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January 30, 2006

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. 050119-TP: Joint Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc. and Frontier Communications of the South, LLC ("Joint Petitioner") objecting to and requesting suspension of Proposed Transit Traffic Service Tariff filed by BellSouth Telecommunications, Inc.

Docket No. 050125-TP: Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL 2004-284 filed by BellSouth Telecommunications, Inc. by AT&T Communications of the Southern States, LLC

Dear Ms. Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Kathy K. Blake and Kenneth Ray McCallen, which we ask that you file in the captioned docket.

Sincerely,


Manuel A. Gurdian

Enclosures

cc: All Parties of Record
Jerry Hendrix
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket Nos.: 050119-TL and 050125-TP;
Consolidated Pursuant to Order No.: PSC-05-0517-PAA-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 30th day of January, 2006 to the following:

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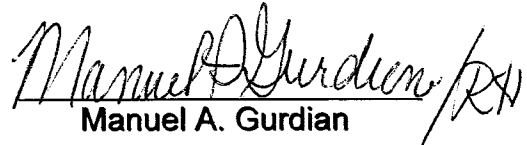
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Manuel A. Gurdian

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF KATHY K. BLAKE
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NOS. 050119-TP AND 050125-TP
5 JANUARY 30, 2006
6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR
9 BUSINESS ADDRESS.
10
11 A. My name is Kathy K. Blake. I am employed by BellSouth as Director –
12 Policy Implementation for the nine-state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.
14
15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR
16 BACKGROUND AND EXPERIENCE.
17
18 A. I graduated from Florida State University in 1981 with a Bachelor of
19 Science degree in Business Management. After graduation, I began
20 employment with Southern Bell as a Supervisor in the Customer Services
21 Organization in Miami, Florida. In 1982, I moved to Atlanta where I held
22 various positions involving Staff Support, Product Management,
23 Negotiations, and Market Management within the BellSouth Customer
24 Services and Interconnection Services Organizations. In 1997, I moved into
25 the State Regulatory Organization with various responsibilities for

1 testimony preparation, witness support and issues management. I assumed
2 my current responsibilities in July 2003.

3

4 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS
5 PROCEEDING?

6

7 A. No.

8

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10

11 A. The purpose of my testimony is to provide BellSouth's policy position on
12 several issues in response to direct testimony filed on December 19, 2005
13 by Timothy J. Gates on behalf of The Competitive Carriers of the South,
14 Inc. ("CompSouth"), Steven W. Watkins on behalf of the Small LECs, and
15 Billy H. Pruitt on behalf of Sprint Nextel and T-Mobile USA Inc. ("Sprint
16 Nextel/T-Mobile") and Richard T. Guepe on behalf of AT&T
17 Communications of the Southern States, LLC ("AT&T").

18

19 Q. COMPSOUTH (GATES, PP. 8-9), THE SMALL LECS (WATKINS, PP. 8-
20 10) AND SPRINT NEXTEL/T-MOBILE (PRUITT, PP. 8-9) ARGUE
21 THAT BECAUSE BELL SOUTH HAS PROVIDED TRANSIT TRAFFIC
22 IN THE PAST WITHOUT AN ADDED CHARGE, BELL SOUTH
23 SHOULD NOT BE ALLOWED TO COLLECT AN INTERMEDIARY
24 CHARGE GOING FORWARD. DO YOU AGREE?

25

1 A. No. In fact, the Florida Public Service Commission (“Commission” or
2 “FPSC”) found in Order No. PSC-05-0975-FPF-TP (“*FL Joint Petitioners*
3 *Arbitration Order*”):

4
5 “The Joint Petitioners’ argument that BellSouth should not
6 be allowed to impose the TIC because it has not been
7 imposed for the previous eight years is unconvincing.
8 ...[W]e find that the basis for the TIC has existed for some
9 time as evidenced by its appearance in BellSouth’s other
10 interconnection agreements. Also, it would seem that
11 BellSouth has attempted to implement the TIC in the past,
12 but elected to forego charging the Joint Petitioners on
13 earlier occasions. BellSouth should not be penalized for
14 deciding [not] [*sic*] to pursue the charge on prior
15 occasions.”¹

16

17 As explained in the Direct Testimony of Mr. McCallen filed on December
18 19, 2005 (pp. 4-5), although BellSouth has been providing the transit
19 function for many years, the explosive growth of wireless and ISP-bound
20 traffic has resulted in a substantial increase in the number of transit calls
21 being placed over BellSouth’s network. The transit service functionalities
22 are valuable to ICOs, CLECs and CMRS providers for their originated
23 traffic. Due to the increased volumes of traffic, BellSouth is taking the
24 appropriate steps so that it is no longer providing this service without
25 receiving compensation for the use of its network.

