

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and Complaint Of AT&T) Docket No. 031046 -TP
Communications Of The Southern States, LLC)
against BellSouth Telecommunications, Inc.) Filed: November 12, 2003
and BellSouth Long Distance, Inc. for)
Anticompetitive Pricing of Long Distance)
Service)

PETITION AND COMPLAINT

AT&T Communications of the Southern States, LLC (AT&T) hereby files a formal Petition and Complaint against BellSouth Telecommunications, Inc. (BellSouth) and BellSouth Long Distance, Inc. (BSLD) seeking an immediate suspension and cancellation of BSLD's Promotion #31 (the 1 cent promotion). The Petition and Complaint is filed pursuant to Sections 364.01(4)(g), 364.051(5)(c), Florida Statutes, and Rules 25-22.036(2) and 28-106.201, Florida Administrative Code. The 1 cent promotion plan is contrary to Florida law because it allows BellSouth and its affiliate, BSLD, to sell long distance service to consumers at a price that does not cover the direct cost AT&T and other interexchange carriers (IXCs) must pay to provide like services by virtue of the unreasonably high rates BellSouth charges for intrastate switched access services. In support of its Petition and Complaint, AT&T shows the following:

1. AT&T Communications of the Southern States, LLC is certificated by the Florida Public Service Commission (the Commission) as an interexchange carrier (IXC) and as a competitive local exchange company (CLEC).

AT&T's full name and address is:

AT&T Communications of the Southern States, LLC
1200 Peachtree Street N.E.
Atlanta, Georgia 30309

DOCUMENT NUMBER-DATE

11301 NOV 12 8

FPSC-COMMISSION CLERK

All pleadings, documents, correspondence, notices, staff recommendations and orders filed, served or issued in this docket should be served on the following on behalf of

Petitioners:

Tracy Hatch, Esq.
AT&T Communications of the
Southern States, LLC.
101 North Monroe Street
Suite 700
Tallahassee, FL 32301
(850) 425-6360

2. BellSouth Telecommunications, Inc. is an incumbent local exchange company certificated by the Commission to provide local exchange services in Florida.

BellSouth's address for receiving communications from the Commission is:

Ms. Nancy H. Simms
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

3. BellSouth Long Distance, Inc. is interexchange telecommunications company certificated to provide interexchange toll and long distance service in Florida.

BellSouth Long Distance's address for receiving information from the Commission is:

Ms. Mary Jean Dennis
BellSouth Long Distance, Inc.
North Terraces Building
400 Perimeter Center Terrace, Suite 400
Atlanta, GA 30346

4. AT&T is authorized to provide switched and non-switched local exchange and long distance services in Florida. AT&T provides long distance (*i.e.*, interexchange toll) services throughout Florida, including to customers who obtain their local service

from BellSouth and/or who make calls to BellSouth's local exchange customers. AT&T obtains intrastate switched access services from BellSouth in order to provide long distance service to those customers. AT&T's substantial interests are significantly affected by the anticompetitive pricing of long distance service by BSLD below BSLD's actual direct expense to originate or terminate long distance calls in Florida.

5 BSLD is an interexchange carrier (IXC) authorized by this Commission to provide interexchange services throughout Florida. Upon information and belief, BSLD is a wholly owned subsidiary of BellSouth Corporation (which also is the parent company of BellSouth). As an IXC, BSLD is obligated to pay the intrastate switched access charges assessed by BellSouth.

6. BellSouth is an incumbent local exchange company (ILEC) and is certificated by this Commission to provide local exchange and interexchange telecommunications services in Florida. BellSouth assesses various fees, collectively known as intrastate switched access charges, to long distance competitors such as AT&T to originate and/or complete long distance calls to customers on the BellSouth network. On a typical long distance call within its service area BellSouth provides switched access on both the originating and terminating ends of the call. BellSouth's rate for two ends of intrastate switched access is approximately \$0.04649 per minute of use.

