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June 1, 2001

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

Re: Docket No. 001810-TP (TCG/Teleport Arbitration)

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to TCG's Motion to Compel, which we ask that you file in the captioned docket.

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 to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (KA)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER · DATE

06916 JUN-15

FPSC - RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 001810-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

(*) Facsimile and U. S. Mail this 1st day of June, 2001 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of TCG South Florida and) Docket No. 001810-TP
Teleport Communications Group for)
Enforcement of Interconnection Agreement)
With BellSouth Telecommunications, Inc.)
_____) Filed: June 1, 2001

**BELLSOUTH TELECOMMUNICATIONS, INC.'S OPPOSITION TO TCG
SOUTH FLORIDA AND TELEPORT COMMUNICATIONS GROUP'S
MOTION TO COMPEL**

BellSouth Telecommunications, Inc. ("BellSouth"), files this opposition to TCG South Florida's and Teleport Communications Group's (collectively "TCG") Motion to Compel. The Florida Public Service Commission ("Commission") should deny TCG's motion for the following reasons:

1. On May 10, 2001, TCG served its First Set of Requests for Production of Documents and First Set of Interrogatories on BellSouth. Pursuant to Procedural Order No. PSC-01-0833-PCO-TP, BellSouth filed specific and general objections to TCG's discovery on May 21, 2001. On May 25, 2001, TCG filed a Motion to Compel in an attempt to force BellSouth to respond to certain interrogatories and requests for production. BellSouth filed its responses to TCG's discovery on May 30, 2001.

2. The dispute in this docket primarily revolves around whether TCG and BellSouth intended to pay each other reciprocal compensation for the transport and termination of Internet Service Provider ("ISP") bound traffic under the terms of the Second TCG Agreement with BellSouth. As a result, the matter is a contract dispute, which will require the Commission to determine the parties' intent in executing the Second TCG Agreement. See First TCG Order No. PSC-

98-1216-FOF-TP; Global NAPs Order No. PSC-98-00-0802-FOF-TP. As such, the scope of relevant information is limited to the intent of the parties during the term of the agreement in question and, under the Global NAPs decision, the intent of AT&T and BellSouth in executing the agreement TCG opted into. As established below, with this Motion to Compel, TCG is attempting to obtain information that is irrelevant and not likely to lead to the discovery of admissible evidence because it seeks information relating to entities that are not parties to the AT&T/BellSouth Agreement or to the Second TCG Agreement and for years in which the Second TCG Agreement was not in effect. Additionally, other claims have been rendered moot by BellSouth providing responses to certain interrogatories and requests for production, subject to and without waiving the previously asserted objections.

3. In Request for Production No. 2, TCG asked for “all documents upon which BellSouth intends to rely or introduce into evidence at the hearing of this matter.” BellSouth objected to this request on the grounds that it was premature because discovery was ongoing and because BellSouth had yet to finalize its preparation for the hearing. In its response, BellSouth reasserted the objection, but subject to and without waiving the objection, instructed TCG that it may introduce the exhibits attached to Beth Shiroishi’s rebuttal testimony and all documents produced in response to TCG’s discovery request. Accordingly, TCG’s request that BellSouth be compelled to provide a response to Request for Production No. 2 is moot.

4. Request for Production Nos. 4 and 5 state as follows:

REQUEST NO. 4: Produce any reports, analysis papers, memoranda, or other documents that provide the underlying support for BellSouth's method for calculating the percentage of traffic it deems to be ISP-bound each month to justify its refusal to pay TCG for the time period of July 1999 through July 2000.

REQUEST NO. 5: Produce any reports, analysis papers, memoranda, or other documents that explain BellSouth's breakdown of minutes into interLATA toll, intraLATA toll, and ISP-bound minutes withheld for every invoice BellSouth received from TCG for the time period of July 1999 through July 2000.

BellSouth objected to these requests on the grounds that they were overly broad and include within their scope documents that are not likely relevant to this proceeding. The basis of the objection was that the requests, as written, would require BellSouth to search for and produce documents that may be irrelevant to the specific contract dispute in question. In any event, subject to and without waiving the previously asserted objection, BellSouth provided a response to these requests on May 30, 2001. Therefore, TCG's motion is moot as to these requests.

