

**ORIGINAL**

**Matilda Sanders**

**From:** Peg Griffin [pgriffin@moylelaw.com]  
**Sent:** Friday, September 22, 2006 3:12 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Vicki Gordon Kaufman; gwatkins@covad.com; Adam Teitzman; james.meza@bellsouth.com; manuel.gurdian@bellsouth.com; Nancy Sims; Charles Beck  
**Subject:** E-filing - Docket No. 060598-TL  
**Attachments:** Response to Bell mtn to amend petition.pdf

Attorney responsible for filing: Vicki Gordon Kaufman  
 118 N. Gadsden Street  
 Tallahassee, FL 32301  
 Telephone: (850) 681-3828  
 Facsimile: (850) 681-8788  
[vkaufman@moylelaw.com](mailto:vkaufman@moylelaw.com)

Docket No. and title: In re: Petition by BellSouth Telecommunications, Inc., pursuant to Florida Statutes §364.051(4) to Recover 2005 Tropical System Related Costs and Expenses  
 Docket No. 060598-TL

Filed on behalf of: Competitive Carriers of the South, Inc.

Number of pages: 5

Document attached: Response to BellSouth's Motion to Amend Storm Petition

**CMP** \_\_\_\_\_  
**COM** \_\_\_\_\_  
**CTR** \_\_\_\_\_  
**ECR** \_\_\_\_\_  
**GCL** \_\_\_\_\_  
**OPC** \_\_\_\_\_  
**RCA** \_\_\_\_\_  
**SCR** \_\_\_\_\_  
**SGA** \_\_\_\_\_  
**SEC**   1    
**OTH** \_\_\_\_\_

Peg G. Griffin  
 Assistant to Vicki Gordon Kaufman  
 Moyle, Flanigan, Katz, Raymond White & Krasker, P.A.  
 118 N. Gadsden Street  
 Tallahassee, FL 32301  
 Telephone: (850) 681-3828  
 Facsimile: (850) 681-8788  
 E-mail: [pgriffin@moylelaw.com](mailto:pgriffin@moylelaw.com)

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this electronic mail transmission may be attorney/client privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect at 850-681-3828. Thank you.

DOCUMENT NUMBER-DATE

08797 SEP 22 06

FPSC-COMMISSION CLERK

9/22/2006

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth  
Telecommunications, Inc., pursuant to  
Florida Statutes §364.051(4) to  
Recover 2005 Tropical System  
Related Costs and Expenses

Docket No. 060598-TL

Filed: September 22, 2006

**COMPETITIVE CARRIERS OF THE SOUTH, INC.'S  
RESPONSE TO BELL SOUTH'S MOTION TO AMEND STORM PETITION**

The Competitive Carriers of the South, Inc. (CompSouth), pursuant to rule 28-106.204, Florida Administrative Code, file this Response to BellSouth Telecommunications, Inc.'s Motion for Leave to File Amended Petition. CompSouth has no objection to BellSouth's request *so long as* the procedural schedule set out in Order No. PSC-06-0783-PCO-TL (*Order Establishing Procedure*) is adjusted to reflect that the 120-day time period in section 364.051(4)(a), Florida Statutes, is restarted as a result of the requested amendment. In support thereof, CompSouth states:

**Background**

1. On September 1, 2006, BellSouth filed its original petition in this docket. On September 12<sup>th</sup>, CompSouth and NuVox filed Petitions to Intervene.
2. On September 15<sup>th</sup>, CompSouth served discovery on BellSouth based on the petition and testimony BellSouth filed on September 1<sup>st</sup>.<sup>1</sup> Included in CompSouth's discovery requests were questions related to BellSouth's count of the number of unbundled loops as set out in Ms. Blake's direct testimony filed on September 1<sup>st</sup>.<sup>2</sup>

<sup>1</sup> It is CompSouth understands that BellSouth has agreed to respond to this discovery within fifteen (15) days of the issuance of the *Order on Procedure*.

<sup>2</sup> The interrogatories ask: 1. At page 3, lines 12-14 of her direct testimony, BellSouth witness Kathy Blake states that based on BellSouth's most recent data (as of June 2006), BellSouth had "approximately 406,000 unbundled loops in service." What is the source of "BellSouth's most recent data"? 2. Of the "approximately 406,000 unbundled loops in service" in June 2006, how many were:

3. After the filing of the Petitions to Intervene and BellSouth's refusal to waive the 120-day time frame in section 364.051(4)(a), Florida Statutes, Staff consulted the parties regarding the scheduling of key events, including the filing of testimony. In discussions with Staff, CompSouth agreed to the October 9, 2006 filing date set out in the *Order Establishing Procedure* for its testimony based on the information contained in BellSouth's original petition and testimony, despite the fact that the time frame is very truncated.