7. On October 15, 2003 BSLD filed a tariff revision to its residential service offering containing, among other things, the "BellSouth Savings Plan Promotion" and in particular "Promotion #31."¹ Promotion #31 allows qualifying customers to pay only 1 cent per minute for domestic long distance calls until January 31, 2004. This rate is

¹ See Exhibit 1, Section 5.32, Original Page 227.27, issued October 15, 2003, effective October 16, 2003; Transmittal Letter from Thomas M. Forte to Ms Beth Salak, October 14, 2003.

considerably below the price BellSouth charges long distance carriers for intrastate switched access services and as such is in violation of F.S. § 364.051(5)(c):

The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

8. The 1 cent price scheme is an attempt by BellSouth to do indirectly through its affiliate, BSLD, that which BellSouth is prohibited by law to do directly. It is essential that the Commission recognize BellSouth's participation in the promotion. To be eligible for the 1 cent long distance promotion, the customer must also be a subscriber to BSLD's affiliated incumbent local exchange carrier, BellSouth, *and* must subscribe to BellSouth's Complete Choice® plan, BellSouth Area Plus® plan or Flat Rate Residential Individual lines.² AT&T and other long distance providers are unable to compete with the 1 cent pricing plan because the \$0.04649 switched access rate is a direct cost to them, but not to BellSouth and BSLD. Indeed, the only access "payments" between BSLD and BellSouth that conceivably would occur are nothing more than intra-corporate accounting transactions that have no consequence for the overall bottom line of BellSouth Corporation. The failure of BSLD to impute the full price of switched access in its promotional offering is as clear a violation of § 364.051(5)(c) as if BellSouth itself had filed the tariff. The 1 cent promotional offering results in an anti-competitive "price squeeze" that is detrimental to the development of competition and contrary to the public interest.

² See BSLD tariff, Section 4.2.31, Original Page 157.9, Issued October 15, 2003, Effective October 16, 2003.

9. The 1 cent promotional tariff is, to the extent that BSLD actually pays switched access charges to BellSouth or any other local exchange company in the state of Florida, a clear example of predatory pricing. The 1 cent per minute price established in the tariff is below the price of switched access provided by BellSouth or any other ILEC that other IXCs must pay to originate and terminate long distance calls. Such anticompetitive pricing behavior is a violation of Section 364.01(4)(g), Florida Statutes. This section requires the Commission to “ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior.” If BSLD does not actually pay switched access charges to BellSouth, then BellSouth is in violation of Sections 364.08, 364.09 and 364.10, Florida Statutes that prohibit discriminatory assessment of switched access charges among similarly situated IXCs.

10. The promotional offering puts competing IXCs at a substantial competitive disadvantage because IXCs are being forced to incur inflated access expenses that BellSouth is not. BSLD is forcing other IXCs to compete at a loss based on the cost of access charges alone, before considering non-access related costs of providing the service. There is no valid public policy basis for allowing this discriminatory and disparate treatment of competing providers of substantially identical services. It should be eliminated in order to permit all carriers to compete on an equal footing.

11. Alternatively, if the Commission determines not to invalidate the 1 cent promotional offering, it should address the root cause of this abuse of monopoly position by reducing BellSouth’s intrastate switched access rates to cost-based levels immediately. Local interconnection rates are charges imposed by BellSouth for terminating calls within the local calling area. This local call termination is functionally indistinguishable from

switched access services. Yet, BellSouth's current rate for reciprocal compensation for termination of local traffic is \$0.007 (equivalent to terminating switched access at \$0.0027 or about 3% of its access rate). The only effective way for the Commission to limit BellSouth's monopoly power in the short run and to allow all Florida consumers to benefit from genuine competition from a variety of market participants is for the Commission to reduce to cost the rates that BellSouth charges for intrastate switched access services.

12. BellSouth's entry into the interLATA market in Florida makes it imperative that the inflated access rates charged by BellSouth be addressed. Above-cost access rates were created at the time of the AT&T Divestiture purportedly to compensate the RBOCs for the loss of their internal cross subsidies when long distance and local services were split apart into different companies – AT&T for long distance and the RBOCs for local. But that artificial construct no longer has place in a world in which long distance and local services have once again been reunited under BellSouth's corporate umbrella. Indeed, the Telecommunications Act, as part of the grand bargain allowing the RBOCs to reunite long distance and local services, specifies that access should be brought to cost and subsidies, if any, be made explicit. Yet, while access has continued at far above cost levels, BellSouth has been permitted to extend its dominant presence in the local exchange market into the long distance market. In the few months since BellSouth obtained permission to enter the interLATA market, BellSouth has achieved a 21% long distance penetration as a percentage of its local lines.³ BellSouth


³ See *BellSouth Third Quarter Report, BellSouth Investor News 2003*, at p. 5 (available at http://bellsouth.com/investor/pdf/3q03p_pdf).

has been taking full advantage of the anti-competitive cost disparity to provide customers with calling plans that put its IXC competitors in a price squeeze.

