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December 11, 2003

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

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COMMISSION
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Re: Docket No. 030851-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC, MCI metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. are an original and fifteen copies of their Motion to Compel BellSouth Telecommunications, Inc. to Copy and Furnish Documents in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

RECEIVED & FILED

jh
FPSC-BUREAU OF RECORDS

Floyd R. Self
for Floyd R. Self

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Enclosures
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Implementation of Requirements)	
Arising From Federal Communications)	
Commission Triennial UNE Review:)	Docket No.: 030851-TP
Local Circuit Switching for Mass)	Filed: December 11, 2003
Market Customers)	
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**MOTION TO COMPEL BELLSOUTH TELECOMMUNICATIONS, INC.
TO COPY AND FURNISH DOCUMENTS**

AT&T of the Southern States, LLC (“AT&T”), and MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively “MCI”), pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.380(a), Florida Rules of Civil Procedure, requests that the Florida Public Service Commission (“Commission”) or the prehearing officer enter an order compelling BellSouth Telecommunications, Inc. (“BellSouth”) to provide AT&T and MCI with legible copies of each document received pursuant to the Subpoenas Duces Tecum referenced below, and as grounds therefore state:

1. On October 27, 2003, BellSouth issued Subpoenas Duces Tecum for Deposition to the following entities:

- Adelphia Telecommunications of Florida, Inc.;
- AllTel Communications, Inc.;
- Comcast Phone of Florida, LLC;
- Cox Florida Telecom, LP;
- Eagle Communications, Inc.;
- Florida Digital Network, Inc.;
- Focal Communications Corporation of Florida;
- IDS Telecom LLC;
- Interloop, Inc.;
- Level 3 Communications, LLC;
- Knology of Florida, Inc.; CG, LLC;
- Metropolitan Telecommunications of Florida, Inc.;
- Network Plus, Inc.;
- Orlando Telephone Company, Inc.;

PaeTec Communications, Inc.;
PointeCom, Incorporated;
Teligent Services, Inc.;
Time Warner Telecom of Florida, L. P.;
US LEC of Florida, Inc.;
Winstar Communications, LLC; and
XO Florida, Inc.

On October 30, 2003, BellSouth issued additional Subpoenas Duces Tecum for Deposition to the following entities:

IDT America, Corp.; and
NuVox Communications, Inc.

None of the entities listed is a party to this proceeding.

2. The subpoenas required that each non-party entity appear at the law offices of Radey, Thomas, Yon & Clark, P.A. in order to have their depositions taken. The subpoenas further required the deponents to appear with documents listed on the subpoena and on an attached document entitled "Matters upon which examination is requested per Fla. Rule 1.310(b)(6)."

3. BellSouth did not take the depositions of the entities to whom subpoenas were issued. Rather, BellSouth allowed each entity to produce the documents without seeking to depose the custodian or other person in possession of the documents.

4. On November 21, 2003, AT&T and MCI filed a Request for Copies Per Rule 1.351, seeking copies of the documents received by BellSouth pursuant to the subpoenas.

5. On November 25, 2003, BellSouth filed its Objections to AT&T and MCI's Request For Copies Per Rule 1.351 asserting four objections to AT&T and MCI's request.

6. This Commission has recognized that discovery is proper and may be compelled if it is not privileged and likely will lead to relevant and admissible information:

The test for determining whether discovery is appropriate is set forth in Rule 1.280(b)(1) of the Florida Rules of Civil Procedure which provides

that "parties may obtain discovery regarding any matter, not privileged, that is relevant for the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Section 90.401 of the Florida Evidence Code defines "relevance" as evidence tending to prove or disprove a material fact.

Order No. PSC-93-0652-PCO-WS, *In Re Jasmine Lakes Utilities Corporation*, Docket No. 920148-WS, dated April 28, 1993.

7. AT&T and MCI's Request for Copies is authorized by the rules of discovery and seeks information relevant to the subject matter of this action. The copies are not protected by any privilege recognized under Rule 1.280, Fla.R.Civ.P., or by any other privilege in Florida law, nor has BellSouth asserted the existence or applicability of any such privilege.

8. BellSouth presumably sought production of the information requested by its subpoenas for use in this proceeding either as direct evidence, or as material that would ultimately lead to the discovery of relevant and admissible evidence. Regardless of whether BellSouth chooses to use the information, AT&T and MCI are entitled to review that information and make an independent determination of its relevance to the issues raised in this proceeding.