4. On September 20, 2006, the *Order Establishing Procedure* was issued. It requires that rebuttal testimony be filed on October 9, 2006. Late in the day on September 20, 2006, after the *Order Establishing Procedure* was issued, BellSouth filed a Motion for Leave to File Amended Petition and its Amended Petition.

#### **The Filing of the Amended Petition Restarts the 120-day Time Period**

5. Section 364.051((4)(a) states that the Commission shall act upon the petition within 120 days of its filing. This places severe constraints on the parties and the Commission and BellSouth has refused to waive the time frame.<sup>3</sup>

6. BellSouth's filing of an amended petition restarts the 120-day time period. Trawick, *Fla. Practice and Proc.*, § 14-2 states:

An amended pleading is substituted for the former pleading and the former pleading ceases to have any effect.

- 
- a. stand-alone loops?
  - b. ISDN loops?
  - c. DS1 loops?
  - d. xDSL loops?
  - e. other?

<sup>3</sup> Letter from James Meza III to Chairman Edgar, Sept. 15, 2006.

(See cases cited therein: *Shannon v. McBride*, 105 So. 2d 16 (Fl. 2<sup>nd</sup> DCA 1958); *Dee v. Southern Brewing Co.*, 1 So.2d 562 (Fl. 1941). In addition, there is ample Commission precedent to restart the statutory clock when a petitioner seeks to amend the original filing, particularly, as is the case here, where the amendment increases the amount of revenue sought. By seeking to amend its original petition, BellSouth has in effect replaced its September 1<sup>st</sup> filing and restarted the 120-day time period for action, which runs from the date of the amended filing. Thus, the 120-day period for Commission action begins to run on September 20<sup>th</sup>.

7. An additional 20 days has now been added to the very tight time schedule set out in the *Order Establishing Procedure*. CompSouth requests that if BellSouth is granted leave to amend, the *Order Establishing Procedure* be revised to reflect the additional time and to require the filing of rebuttal testimony on October 16, 2006 rather than on October 9, 2006.<sup>4</sup> Such additional time is particularly necessary for CompSouth as it appears that the proposed amendment relates to BellSouth's calculation of the number of unbundled loops. BellSouth states in its Motion to Amend: "BellSouth requests leave to file an Amended Petition in order to correct errors that resulted in the understatement of the number of unbundled loops in service as of June 2006. . . ." <sup>5</sup> Thus, CompSouth must now explore not only how the original calculation was done, but also want warranted the change and how it was made.<sup>6</sup> While this may reduce the time that

---

<sup>4</sup> This revision has the additional benefit of permitting CompSouth to file its testimony *after* the issue identification meeting has occurred, rather than before as the current schedule contemplates.

<sup>5</sup> Motion to Amend, ¶ 2.

<sup>6</sup> CompSouth's 1<sup>st</sup> Set of Interrogatories regarding this issue (see footnote 2 above), related to Ms. Blake's original testimony. If the Commission permits the amendment, BellSouth should be required to respond to CompSouth's interrogatories based on BellSouth's amended petition and testimony within the original 15 day time frame and not require CompSouth to reserve the discovery. CompSouth has asked BellSouth to do this and BellSouth has agreed.

BellSouth has for rebuttal testimony, this situation has occurred due to BellSouth's requested amendment coupled with its refusal to waive the 120-day period.

8. In the Amended Petition, the amount of the surcharge BellSouth requests has increased from \$32.3 million in the original petition to \$34.6 million. No explanation of how the number was originally calculated or what accounts for the change has been provided. CompSouth needs additional time to deal with this discrepancy as well as to develop its testimony.

**WHEREFORE**, CompSouth requests that, if the Commission permits BellSouth to amend its Petition, it also revise the *Order Establishing Procedure* to require intervenor testimony to be filed on October 16, 2006.

s/ Vicki Gordon Kaufman  
Vicki Gordon Kaufman  
Moyle Flanigan Katz Raymond  
White & Krasker, PA  
118 North Gadsden Street  
Tallahassee, Florida 32301  
850.681.3828  
vkaufman@moylelaw.com

Attorneys for CompSouth

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Response to BellSouth's Motion to Amend Storm Petition furnished by (\*) electronic mail and U.S. Mail this 22<sup>nd</sup> day of September, 2006 to:

(\*) Adam Teitzman  
Staff Counsel  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)

(\*) James Meza III  
Manuel A. Gurdian  
c/o Nancy Sims  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301  
[james.meza@bellsouth.com](mailto:james.meza@bellsouth.com)  
[manuel.gurdian@bellsouth.com](mailto:manuel.gurdian@bellsouth.com)  
[nancy.sims@bellsouth.com](mailto:nancy.sims@bellsouth.com)

(\*) Charles J. Beck  
Deputy Public Counsel  
Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
[Beck.Charles@leg.state.fl.us](mailto:Beck.Charles@leg.state.fl.us)

s/ Vicki Gordon Kaufman  
Vicki Gordon Kaufman