26

27

¹ *In re: Joint petition by NewSouth Communications Corp., NuVox Communications, Inc., and Xspedius Communications, LLC, on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Jacksonville, LLC, for arbitration of certain issues arising in negotiation of interconnection agreement with BellSouth Telecommunications, Inc.*, Docket No. 040130-TP, issued October 11, 2005 (“*FL Joint Petitioners Arbitration Order*”), p. 52.

1 Q. THE POSITION OF COMPSOUTH (GATES, PP. 14-15), AT&T (GUEPE,
2 P. 8) AND SPRINT NEXTEL/T-MOBILE (PRUITT, PP. 9-14) IS THAT
3 INCUMBENT LECS ARE REQUIRED TO PROVIDE TRANSITING
4 PURSUANT TO §§ 251(a)(1) AND 251(c)(2)(a) OF THE ACT. DO YOU
5 AGREE?

6
7 A. Certainly not. Although I am not an attorney, from a layman's perspective,
8 as BellSouth's witness Mr. McCallen stated in his direct testimony (page
9 12), Section 251(a)(1) imposes obligations on any two carriers to
10 interconnect their networks either directly or indirectly. Section 251(a)(1)
11 says nothing at all about any other carrier's obligation to facilitate that
12 indirect interconnection. If the parties' interpretation of what this section
13 means were correct, any and every carrier in Florida could be forced to
14 transport calls for other carriers, even though as a third party it neither
15 originated nor terminated the traffic. This is clearly beyond what Congress
16 intended when it stated that each telecommunications carrier has the duty
17 "to connect directly or indirectly with the facilities and equipment of other
18 telecommunications carriers." (Section 251(a)(1))

19
20 As Mr. Gates admits (Gates, p. 12), the FCC is "still pondering" whether the
21 FCC has a legal authority to impose transiting obligations pursuant to
22 Section 251 of the Act, and, if so, the basis for the appropriate rates for such

1 services. In addressing this issue in the *Virginia Arbitration Order*,² the
2 Wireline Competition Bureau of the FCC declined to make such a finding³
3 and is seeking comments in the pending Intercarrier Compensation
4 FNPRM.⁴ In addition, the FCC stated in the *Triennial Review Order*
5 (“TRO”) that, “[t]o date, the Commission’s rules have not required
6 incumbent LECs to provide transiting.”⁵ While the FCC has not expressly
7 held that ILECs do not have to provide the transit function, it is clear that
8 the FCC has refused to make it a requirement to date, notwithstanding many
9 opportunities to do so. Further, if the FCC were to impose such an
10 obligation, there is no indication that TELRIC rates would apply.

11

12 Q. ON P. 16 OF HIS TESTIMONY, MR. GATES QUOTES THE *NC JOINT*
13 *PETITIONERS ARBITRATION RECOMMENDED ORDER*⁶ AS STATING,
14 “BELLSOUTH HAS CONCEDED THAT THE TANDEM TRANSIT
15 FUNCTION IS A SECTION 251 OBLIGATION.” PLEASE RESPOND.

² See *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(3)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(3)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Arbitration*, CC Docket No. 00-249, and *In the Matter of Petition of AT&T Communications of Virginia Inc. Pursuant to Section 252(3)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.* CC Docket No. 00-251 Memorandum Opinion and Order dated July 17, 2002 (“*Virginia Arbitration Order*”).

³ *Virginia Arbitration Order*, at ¶ 117.

⁴ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, cc Docket No. 01-92, Further Notice of Proposed Rulemaking, Federal Communications Commission, 20 FCC Rcd 4685; 1005 FCC LEXIS 1390, FCC 05-33, rel. March 3, 2005 (“*ICF FNPRM*”).

⁵ FCC *Triennial Review Order* (“TRO”), FCC 03-36, rel. August 21, 2003, at ¶ 534, n. 1640..

⁶ *In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*, Docket Nos. P-772, Sub 8; P-913, Sub 5; P-898, Sub 3; P-824, Sub 6; and P-1202, Sub 4, Recommended Arbitration Order, issued July 26, 2005 (“*NC Joint Petitioners Arbitration Recommended Order*”).