WHEREFORE and in consideration of the foregoing, AT&T respectfully requests that the Commission:

- (A) Immediately suspend the 1 cent promotion filed by BSLD.
- (B) Commence an expedited review/hearing regarding the matters alleged herein.
- (C) Cancel BSLD's 1 cent promotional tariff.
- (D) Require BSLD to establish per minute rates for each of its intrastate long distance calling plans that satisfy the imputation safeguards of F.S. § 364.051(5)(c).
- (E) Find that BellSouth's intrastate switched access rates are excessive, unjust and unreasonable and reduce those rates to cost-based levels immediately.
- (F) Provide other relief, as the Commission may deem appropriate.

RESPECTFULLY submitted this 12th day of November, 2003.



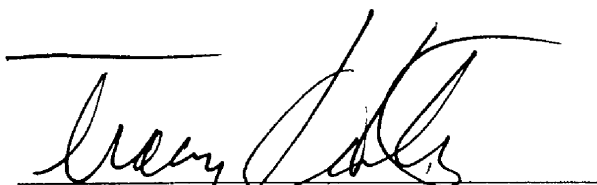
Tracy Hatch, Esq.

AT&T Communications of the
Southern States, LLC.
101 North Monroe Street, Suite 700
Tallahassee, FL 32301
(850) 425-6360

**CERTIFICATE OF SERVICE
DOCKET #**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail or as indicated this 12th day of November 2003, to the following parties of record:

| | |
|---|--|
| BellSouth Long Distance, Inc. Ms. Mary Jean Dennis North Terraces Building 400 Perimeter Center Terrace, Suite #400 Atlanta, GA 30346 Phone: (770) 352-3077 Fax: (678) 443-3470 <i>Email:</i> <i>Mary.dennis@BellSouth.com</i> | Bell South Telecommunications, Inc. Ms. Nancy H. Simms 150 South Monroe Street, Suite 400 Tallahassee, Florida 32301-1556 Phone: (850) 224-7798 Fax: (850) 222-8640 <i>Email:</i> <i>Nancy.soms@Bellsouth.com</i> |
| | |



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October 14, 2003
Via Overnight Delivery

2003 OCT 15 10:10:02
COMMERCIAL SERVICES

Ms. Beth Salak
Director of Competitive Markets
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

RE: Tariff Revision for BellSouth Long Distance, Inc.

Dear Ms. Salak:

Enclosed for filing is the original and three (3) copies of a tariff revision for BellSouth Long Distance, Inc. This filing introduces a new residential consumer plan - BellSouth® Savings Plan and the BellSouth® Savings Plan promotion. The Company respectfully requests an effective date of October 16, 2003 for this revision.

This filing includes the following pages:

| Page Revision | Reason for Change |
|----------------------------------|--|
| 25 th Revised Page 2 | Updates Check Sheet |
| 8 th Revised Page 3 | Updates Check Sheet |
| 23 rd Revised Page 4 | Updates Check Sheet |
| 6 th Revised Page 7.1 | Updates Table of Contents |
| Original Page 157.9 | Introduces BellSouth® Savings Plan |
| Original Page 227.27 | Introduces BellSouth® Savings Plan promotion |

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose.

Any questions regarding this filing may be directed to my attention at (407) 740-8575.

Sincerely,

Thomas M. Forte
Consultant to BellSouth Long Distance, Inc.

TMF:mw
Enclosure

cc: Mario Soto - BellSouth
Robin Taylor - BellSouth
Nancy Sims - BST
file: BellSouth - FL
BellSouth binder (MW)
tms: FLi0325

DOCUMENT NUMBER-DATE

11301 NOV 12 03

FPSC-COMMISSION CLERK

BELLSOUTH LONG DISTANCE, INC.

