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LAW OFFICES
MESSER, CAPARELLO, MADSEN, GOLDMAN & METZ
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (904) 222-0720
TELECOPIERS: (904) 224-4359; (904) 425-1942

September 19, 1996

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

BY HAND DELIVERY

960833-TP

Re: Docket No. 960916-TP

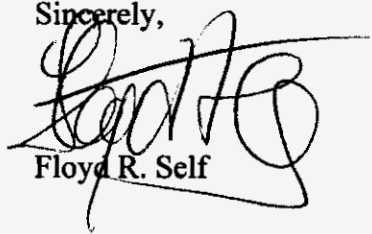
Dear Ms. Bayo:

Enclosed are an original and fifteen copies of ACSI's Motion to Compel BellSouth's Answers to ACSI's First Set of Interrogatories and ACSI's Motion to Compel BellSouth's Answers to ACSI's First Request for Production of Documents in the above- referenced docket. Also enclosed is a diskette with both documents on it in WordPerfect 6.0/6.1 format.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,



Floyd R. Self

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU Keith
- CTR _____
- EAG _____
- LEG 1
- LIN 5
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

FRS/amb
Enclosures

James Falvey, Esq.
Mr. Charles Rehwinkel
Parties of Record

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BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition by American Communications)
Services, Inc. and American Communications)
Services of Jacksonville, Inc. For Arbitration with)
BellSouth Telecommunications, Inc. Pursuant to)
the Telecommunications Act of 1996.)
_____)

DOCKET NO. 960916-TP
Filed: September 19, 1996

**ACSI'S MOTION TO COMPEL BELLSOUTH'S
ANSWERS TO ACSI'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 1.380 (a), Florida Rules of Civil Procedure, and Rule 25-22.034, Florida Administrative Code, American Communications Services, Inc., and American communications Services of Jacksonville, Inc., (hereinafter "ACSI"), by and through counsel, respectfully request entry of an order compelling BellSouth Telecommunications, Inc.'s (hereinafter "BellSouth") Answers to Interrogatories previously served by ACSI and as grounds therefore would state:

1. On August 13, 1996, ACSI served its First Set of Interrogatories, numbered 1 through 11, to BellSouth, a copy of which is attached hereto as composite exhibit "A." On September 3, 1996, BellSouth filed its objections to ACSI's First Set of Interrogatories and objected to Interrogatories 1, 4 and 10. Although BellSouth responded to Interrogatories 5 and 6 those answers are not complete and are thus the subject of this motion as well.

2. Pursuant to Rule 1.340 (b), Florida Rules of Civil Procedure, interrogatories may relate to "any matters that can be inquired into under Rule 1.280 (b)." Further, a party is permitted to discover relevant evidence that would be inadmissible at trial so long as it would lead to the discovery of admissible evidence. Amente v. Newman, 653 So.2d 1030 (Fla. 1995). Relevancy describes evidence that has legitimate tendency to prove or disprove given proposition that is

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material as shown by the pleadings. Zabner v. Howard Johnsons, Inc., 227 So.2d 43 (4th DCA 1969). ACSI's interrogatories request such information. BellSouth has not asserted any legal basis for its objections and should be directed to respond as more fully described below.

3. Interrogatory 1. In this interrogatory, ACSI requested BellSouth to name each ALEC or other LEC with which BellSouth has entered into a local interconnection agreement, to state the date the agreement was executed and whether the agreement covers local traffic exchange, provision of unbundled network elements or both. BellSouth provided a list of ALEC agreements but objected with respect to information pertaining to local interconnection agreements with other LECs. The basis for the objection that the request is subject to another docket, is overly broad, oppressive and unduly burdensome. In addition, BellSouth contends that the request does not seek information relevant to the issues in this docket and are not reasonably calculated to lead to the discovery of admissible evidence.