1 A. As clarified in BellSouth's Objections to Recommended Arbitration Order
2 and BellSouth's Reply Comments in Support of Objections to
3 Recommended Arbitration Order and my pre-filed testimony filed in the *NC*
4 *Joint Petitioners Arbitration* proceeding, BellSouth's position is that the
5 FCC has declined to find that ILECs have a 251 duty to provide transit
6 service at TELRIC rates. Mr. Gates' reference to my testimony from the
7 hearing transcript in the *NC Joint Petitioners Arbitration* proceeding (Tr.
8 Vol. 6, page 338) is a quote that BellSouth has a 251 obligation to provide
9 transiting traffic services "based on our read of the FCC's arbitration orders
10 in Virginia." This statement was incorrect. As acknowledged by Mr. Gates
11 in his testimony in the current proceeding (Gates, p. 12), and as discussed
12 above, the FCC's decision in the *Virginia Arbitration Order* refused to find
13 any 251 obligation to provide transit service, as recognized throughout my
14 written testimony and other oral testimony. BellSouth's written testimony,
15 oral testimony, and briefs in the *NC Joint Petitioners Arbitration*
16 proceeding, taken as a whole, demonstrate that BellSouth's position is that
17 the FCC has not found that ILECs have a Section 251 duty to provide transit
18 service.

19
20 Q. IS THE ISSUE OF TRANSIT TRAFFIC PROVISION AS A SECTION
21 251(a)(1) REQUIREMENT INCLUDED ON THE ISSUES LIST FOR
22 THIS PROCEEDING?

23
24 A. No. This issue is not included on the list of issues to be addressed per
25 Exhibit A of the Commission's Order Establishing Procedure, Order No.

1 PSC-05-1206-PCO-TP, issued December 6, 2005.

2

3 Q. THEN WHY IS THE ISSUE OF A SECTION 251 OBLIGATION BEING
4 RAISED BY COMPSOUTH (GATES, P. 15) AND SPRINT NEXTEL/T-
5 MOBILE (PRUITT, PP. 16-18 AND 27-28)?

6

7 A. Presumably, CompSouth and Sprint Nextel/T-Mobile are propounding their
8 position that BellSouth has a Section 251 obligation to provide transit
9 service as justification for arguing that any charges for providing the service
10 should be at TELRIC rates.

11

12 Q HOW DO YOU RESPOND TO THE ASSERTION THAT TRANSIT
13 RATES MUST BE DEVELOPED CONSISTENT WITH TELRIC
14 PRINCIPLES?

15

16 A. As I explained above, Mr. Gates' and Mr. Pruitt's initial premise – that
17 BellSouth has a Section 251/252 obligation to provide transit traffic – is
18 incorrect. Therefore, the conclusion that such traffic must be provided at
19 TELRIC rates is equally flawed. Because BellSouth is not required to
20 provide a transit function, TELRIC pricing principles are inapplicable.
21 Where BellSouth voluntarily agrees to provide a transit function, BellSouth
22 can charge market-based rates. Even if Section 251(a) could be read to
23 impose a transit obligation (which it cannot), TELRIC pricing would not be
24 applicable to that obligation.

25

1 Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION (FPSC)
2 ALREADY ADDRESSED WHETHER TRANSITING IS A SECTION
3 251/252 REQUIREMENT?
4

5 A. Yes. The *Florida Joint Petitioners Arbitration Order*, issued October 11,
6 2005, states,

7
8 ... (W)e find the TIC [Tandem Intermediary Charge] is not
9 required to be TELRIC-based and is more appropriately, in
10 this instant proceeding, a negotiated rate between the
11 Parties. A TELRIC rate is inappropriate because transit
12 service has not been determined to be a § 251 UNE.⁷

13 In approving a Tandem Intermediary Charge (i.e., a charge in addition to
14 the applicable TELRIC tandem switching and transport rates), the FPSC
15 Order further concludes,

16
17 BellSouth shall be allowed to charge the CLEC a Tandem
18 Intermediary Charge (TIC) for transport of transit traffic
19 when CLECs are not directly interconnected to third parties.
20 Parties are strongly encouraged to continue negotiations
21 beginning at a rate of \$.0015 per minute of use.⁸

22
23 Q. IN RESPONSE TO THE QUESTION WHETHER ANY STATES IN
24 BELLSOUTH'S SERVING AREA HAVE ISSUED FINAL DECISIONS
25 ON THE TRANSIT TRAFFIC ISSUE, ON PAGES 15-16, MR. GATES
26 DISCUSSES THE *NORTH CAROLINA JOINT PETITIONER*
27 *ARBITRATION ORDER*. IS THAT A FINAL ORDER?
28
29

⁷ *FL Joint Petitioners Arbitration Order*, at p. 52.

⁸ *Id.*, at p. 53.

1 A. No. The North Carolina Joint Petitioner Arbitration Order is a
2 Recommended Arbitration Order. Comments were filed by the parties
3 through October, 2005. A final North Carolina order has not yet been
4 issued.

5
6 Q. IS THE *FLORIDA JOINT PETITIONERS ARBITRATION ORDER* THE
7 ONLY FINAL ORDER ON THIS ISSUE IN BELLSOUTH'S REGION?

