

EXPRESS PHONE SERVICE, INC.

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ORIGINAL

November 16, 2004

Ms. Blanca S. Bayo
Director, Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

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RE: BELLSOUTH, SELF EFFECTUATING ENFORCEMENT MECHANISM and 2004 HURRICANE ACTIVITY IN THE STATE OF FLORIDA

Dear Ms. Bayo:

In FPSC Document 09739, dated 09/08/04, and FPSC Document 10212, dated 09/21/04, BellSouth Telecommunications, Inc. ("BellSouth") has conveyed the following to the Commission:

1. Section 4.5.4 of BellSouth's Self Effectuating Enforcement Mechanism Administration Plan ("Plan"), approved by the Florida Public Service Commission on February 12, 2002, by Order No. PSC-02-0187-FOF-TP, allows BellSouth to seek exemption from obligations for penalties under Tier 1 or Tier 2 Enforcement Mechanism for non-compliance with a performance measure if such non-compliance is the result of a force majeure event.
2. The severity of Hurricane Frances warrants defining BellSouth's entire service area in the State of Florida as the service emergency area effective September 7, 2004.
3. BellSouth will keep the Commission advised of recovery efforts progress and when the service emergency period is concluded.
4. The effective date for defining the entire State of Florida as the service emergency area should be September 4th versus September 7th as the former is the date Hurricane Frances made landfall on the eastern coast of Florida.

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Additionally, in Carrier Notification Letters SN91084271 and SN 91084292, dated October 21, 2004 and November 15, 2004, respectively, BellSouth outlines its perceptions of exclusions of wire centers, submetrics and dates in calculating remedy payment amounts.

The historical weather patterns that have impacted the State of Florida and all of its residents, both residential and commercial, over the last few months have been quite significant and have definitely everyone's ability to conduct "business as usual". There is little doubt that BellSouth has faced unusual burdens in acquiring all of the information necessary to comply with the provisions of the Plan. There is also little doubt that, without the disruption of the four hurricanes, that BellSouth still would not have met the measurement standards established by the Commission. But this is exactly what BellSouth is trying to establish by exempting themselves from obligations due to force majeure events.

The reality is that BellSouth would still have fallen short of meeting the established performance standards, even in the absence of the force majeure events. This is readily evident by the historical performance of BellSouth over the first ten months of 2004. BellSouth should not be allowed to completely avoid penalties they would normally be faced with.

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BellSouth also cannot be allowed to arbitrarily decide that the entire state was affected by Hurricane Frances for the purpose of seeking exemption from obligations for penalties under Tier 1 or Tier 2 Enforcement Mechanism for non-compliance with a performance measure.

Escambia County and Santa Rosa County, the two western most geographical counties in Florida, are both served by BellSouth as the incumbent RBOC. Fortunately, neither county was impacted by Hurricane Frances. At approximately 2 p.m. on September 5, 2004, one of the last recordings of hurricane force winds (75 mph) was documented for Hurricane Frances. At that time, Hurricane Frances was located approximately 340 miles away from Pensacola, Florida. At approximately 11 p.m. the following day, September 6, 2004, Frances was recorded as only having 35 mph winds and was still located approximately 150 miles away from Pensacola, Florida.

BellSouth states to the Commission that they are invoking Section 4.5.4 of the Plan effective September 7, 2004 (later changed to September 4, 2004, the date Hurricane Frances impacted the east coast of Florida) to avoid the obligations for penalties for the entire State of Florida. In fact, there is no basis for including Escambia County and Santa Rosa County, and their associated specific NXX's, in the definition of the service emergency area as of either date.

Escambia County and Santa Rosa County were impacted by the landfall of Hurricane Ivan on September 16, 2004. If the Commission is going to allow BellSouth to declare the entire State of Florida as a service emergency area, this is the date that the inclusion of Escambia County and Santa Rosa County into that area should be based on.

Lastly, BellSouth further states that they will advise the Commission when the service emergency period is concluded. As of the date of this letter, two months have passed since the last hurricane made landfall in the State of Florida. Express Phone Service has not found any representations by BellSouth that indicate either a conclusion of the service emergency periods or a projection of a possible conclusion.

Express Phone Service, Inc. ("Express") hereby respectfully requests that the Commission take the following matter under consideration in light of the information presented herein:

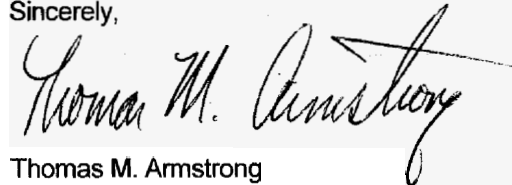
1. BellSouth should be responsible for obligations for penalties under Tier 1 or Tier 2 Enforcement Mechanism for non-compliance with a performance measure even if such non-compliance is the result of a force majeure event when non-compliance is historically habitual. In the specific case of Express, BellSouth has been responsible for obligations for penalties for the ten consecutive months immediately preceding the force majeure events.
2. BellSouth should only be afforded relief from any of its responsibilities in areas that are actually affected by force majeure events and should not be allowed to include service areas that are not impacted whatsoever.
3. BellSouth should be required to either provide a "sunset" date for the service emergency area designated, in entirety or portions thereof, within a reasonable amount of time as established by the Commission following a force majeure event. In the absence of a date being provided by BellSouth within a reasonable amount of time, the Commission should establish a "sunset" date for the service emergency area, in entirety or portions thereof. BellSouth currently has no incentive to end a period of designation of a service emergency area; instead, if they are allowed to seek exemptions from the obligations for penalties, BellSouth actually stands to gain financially by not ending the designation.

The current situation of BellSouth being able to (1) seek exemption from obligations for penalties for non-compliance with performance measures due to a force majeure event, (2) establish service emergency areas based on an event happened while disregarding where the event occurred and (3) having no compelling reason to end a designation of service emergency areas is akin to allowing the fox to administratively manage the hen house.

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The Commission should take steps to ensure that BellSouth is not allowed to have the final say and determination of when, where, what and how long a force majeure event, or events in the case of Florida in 2004, will impact its obligations under the Plan established the Commission to ensure that BellSouth's performance is supportive of the State's goals of having a competitive telecommunications marketplace for its citizens.

Sincerely,



Thomas M. Armstrong
President

cc: Braulio L. Baez, Chairman
J. Terry Deason
Lila A. Jaber
Rudolph Bradley
Charles M. Davidson
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