4. This interrogatory is relevant because BellSouth is required to provide unbundled network elements on a nondiscriminatory basis pursuant to 47 U.S. C. §§ 251(c)(3) and 252(d)(1) and only with this information can it be determined if BellSouth is offering the elements on a nondiscriminatory basis. The relevancy is enhanced by the fact that Article XXII of the ACSI-BellSouth Interconnection Agreement includes a "Most Favorable Provisions" clause insuring ACSI availability to elements on the same terms, rates and conditions as made available to others. Agreements between BellSouth and other telecommunications carriers, including CAPs, CLECs, IXC, and other LECs must be produced therefore in order for ACSI to ascertain whether they are being granted nondiscriminatory access and rates. As to agreements predating the Act, the FCC explicitly concluded that such agreements, including those between neighboring incumbent LECs,

must be made available. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. 96-98, First Report and Order, ¶ 165 (released August 8, 1996) and the fact that the commissions may be considering similar issues in another docket does not dispose of this request.

5. Interrogatory 4. This interrogatory requests that BellSouth “provide a complete explanation of the manner in which the non-recurring costs BellSouth assesses when a customer elects to change its presubscribed long-distance carrier was established.” BellSouth objects on the basis that the information is not relevant nor reasonably calculated to lead to the discovery of admissible evidence.

6. With respect to Interrogatory 4, the information regarding non-recurring charges (“NRCs”) relating to presubscribed long-distance carriers is directly relevant for purposes of comparison with NRCs for local exchange services. A key issue in this proceeding is determining TELRIC-based NRCs for unbundled loops. Many of the administrative and other activities required for a presubscription charge are identical to the administrative and other activities required to provide unbundled loops. ACSI would therefore like additional detail as to the presubscription process and any associated costs studies.

7. Interrogatory No. 5. ACSI requested BellSouth to describe and explain in detail how BellSouth computed its proposed nonrecurring and recurring charges for unbundled local loops. BellSouth responded by making a general statement that nonrecurring charges were established at levels slightly higher than LRIC and addressed only 3 loops. BellSouth has not described in detail how NRCs were computed nor has it addressed all of the types of loops BellSouth’s reply is nonresponsive and a complete reply should be required.


8. Interrogatory 6. ACSI requested an explanation as to the computation of proposed nonrecurring and recurring charges for cross connections. BellSouth responded that rates for cross connections required to connect an unbundled loop to ACSI are being developed. ACSI reads this response to infer that an explanation will be provided when those rates are developed.

9. Interrogatory 10. ACSI requested BellSouth to state the proportion of the rates charged that is attributable to an allocation of joint and common costs for the following service listings: Centrex, Special Access (DS1 and DS3 level), Private line (DS1 and DS3 level), PBX Trunk Service and DID. Again BellSouth objected on the basis the information is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence.

10. A response to this request is critical to determining whether BellSouth is providing the appropriate level of joint and common costs in its unbundled loop costs. As explained in ACSI's testimony, competitors will have to buy multiple bottleneck inputs from BellSouth, and then compete with BellSouth retail rates to end users. BellSouth should not be permitted to include only minimal joint and common costs in its prices to end users, but load excessive joint and common costs into its prices for bottleneck monopoly elements provided to competitors. This request is therefore directly relevant, as it seeks information on the joint and common costs that BellSouth chooses to load on its more competitive services.

WHEREFORE, AMERICAN COMMUNICATIONS SERVICES, INC., and AMERICAN COMMUNICATIONS SERVICES OF JACKSONVILLE, INC., request entry of an order compelling BellSouth Telecommunications, Inc., to immediately file responsive and complete answers to ACSI's First Set of Interrogatories.

Respectfully submitted,
MESSER, CAPARELLO, MADSEN,
GOLDMAN & METZ, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
(904) 222-0720



FLOYD R. SELF, ESQ.
NORMAN H. HORTON, JR., ESQ.

Attorneys for American Communications Services, Inc.
and American Communications Services of
Jacksonville, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of ACSI's Motion to Compel BellSouth's Answers to ACSI's First Set of Interrogatories in Docket No. 960916-TP has been sent by Hand Delivery (*) on this 19th day of September, 1996 to the following parties of record:

Donna Canzano, Esq.*
Division of Legal Services
Room 370, Gunter Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Phil Carver*
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301

Tracy Hatch, Esq.*
AT&T Communications of the Southern States
101 N. Monroe Street, Suite 700
Tallahassee, FL 32301

Richard Melson, Esq.*
Hopping, Green, Sams & Smith
123 S. Calhoun St.
Tallahassee, FL 32301



Floyd R. Self