8
9 A. No. On March 23, 2005, the Georgia Public Service Commission
10 ("GPSC") issued its order in Docket 16772-U, BellSouth's Petition for a
11 Declaratory Ruling Regarding Transit Traffic. The GPSC order approved
12 (with some modifications) the Memorandum of Understanding ("MOU")
13 filed by BellSouth and the Georgia Telephone Association, including
14 BellSouth's voluntary provision of the transiting function for third party
15 transit traffic, in exchange for transiting charges to be paid to the transiting
16 carrier at a rate of \$0.0025 per minute of use, unless otherwise agreed in an
17 effective interconnection agreement between the parties.

18
19 In Docket No. 03-00585⁹ on the issues of CMRS/ICO transit traffic, the
20 Tennessee Regulatory Authority ("TRA") found "the company that
21 originates the call is responsible for paying the party terminating the call."¹⁰

22 Specifically, the Order states:
23

⁹ *In Re: Petitions for Arbitration of Cellco Partnership d/b/a Verizon Wireless, BellSouth Mobility LLC, et al, AT&T Wireless, T-Mobile USA < Inc. and Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, Order of Arbitration Award issued January 12, 2006. ("*TN CMRS/ICO Arbitration Order*").

¹⁰ *Id.*, at p. 24.

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Similarly, calls that originate on an ICO member’s network which traverse the BellSouth trunk group obligates that ICO member to pay the appropriate transport and termination charges associated with getting that call to the POI of the CMRS provider, which is located at the BellSouth tandem.¹¹

The TRA will address issues regarding BellSouth’s Transit Tariff in Docket No. 04-00380, which is currently in abeyance pending the resolution of the ICOs’ planned appeal of certain aspects of the *TN CMRS/ICO Arbitration Order*.

In its *KY Joint Petitioners Arbitration* on September 26, 2005,¹² the KPSC concluded at p. 15 that BellSouth would continue to be required to transit third party traffic, but not as a Section 251 obligation. The KPSC further held that “[t]he rates previously charged should be contained in the new interconnection agreements until and unless BellSouth can justify the TIC additive.”¹³ On October 18, 2005, BellSouth filed a Motion for Rehearing and Request for Oral Argument on several findings in the KPSC’s Order, including its finding on the transit traffic issue (Issue 65). Oral arguments were heard on November 30, 2005. A decision on the Motions for Reconsideration is pending.

¹¹ *Id.*, at p. 30.
¹² *In the Matter of: Joint Petition for Arbitration of NewSouth Communications Cop., NuVox Communications, Inc., KMC Telecom V., Inc., KMC Telecom III LLC, and Xspedius Communications, LLC et al of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(B) of the Communications Act of 1934, as Amended, Case No. 2004-00044, (“KY Joint Petitioners Arbitration Order”)*.
¹³ *Id.*, at p. 15.

1 Q. ARE THERE ANY OTHER DECISIONS FROM STATES IN
2 BELLSOUTH'S SERVING AREA ON THE THIRD-PARTY TRANSIT
3 TRAFFIC ISSUE?
4

5 A. There are no other final written orders; however, this issue has been
6 arbitrated by BellSouth and the Joint Petitioners in all nine of BellSouth's
7 states. In Mississippi, the Recommendation of the Arbitration Panel to the
8 Mississippi Public Service Commission, issued December 13, 2005,
9 concluded,

10
11 [T]here is no support for the proposition that BellSouth
12 must provide this transit function under Section 251.
13 Accordingly, we adopt BellSouth's position and language
14 for this issue.¹⁴
15

16 Q. MR. GATES MAKES THE ALLEGATION THAT "ABSENT THE
17 INCUMBENT'S TRANSITING SERVICES, COMPSOUTH MEMBERS
18 COULD BE REQUIRED TO ESTABLISH, MONITOR AND MAINTAIN
19 INTERCONNECTION ARRANGEMENTS WITH EVERY OTHER
20 LOCAL CARRIER TO HANDLE THIS TRAFFIC." (GATES, P. 17). IS
21 THIS WHAT BELLSOUTH IS SAYING?
22

23 A. No. BellSouth has agreed to provide the transit function between two other
24 carriers, but not at TELRIC rates. Carriers can connect directly with other
25 carriers in order to exchange traffic, and, in fact, are required to do so

¹⁴ *In the Matter of: Joint Petition for Arbitration by NewSouth Communications, Corp., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC et al of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Docket No. 2004-AD-094, issued December 13, 2005 ("MS Joint Petitioners Arbitration")

1 pursuant to Section 251(a). They do not need BellSouth to pass such traffic
2 for them. However, for whatever efficiencies they gain, carriers have
3 elected to have BellSouth perform a transit traffic function for them, and
4 BellSouth is entitled to compensation for performing that function.

5

6 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

7

8 A. Yes.

9

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18 #617541