

ORIGINAL



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COMMISSION
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September 24, 2001

2001 SEP 27 PM 3:36
DIVISION OF
COMPETITIVE SERVICES

Nancy B. White, Esq.
General Counsel - Florida
BellSouth Telecommunications, Inc.
150 West Flagler Street
Suite 1910
Miami, FL 33130

RE: Notice of Dispute between US LEC of Florida Inc. and
BellSouth Telecommunications, Inc.

Dear Ms. White:

I have received your letter of September 10, 2001. As you know, US LEC of Florida Inc. ("US LEC") was compelled to begin setting off and recouping the sums that BellSouth owes to US LEC by subtracting a portion of the amounts BellSouth has billed to US LEC from the millions of dollars that US LEC has billed to BellSouth.

Across its nine state region, BellSouth owes US LEC tens of millions of dollars and, in light of BellSouth's continued refusal to pay amounts appropriately invoiced, set off and recoupment were US LEC's only options. I will not respond to each and every point in your letter because many of the arguments you make are now the subject of proceedings in federal court and before the Florida Public Service Commission, and those arguments will be decided by the court and the Commission in due course. It is not productive for you and I to debate those issues by letter. However, there are a number of points that I believe are relevant.

First, let there be no confusion -- US LEC is exercising its rights under its interconnection agreements with BellSouth and under state law. Because US LEC has the legal rights of setoff and recoupment under Florida law, BellSouth's claims for immediate payment while it steadfastly refuses to pay US LEC establishes that there are disputed sums, as that term is appropriately read in the interconnection agreements. Therefore, US LEC's deduction of a portion of the money BellSouth owes US LEC from the

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Second, you indicate that BellSouth has paid reciprocal compensation in accordance with the terms of its interconnection agreements with US LEC. This is, as you know, patently untrue. For example, under the current US LEC/BellSouth interconnection agreement in Florida, BellSouth withheld millions of dollars in properly billed reciprocal compensation from January, 2000 through August, 2001 without any valid reason under the interconnection agreement. Proof of that fact is that in August, 2001, after US LEC notified BellSouth about the setoff and recoupment, BellSouth suddenly paid a portion of that money (about \$11 million across the nine state region) without any explanation for its sudden change of position, and without payment of required late payment charges. BellSouth had no legitimate reason to withhold the monies due for up to nineteen months, and its failure to pay late payment charges on that over \$11 million has still not been explained. Indeed, even as of this date, BellSouth still has not paid US LEC for all reciprocal compensation invoiced during that period, and additionally has not paid the required late fees in direct violation of the Interconnection Agreement and BellSouth's own practices regarding late payment charges.

BellSouth continues to rely on its claim that it does not owe reciprocal compensation for ISP bound traffic as one of several excuses for its refusal to pay, even though the FCC has twice affirmed the obligation to pay reciprocal compensation for ISP bound traffic when the relevant state commission has so ordered. We are certain you would acknowledge that the Florida Commission has ruled repeatedly that compensation for such traffic is required. As such, your refusal to comply with those rulings cannot possibly be characterized as a good faith dispute.

Even more troubling is your claim that US LEC is one of only a handful of CLECs with whom BellSouth has not been able to reach agreement on reciprocal compensation. In the first place, given our general agreement on the confidentiality of the negotiations, your public comments implying that US LEC is to blame for the failure to reach a resolution are totally inappropriate and, as I am sure you understand, do nothing to advance future negotiations. I can assure you that if BellSouth had approached these discussions in good faith, our dispute would have been settled long ago.

Finally, if you believe that US LEC's exercise of its rights under the interconnection agreement and Florida law to set off the monies BellSouth owes to US LEC against BellSouth's bills to US LEC is a violation of the interconnection agreements, then we invite you to bring such a claim to the Florida Public Service Commission. I can assure you that US LEC looks forward to the opportunity to defend its position before any Commission or



Nancy B. White, Esq.
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court. After all, BellSouth has not paid US LEC for years without anything to support its position other than its own view of telecomm policy and contract interpretation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Wanda Montano', written in a cursive style.

Wanda G. Montano
Vice President,
Regulatory & Industry Affairs

Cc: The Honorable Leon Jacobs, Chairperson,
Florida Public Service Commission
Earl Edenfield, Jr. Esq.
Mr. Joseph Lacher
Aaron D. Cowell, Jr., Esq.
Mr. Jerry Hendrix