

FILE COPY

Legal Department

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August 30, 1996

Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

RE: Docket No. 92-33-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Compel Answers to Interrogatories. Please file these documents 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 on the parties shown on the attached Certificate of Service.

Sincerely,

*Edward L. Rankin, III*

Edward L. Rankin, III

(RW)

ACK \_\_\_\_\_ Enclosures

AFA \_\_\_\_\_

APP \_\_\_\_\_ cc: All Parties of Record

CAF \_\_\_\_\_ A. M. Lombardo

OPU \_\_\_\_\_ R. G. Beatty

OTD \_\_\_\_\_ W. J. Ellenberg

EAG \_\_\_\_\_

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RECEIVED & FILED

*[Signature]*

TECHNICAL DEPARTMENT OF RECORDS

DOCUMENT NUMBER - DATE

09246 AUG 30 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Matter of the )  
Interconnection Agreement )  
Negotiations Between AT&T ) Docket No. 960833-TP  
Communications of The )  
Southern States, Inc. and )  
BellSouth Telecommunications, ) Filed: August 30, 1996  
Inc. Pursuant to 47 U.S.C. )  
§ 252 )  
\_\_\_\_\_ )

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO COMPEL  
ANSWERS TO INTERROGATORIES BY AT&T COMMUNICATIONS OF THE  
SOUTHERN STATES, INC.**

COMES NOW, BellSouth Telecommunications, Inc. ("BellSouth"), and files its motion requesting that the Florida Public Service Commission ("FPSC" or "Commission") direct and order AT&T Communications of the Southern States, Inc. (AT&T) to answer certain interrogatories contained in BellSouth's First Set of Interrogatories to AT&T. In its objections served on August 12, 1996, AT&T refused to answer almost one half of the interrogatories (60 of 126) propounded by BellSouth.

A close reading of AT&T's objections reveals that AT&T has interposed essentially the same boilerplate objection to each identified interrogatory. The primary objection is one of relevancy and, for the reasons stated below, the Commission should refuse to sustain the objections and should order AT&T to answer the interrogatories at issue.<sup>1</sup>

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<sup>1</sup> BellSouth has recently received AT&T's Responses to the interrogatories to which it did not object. BellSouth reserves the right to supplement this Motion to Compel should a complete review of AT&T's Responses reveal that any of them are non-responsive or objectionable.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

## INTRODUCTION

The interrogatories at issue generally seek information regarding 1) AT&T's plans to enter the local exchange market in Florida; 2) AT&T's conduct during the negotiation of an interconnection agreement with BellSouth; and 3) issues raised by AT&T through its Petition and/or pre-filed testimony. AT&T cannot refuse to disclose information it possesses pertaining to the reasonableness and/or credibility of its arguments advanced in support of its entry in the local exchange market.

To state, as AT&T has in its objections, that "AT&T's plans to enter the local exchange market and any information related thereto are not within the scope of this proceeding" displays, at best, a misguided notion of the purpose and scope of this proceeding and, at worst, an appalling level of arrogance. The only reason this proceeding exists is due to AT&T's demand under Section 252(b) of the Telecommunications Act of 1996 (the Act) to have this Commission arbitrate the terms and conditions of AT&T's entry into BellSouth's local exchange market in Florida.

It is stating the obvious to observe that positions taken by AT&T, either in other regulatory proceedings or in dealings with competitors in AT&T's own long distance business, on issues identical to the ones raised by it in this docket are extremely relevant to this proceeding. Far from being irrelevant and beyond the scope of this proceeding, these interrogatories generally seek to elicit

information regarding the reasonableness and credibility of positions AT&T has advanced in its Petition and through its prefiled testimony, including, but not limited to: 1) what services BellSouth must resell and/or unbundle and the prices associated therewith, 2) "service parity" or "operational parity" issues and 3) other issues concerning access and interconnection with BellSouth's network. Clearly, to the extent AT&T has either publicly or privately advanced positions that are inconsistent with positions taken in this case, BellSouth (and, through the hearing process, the Commission) are entitled to have this information.

The litigation process, whether administrative, civil, or criminal, involves the weighing and balancing of competing interests by a finder of fact. Credibility determinations can be critical in weighing the competing interests and resolving the important public policy issues in this docket. Thus, contrary to AT&T's position that its plans to enter the local exchange market, either in Florida or elsewhere, are no business of this Commission, BellSouth submits that the Commission cannot properly exercise the authority vested in it by Section 252 of the Act without knowing as many facts as possible that can possibly shed light on the relative merits of positions advanced by the parties.