RESPONSE TO OBJECTION (1)

9. BellSouth argues that the minimum time for responding to discovery under the Commission's procedural orders is 21 days, rather than the 7 days requested. However, BellSouth fails to consider that the request for copies is not a production of documents in the normal sense.

10. The recipients of the subpoenas, none of whom are parties to this proceeding, were the entities burdened with producing the documents. AT&T and MCI are merely requesting copies of the documents produced to BellSouth (see Response to Objection (2)). Section 1.351(e) provides that a parties receiving documents pursuant to a subpoena to a non-party must furnish a copy of each

document to any party requesting a copy, subject only to payment of a reasonable copying charge. That requirement is not a separate discovery request, and is not governed by a more lengthy discovery response time. If depositions were taken as noticed, AT&T and MCI would already have had access to the documents. The parties agreed to cooperate in discovery with regard to the exchange of information. AT&T and MCI believe the 7 day turnaround is reasonable in light of the existing schedule for the filing of rebuttal testimony in this case, and does not constitute an undue burden on BellSouth. Therefore, AT&T and MCI request that the Commission compel BellSouth to provide copies of the documents received from each of the non-party telecommunications companies.

RESPONSE TO OBJECTION (2)

11. BellSouth argues that its subpoenas were issued to the listed non-parties pursuant to Rule 1.310, Fla.R.Civ.P., and as such it is not required to provide copies of documents under Rule 1.351, Fla.R.Civ.P. BellSouth's argument should be rejected by the Commission, and BellSouth should be compelled to copy and produce the documents received from non-parties to this proceeding.

12. The BellSouth subpoenas were issued pursuant to Rule 1.310(b)(6), Fla.R.Civ.P, which governs the taking of depositions. The subpoenas contain an attachment identifying the documents to be produced as authorized by 1.310(b)(1), Fla.R.Civ.P. Rule 1.310(b)(5), Fla.R.Civ.P. provides that production of documents at the taking of a deposition is to be made pursuant to Rule 1.350, Fla.R.Civ.P.

13. Rule 1.310(f) and (g), Fla.R.Civ.P. provide that documents produced in the course of a deposition must be copied and exchanged with any party so requesting. In that regard, Rule 1.310(f)(1), Fla.R.Civ.P provides, in pertinent part, that:

. . . Documents and things produced for inspection during the examination of the witness shall be marked for identification and annexed to and returned with the depositions upon the request of a party and may be inspected and copied by any party. . . . (e.s.).

Similarly, Rule 1.310(g), Fla.R.Civ.P. governs a party's right to obtain copies of depositions, subject only to the payment of reasonable costs of copying. In short, the rule cited by BellSouth governs the procedures to follow when depositions are taken, transcribed, and filed in the record. In this case, had BellSouth actually taken any depositions, AT&T and MCI would already have access to the documents.

14. Despite the designation of Rule 1.310, Fla.R.Civ.P. in its subpoena, BellSouth did not take depositions of the subpoenaed telecommunications companies. Thus, the effect of the subpoenas was that contemplated by Rule 1.351, Fla.R.Civ.P, which governs the "inspection and copying of any documents or things within the scope of rule 1.350(a)" from persons that are not parties to a proceeding. The fact that BellSouth chose to permit the companies to produce documents in lieu of sitting for deposition does not extinguish BellSouth's obligation to exchange such documents under either Rule 1.310 or Rule 1.351, Fla.R.Civ.P.

15. It is undisputed that each of the companies to which subpoenas were directed are not parties to this action. It is also undisputed that no depositions were actually taken. AT&T and MCI's filing of its request for copies under Rule 1.351, Fla.R.Civ.P. was intended to recognize the reality of the nature of BellSouth's subpoena. Had BellSouth disclosed from the beginning that it had no intention of taking the depositions, and that its subpoenas were nothing more and nothing less than production requests to non-parties, it would have been required to proceed under Rule 1.351, Fla.R.Civ.P., and the requirement to produce copies of documents pursuant to that rule would not now be in dispute. In any event, whether proceeding under either Rule 1.310 or 1.351, Fla.R.Civ.P., AT&T and MCI are entitled to inspect the documents received by BellSouth pursuant to the subpoenas issued, and the Commission should not allow BellSouth to avoid the exchange of documents so clearly contemplated in both rules.