5. Request for Production No. 7 states:

REQUEST NO. 7: Produce all documentation that explains BellSouth's method for calculating the percentage of ISP-bound traffic that has been provided to TCG or to any other ALEC and how this percentage is applied to the overall total of minutes billed to BellSouth by TCG or by any other ALEC.

BellSouth objected to this request on the grounds that it sought information relating to other ALECs in the State of Florida, not just TCG. For this same reason, BellSouth objected to the request on the grounds that it was overly broad and burdensome. BellSouth does not object to providing responsive information relating to TCG, and in fact, did provide such information. As previously stated, however, this matter involves a contract dispute between BellSouth and TCG. Information relating to the other ALECs, involving different facts and circumstances as well as different arbitration agreements is totally irrelevant to whether TCG and BellSouth or AT&T and BellSouth intended to pay each other reciprocal compensation for the transfer and termination of ISP-bound traffic.

The fact that Ms. Shiroishi references the fact that AT&T has not brought a claim for reciprocal compensation for ISP-bound traffic under the AT&T/BellSouth arbitration agreement, which TCG adopted into, does not change this conclusion. Ms. Shiroishi only referenced AT&T to explain that, under the analysis adopted by this Commission in the Global NAPS case, TCG is not entitled to reciprocal compensation. In her testimony, she did not she state or infer that BellSouth's compensation arrangements with other ALECs are relevant to this proceeding. In any event, TCG's motion as to this request is moot because BellSouth, subject to and without waiving the previously asserted objections, provided a response to this request on May 30, 2001.

6. In Requests for Production Nos. 8, 9, 10, and 11, TCG requested that BellSouth produce certain documents and provide a "full explanation" or

other commentary or explanatory narrative with its response. For instance, in Request for Production No. 11, TCG asked that BellSouth “[p]roduce BellSouth’s calculations regarding ISP-bound traffic, with full explanation using Exhibit 1 and TCG invoices for the time period of July 1999 through June 2000.” In addition, in requests Nos. 8, 9, and 10, TCG requested that BellSouth produce the actual calculations BellSouth used to determine certain information, “[s]howing all of the steps in BellSouth’s process for determining” the information, “including how and when it is applied to the overall total of minutes billed to BellSouth by TCG.”

BellSouth objected to the requests to the extent they required BellSouth to generate or create documents in order to provide a response. Under the Florida Rules of Civil Procedure, a party responding to a request for production is only obligated to produce documents in its possession that are responsive to the request. See Fla. R. Civ. P. 1.350(a)(b). The applicable rules do not require a responding party to create or generate documents. Accordingly, to the extent these requests require BellSouth to create or generate documents, it should be denied. In any event, TCG’s motion as to this request is moot because BellSouth, subject to and without waiving the previously asserted objections, provided a response to these requests on May 30, 2001.

7. In Requests for Production Nos. 16 and 17, TCG requested that BellSouth produce certain Commission or FCC orders concerning the payment of reciprocal compensation for ISP-bound traffic. Specifically, these requests state:

REQUEST NO. 16: Produce any FCC, Commission, or Court Rulings or Orders that have required ALECs to accept and comply with any ILEC’s unilateral “notice” from BellSouth of its position to withhold

payment for all ISP-bound traffic without arbitrating the issue.

REQUEST NO. 17: Produce any Orders by the Florida Public Service Commission after BellSouth's August 12, 1997 letter to ALECs addressing whether ISP-bound traffic is treated as local in any of BellSouth's interconnection Agreements.

BellSouth objected to these requests primarily on the grounds that other Commission or FCC orders addressing different facts and involving different parties is irrelevant to this specific contract dispute between TCG and BellSouth. Stated another way, whether or not the FCC or the Commission has previously required "ALECs to accept and comply with any ILEC's unilateral notice of its position to withhold payment for all ISP-bound traffic" or whether the Commission has issued an order after BellSouth's August 12, 1997 letter to ALECs addressing whether ISP-bound traffic is treated as local" is irrelevant to whether TCG and BellSouth intended to pay each other reciprocal compensation for the transport and termination of ISP-bound traffic. Accordingly, TCG's motion should be denied as to these requests.