Rule 1.280(b)(1) of the Florida Rules of Civil Procedure permits discovery of "any matter" that is either

“relevant to the subject matter of the pending action” or “appears reasonably calculated to lead to the discovery of admissible evidence.” Neither the number nor scope of the interrogatories at issue is oppressive, excessive or burdensome. Any truly valid concerns over attorney/client, attorney work product or trade secret privileges may be addressed through an in camera review of the information by the Commission and/or through existing confidentiality agreements between the parties.<sup>2</sup>

BellSouth now proceeds to respond to the specifics of AT&T's objections:

#### RESPONSES TO OBJECTIONS

##### Objections to Numbers 1, 2, 7, 10, and 40

To the extent that AT&T has information concerning the demand for local exchange service in Florida or any other state, such information is, at a minimum, relevant to AT&T's strident demands for “operational parity” with BST immediately upon entering the local exchange market. Is the need for AT&T's version of “operational parity” consistent with its projections of demand for its services once it enters the local exchange market?

Further, information regarding AT&T's demands for access and interconnection with other incumbent local exchange companies (ILECs) in other states directly bears on

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<sup>2</sup> BellSouth has had a difficult time identifying an interrogatory that even arguably elicits an attorney/client or attorney work product issue. Reminiscent of the “boy who cried wolf”, AT&T raised these privileges in 42 of the 60 interrogatories at issue.

the reasonableness of its negotiations with BellSouth and its positions advanced in this docket.

Objections to Numbers 11, 12, 13(d), 14(d), 17, 18, 20-21, 46, 54-55, 60-62, 68-71, and 93

All of these interrogatories directly relate to the issue of resale and, more specifically, to the reasonableness of the discounts to which AT&T claims it is entitled as a potential reseller of BellSouth's local exchange services. Through both its Petition and its prefiled testimony, AT&T has argued that it is entitled to resell BellSouth's retail services at a discount of between 66.7% to 71.7%. What can be more relevant than questions that fully explore AT&T's reasons for requesting said discount and AT&T's positions before other state commissions or with other ILECs on the same issues?

Further, AT&T's experience in reselling its own services is extremely relevant to this proceeding. AT&T has listed costs that it claims BellSouth will avoid when it provides retail local services to AT&T for resale purposes. Has AT&T avoided the same or similar costs as a reseller? Has its experience as a reseller been consistent with the experience that it predicts BellSouth will have? AT&T argues that BellSouth should discount retail services to "jump start" competition. Has AT&T ever taken a position contrary to that as a reseller of its own long distance services?

BellSouth and the Commission are entitled to fully explore these issues with AT&T through these interrogatories.

Objections to Numbers 22-24, 26, 28-30, 32-39, 41-42

An issue in any arbitration conducted under the Act is whether and to what extent the parties engaged in good faith negotiations prior to and after bringing their dispute before the state commission. See, Section 251(c)(1); Section 252(b)(4). The identified interrogatories seek to elicit information regarding the reasonableness of AT&T's negotiating efforts as well as the source of its negotiating strategy. Information pertaining to AT&T's negotiating efforts and the involvement of its parent company in its negotiating efforts is relevant to the Commission's determination of whether AT&T, in fact, conducted itself in good faith under the Act.

Objections to Numbers 47-53

In its Petition and prefiled testimony, AT&T has contended that it cannot effectively compete with BellSouth without complete and immediate "operational" or "service" parity on the day it enters the local exchange market. These interrogatories seek information regarding how AT&T has handled operational and service parity issues when it has resold services, as well as what restrictions it has imposed on resellers of its own services.

Objection to Number 64

By the term "network interface," BellSouth means the "network interface device" (NID). This interrogatory simply asks whether AT&T has any network interface devices in BellSouth's Florida territory. AT&T is being obtuse.

Objections to Numbers 72-79

These interrogatories seek information on positions taken by AT&T in other jurisdictions on the identical issues before this Commission for resolution (resale, unbundling and interconnection) and, therefore, are relevant to the matters in dispute here.

Objection to Interrogatory Number 102

The response to this interrogatory represents one of AT&T's most egregious misuses of the attorney/client and attorney work product privileges. The information sought relates to AT&T's network configuration and is relevant to the access and interconnection and "operational parity" issues in this docket. BellSouth is perplexed over how a question that asks AT&T to identify copper or fiber routes could possibly be construed to impinge on the attorney/client or attorney work product privileges

WHEREFORE, for the reasons stated above, BellSouth respectfully requests the Commission to direct AT&T to answer the identified interrogatories within 10 days from the date of the Commission's order.



Respectfully submitted this 30<sup>th</sup> day of August,  
1996.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on AT&T and the Attorney General by placing a copy of same in the U. S. mail, first class postage prepaid, this 30th day of August, 1996.

Edward L. Rankin, III (Pw)

CERTIFICATE OF SERVICE  
DOCKET NO. 960833-TP  
DOCKET NO. 960846-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 30th day of August, 1996 to the following:

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