16. The express terms of both rules provide for inspection by all parties of all documents produced pursuant to requests made under such rules. The fact that BellSouth chose not to take the

noticed depositions does not alter the substantive or procedural rights of the parties to inspect copies as set forth in each of those rules. Therefore, AT&T and MCI request that the Commission give effect to the obligation to provide copies, regardless of the discovery name that BellSouth chose to act under, and compel BellSouth to provide copies of the documents received from each of the non-party telecommunications companies.

RESPONSE TO OBJECTION (3)

17. BellSouth argues that AT&T and MCI could obtain the documents sought by serving its own subpoenas to the same entities. Aside from the fact that both Rule 1.310 and 1.351, Fla.R.Civ.P. give AT&T and MCI an unqualified right to obtain copies from BellSouth, earlier discussions between the parties and the Commission concerning the discovery process led AT&T and MCI to believe that: 1) the parties were to cooperate in discovery; 2) duplicate subpoenas were not necessary and to be avoided, so that parties and non-parties alike would not be overburdened or bombarded with similar requests; 3) a full exchange of documents would be required; and, 4) any claims of confidentiality with respect to documents to be exchanged would be rendered moot by reason of the November 7, 2003 Protective Order No. PSC-03-1263-PCO-TP. Based upon the foregoing, AT&T and MCI did not believe it was necessary to issue duplicate subpoenas to the same non-party telecommunications companies. Therefore, AT&T and MCI request that the Commission give effect to the agreements regarding cooperation, not require the duplication of the burden of production on non-parties, and compel BellSouth to provide copies of the documents received from each of the non-party telecommunications companies.

RESPONSE TO OBJECTION (4)

18. BellSouth's final objection is based on the fact that it entered into non-disclosure agreements with the producing entities which restricts disclosure. BellSouth asserts that this act, a

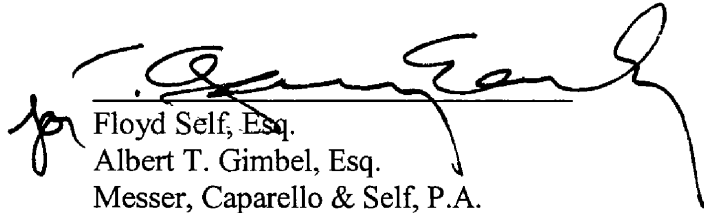
contractual obligation of its own doing, allows it to circumvent the Florida Rules of Civil Procedure and the Protective Order entered in this case, and prevents the exchange of otherwise relevant and non-privileged documents in this matter.

19. BellSouth's claims that confidentiality issues serve to restrict further production fail, since prior actions of this Commission render confidentiality to a nonissue status. Order No. PSC-03-1263-PCO-TP more than adequately addresses the processing and maintaining of confidential information. AT&T and MCI have agreed to receive and handle documents from BellSouth subject to the Order No. PSC-03-1263-PCO-TP.

20. BellSouth cannot deny the rights of parties under the Commission's rules of discovery and procedure by entering "non-disclosure" agreements with those entities from which it obtains documents under those same rules of discovery and procedure. Not only is the refusal to provide copies of documents obtained from non-parties prohibited by the Rules of Civil Procedure, but Commission acceptance of such refusal would establish a dangerous precedent for Commission proceedings. Therefore, AT&T and MCI request that the Commission reject BellSouth's efforts to restrict parties' discovery rights and shirk the requirements of the Rules of Civil Procedure, and compel BellSouth to provide copies of the documents received from each of the non-party telecommunications companies.

WHEREFORE, for the reasons set forth herein, AT&T and MCI request entry of an order compelling BellSouth to provide copies of the documents received by BellSouth from the reference non-parties as requested in the Request of AT&T and MCI For Copies Per Rule 1.351.

Respectfully submitted this 11th day of December, 2003.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by Hand Delivery (*), electronic mail, and/or U. S. Mail this 11th day of December, 2003.

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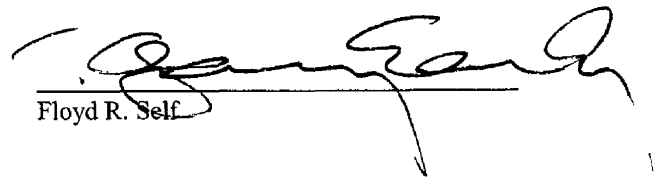
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