Additionally, TCG's motion should be denied because the information the requests seek, FCC or Commission orders, are of public record. If TCG wants this information, like BellSouth, it can research and find the applicable FCC and Commission orders, assuming such orders exist. BellSouth is in no better position than TCG to provide a response to these requests.

8. Request for Production No. 18 states:

REQUEST NO. 18: Produce any correspondence that show an acceptance by an ALEC in the state of Florida of BellSouth's notice of withholding payment

for ISP-bound traffic by the ALEC ceasing billing
BellSouth for this traffic.

BellSouth objected to this request on the grounds that information relating to other ALECs not a party to the Second TCG Agreement is irrelevant to the instant dispute. What another ALEC did or did not do involving a different interconnection agreement and different facts is irrelevant as to whether TCG and BellSouth intended to pay reciprocal compensation for ISP-bound traffic. Again, as stated in response to Request for Production No. 7, the fact that Ms. Shiroishi referred to AT&T in her direct and rebuttal testimony is of no consequence because the scope of relevant information is limited to the parties and AT&T under the Global NAPs decision. In any event, TCG's motion as to this request is moot because, subject to and without waiving the previously asserted objection, BellSouth provided a response to Request No. 18 on May 30, 2001.

9. In Interrogatory Nos. 4 and 5, TCG requested that BellSouth provide certain information regarding the payment or nonpayment of reciprocal compensation to TCG from February 8, 1996 through April 30, 2001. BellSouth provided the requested information for the term of the Second TCG Agreement, July 1999 to June 2000. BellSouth objected to providing any information for the years in which the TCG was not in effect because such information is irrelevant to this proceeding. As stated above, the primary dispute at issue is whether TCG and BellSouth intended to pay reciprocal compensation for ISP-bound traffic pursuant to the terms of the Second TCG Agreement, which was only in existence from July 1999 to June 2000. The alleged amount of reciprocal

compensation for ISP-bound traffic that BellSouth has not paid TCG or the amount of MOUs BellSouth has excluded for time periods before or after the term of the Second TCG Agreement is irrelevant to this determination.

Indeed, any information for time periods before the execution of the Second TCG Agreement (February 8, 1996 to July 14, 1999) was disposed of with Order No. PSC-98-1216-FOF-TP, wherein the Commission interpreted the First TCG Agreement between TCG and BellSouth regarding the payment of reciprocal compensation for ISP-bound traffic under the terms of that specific agreement. Likewise, information for time periods after the expiration of the Second TCG Agreement is not relevant because the agreement in question is no longer in existence. This Commission has held that "adopting an Agreement under Section 252(i) cannot perpetuate the terms of an agreement beyond the life of the original agreement." See Global NAPs Order No. PSC-00-0802-FOF-TP at 8. For these reasons, TCG's motion should be denied as to Interrogatory Nos. 4 and 5.

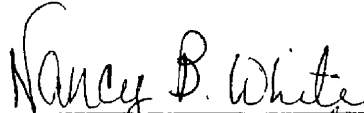
10. In Interrogatory Nos. 6 and 7, TCG requests (1) the amount of reciprocal compensation that BellSouth allegedly has not paid ALECs as a result of excluding payment for ISP-bound traffic from February 8, 1996 through April 30, 2001; and (2) the total amount of MOUs BellSouth has excluded from reciprocal compensation payments to ALECs for ISP-bound traffic from February 8, 1996 through April 30, 2001. TCG's motion should be denied as to these requests because they seek information for all ALECs in Florida, not just the parties in this proceeding and for time periods in which the Second TCG

Agreement was not in effect. BellSouth's relationship with other ALECs, involving different interconnection agreements and facts and for time periods in which the Second TCG Agreement was not in effect is irrelevant to this matter. This Commission has always interpreted this type of proceeding on a case by case basis, looking at the specific facts of each case to determine the parties' intent. See First TCG Order No. PSC-98-1216-FOF-TP. Information involving other ALECs is not relevant to this determination.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that the Commission deny TCG's Motion to Compel.

Respectfully submitted this 1st day of June, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (CA)

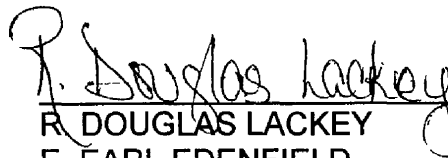
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