Florida P.S.C. Tariff No. 2
 25th Revised Page 2
 Cancels 24th Revised Page 2

CHECK SHEET

Pages of this tariff, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

| PAGE | REVISION | | PAGE | REVISION | PAGE | REVISION |
|------|-----------------------|---|------|----------------------|------|----------------------|
| 1 | Original | | 31 | Original | 62 | 1 st Rev. |
| 2 | 25 th Rev. | * | 32 | Original | 63 | 1 st Rev. |
| 3 | 8 th Rev. | * | 33 | Original | 64 | Original |
| 4 | 23 rd Rev. | * | 34 | Original | 65 | Original |
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| 30 | 1 st Rev. | | | | 90 | Original |

* - Indicates pages included with this filing.

EXHIBIT 1
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Issued: October 15, 2003

Effective: October 16, 2003

Director, Business Implementation and Compliance
 BellSouth Long Distance, Inc.
 400 Perimeter Center Terrace, Suite 400
 Atlanta, Georgia 30346

FLi0325

BELLSOUTH LONG DISTANCE, INC.

Florida P.S.C. Tariff No. 2
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| 122 | Original | | | 178 | 1 st Rev. |
| 123 | Original | | | 179 | 1 st Rev. |
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| 125 | Original | | | | |

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BELLSOUTH LONG DISTANCE, INC.

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| 197 | Original | 225 | 2 nd Rev. | 227.23 | Original |
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| | | | | 227.27 | Original |
| | | | | 228 | 4 th Rev. |
| | | | | 229 | Original |
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Issued: October 15, 2003

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Director, Business Implementation and Compliance
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FLI0325

BELLSOUTH LONG DISTANCE, INC.

Florida P.S.C. Tariff No. 2
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BELLSOUTH LONG DISTANCE, INC.Florida P.S.C. Tariff No. 2
Original Page 157.9**SECTION 4.0 - RATES AND CHARGES, (CONT'D.)****4.2 Residential Service Offerings, (Cont'd.)****4.2.31 BellSouth® Savings Plan**

The BellSouth® Savings plan is a direct dialed domestic outbound long distance service offered to residential Customers from switched access lines. Service is offered on a flat rate basis, twenty-four hours per day, seven days per week. Customers must dial 1 plus the area code, if applicable, and the terminating number to complete a call utilizing this service.

To be eligible for this plan Customers must: (1) be new or existing subscribers to BellSouth Long Distance; (2) be new Customers to the Company's affiliated incumbent local exchange entity but previously have had local exchange service from a competitive local exchange entity at the Customer's present address; and, (3) must subscribe to BellSouth® Complete Choice® plan, BellSouth® Area Plus® plan or Flat Rate Residential Individual lines. Flat Rate Residential Individual lines Customers must also subscribe to at least two Associated Services listed in Section 3.15 of this tariff. These plans and services are provided by the Company's affiliated incumbent local exchange entity.

All calls are billed in one (1) minute increments after an initial period, for billing purposes, of one (1) minute. This service is only offered in conjunction with the corresponding interstate BellSouth® Savings plan. This service is not offered on an intraLATA only basis. Employee Discounts, as defined in Section 4.14 of this tariff, do not apply for this plan.

(A) Monthly Recurring Charge

| | |
|-----------------|--------|
| Monthly Charge* | \$3.95 |
|-----------------|--------|

(B) Per Minute Rate

| | |
|-----------------|----------|
| Rate Per Minute | \$0.0500 |
|-----------------|----------|

- * This charge is the same as the Monthly Charge identified in the Company's Residential Services Pricing and Service Guide. Only one monthly charge will apply when both interstate and intrastate service is provided to the Customer.

EXHIBIT 1
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BELLSOUTH LONG DISTANCE, INC.

Florida P.S.C. Tariff No. 2
Original Page 227.27

SECTION 5.0 – PROMOTIONS, (CONT'D.)

5.32 Promotion #31 BellSouth® Savings Plan Promotion

(N)

(A) Promotion Description:

Customers who subscribe to the BellSouth® Savings plan during the promotion period may pay \$0.01 per minute (rounded up to the next whole minute) for domestic long distance calls subject to this plan during the promotional period.

This promotion covers calls made from time of enrollment in this promotion until January 31, 2004. After January 31, 2004, the Customer will be charged the per-minute rate in effect for the BellSouth® Savings plan described in Section 4.2.31 of this tariff.

(B) This promotion will begin on October 16, 2003 and will end on January 31, 2004.

(N)

**EXHIBIT 1
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