoing **Response of Time**

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