

ORIGINAL

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March 9, 2004

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COMMISSION
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Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No.: 040026-TP**
**Complaint and Petition by CAT Communications International, Inc. against
BellSouth Telecommunications, Inc. for alleged unlawful emergency
telephone service charge and telecommunications relay service charges**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Final Summary Order, 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,

Nancy B White
Nancy B. White *epk*

AUS _____ Enclosures
CAF _____
CMP _____
COM _____ cc: All Parties of Record
CTR _____ Marshall M. Criser III
ECR _____ R. Douglas Lackey
GCL _____
OPC _____
MMS _____
SEC 1 _____
OTH _____

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CERTIFICATE OF SERVICE
Docket No. 040026-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
(* Electronic Mail, (** Fax and First Class U. S. Mail this 9th day of March, 2004 to the
following:

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Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and Petition by CAT Communications) Docket No. 040026-TP
International, Inc. against BellSouth)
Telecommunications, Inc. for alleged unlawful)
emergency telephone service charge and)
telecommunications relay service charges) Filed: March 9, 2004
_____)

BellSouth Telecommunications, Inc.'s Motion for Final Summary Order

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion for Final Summary Order with respect to the Complaint filed by CAT Communications International, Inc. ("CAT") on the grounds that the Complaint fails to state a claim for which the Florida Public Service Commission ("Commission") may grant relief and that CAT has no genuine complaint against BellSouth.

As acknowledged in CAT's Complaint, CAT currently purchases and resells BellSouth services pursuant to a resale agreement entered into between CAT and BellSouth on November 6, 2002. The agreement was approved by the Commission by operation of Section 252(e)(4) of the Telecommunications Act of 1996 on March 10, 2003.

CAT complains that BellSouth is inappropriately collecting "911" fees and telecommunications access system surcharges from CAT. Specifically, CAT states that it collects these charges from its end users, and therefore, should be allowed to maintain the associated administrative fees allowed by Section 365.171, Florida Statutes and Section 427.704, Florida Statutes. CAT requests that the Commission direct BellSouth to cease and desist from charging or collecting "911" and other surcharges from CAT.

CAT's Complaint should be dismissed for failure to state a claim for which relief can be granted. CAT neglected to point out to the Commission Section 1.1.5 of Attachment 7 of the interconnection agreement between BellSouth and CAT which states in part that:

BellSouth will also bill CCI and CCI will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees.

The BellSouth activity complained of by CAT is, therefore, exactly what CAT and BellSouth agreed to do in the Commission approved interconnection agreement.

Moreover, CAT's apparent contention that BellSouth's actions somehow violate Florida Statutes also has no foundation. Pursuant to the interconnection agreement, BellSouth collects the "911" fee from CAT, deducts the costs of administration, and remits the funds to the counties pursuant to Section 365.171, Florida Statutes. It is apparent that CAT passes the "911" fee on to its end users. Nothing in Section 365.171, Florida Statutes prohibits this process and pursuant to the interconnection agreement between BellSouth and CAT, the process works the way it was intended.

Likewise, Section 427.704, Florida Statutes requires the collection of a monthly surcharge from local subscribers in order to fund the statewide telecommunications access system. Pursuant to Section 1.1.5. of Attachment 7 of the interconnection agreement between BellSouth and CAT, BellSouth collects the surcharge from CAT, deducts the costs of administration and remits the funds to the appropriate party. Once

again, CAT passes the surcharge on to its end users and the process works the way it was intended.

Rule 28-106.204(40), Florida Administrative Code, provides that “any party may move for summary final order whenever there is no genuine issue as to any material fact.” Pursuant to Section 120.57(1)(b), Florida Statutes, a summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.

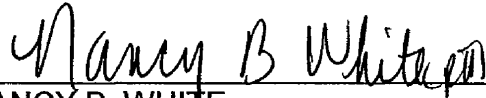
Under Florida law, it is well established that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought. Moore v. Moore, 475 So. 2d 666, 668 (Fla. 1985). A summary judgment cannot be granted unless the facts are so crystallized that nothing remains but question of fact. Id.

As demonstrated by the contract section quoted above, there is no issue of material fact within the four corners of the Complaint filed by CAT with regard to BellSouth. BellSouth is thus entitled to the entry of a final summary order dismissing the Complaint.

WHEREFORE, BellSouth respectfully requests that the Commission grant BellSouth’s Motion for Summary Final Order.

Respectfully submitted this 9th day of March, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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