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Tracy Hatch  
Attorney

Suite 700  
101 N. Monroe St.  
Tallahassee, FL 32301  
904 425-6364  
FAX: 904 425-6361

September 23, 1996

Mrs. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Docket Nos. ~~960833~~-TP, 960846-TP and 960956-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced dockets are an original and fifteen (15) copies of AT&T's Response To BellSouth Telecommunications Inc.'s Motion To Compel Answers To Its First Set Of Interrogatories and Motion For Protective Order.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,  
*Tracy Hatch*  
Tracy Hatch

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU Beita
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 5
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

Attachments  
cc: Parties of Record

RECEIVED & FILED  
*[Signature]*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
10158 SEP 23 96  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T )  
Communications of the Southern )  
States, Inc., for Arbitration with )  
BellSouth Telecommunications, Inc. )  
Concerning Interconnection and )  
Resale under the Telecommunications )  
Act of 1996. )  
\_\_\_\_\_ )

DOCKET NO. 960833-TP

Filed: September 23, 1996

AT&T'S RESPONSE TO BELL SOUTH TELECOMMUNICATIONS INC.'S  
MOTION TO COMPEL ANSWERS TO ITS FIRST SET OF  
INTERROGATORIES

AND

MOTION FOR PROTECTIVE ORDER

AT&T Communications of the Southern States, Inc. (AT&T), pursuant to Rules 25-220.034 and 25-22.035, Florida Administrative Code and Rules 1.340 and 1.380, Florida Rules of Civil Procedure, hereby submits the following response to BellSouth Telecommunications Inc.'s (BellSouth's) second Motion to Compel Answers to its First Set of Interrogatories, filed September 10, 1996.

AT&T requests that the Florida Public Service Commission (the Commission) deny BellSouth's second motion to compel with respect to those interrogatories set forth below because the interrogatories in question elicit information which is not relevant to the issues properly before the Commission in this proceeding and seek information that is subject to the attorney client privilege. Under the law, BellSouth is permitted to propound interrogatories to request information only if that information is "relevant to the subject matter of the pending

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action" or if that information "appears reasonably calculated to lead to admissible evidence."

Fla.R.Civ.P.1.280(h)(1); Manatee County v. Estech Gen. Chem. Corp., 402 So. 2d 75, 76 (D. Fla. 1981).

The purpose of this arbitration, conducted pursuant to the federal Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 252, is to resolve open issues between the parties concerning interconnection, resale, and unbundled network elements. Each of those issues addresses how BellSouth's duties under the Act are to be implemented. Except as noted below, the interrogatories subject to the Motion to Compel seek information that has no bearing upon these issues.

BellSouth continues to seek information regarding AT&T's operations that are beyond the scope of this proceeding with the implicit suggestion that there must be some sort of *quid pro quo* in AT&T's operations before BellSouth should be made to fulfill its statutory obligations under the Act to foster local telephone exchange market competition. Thus, BellSouth's basis for propounding such interrogatories continues to be fundamentally flawed.<sup>1</sup>

BellSouth's position in its Motion appears to be based on its belief that AT&T is required by the Act to justify and explain its entry into the local exchange market. However, as the provisions of the Act, as well as the FCC's Order implementing regulations make clear, the purpose of the Act is to promote customer choice and technological innovation through the establishment of robust competition in the local exchange market. To ensure that new entrants' transition into a market traditionally controlled by monopolists in as transparent and rapid a manner as possible, the Act mandates that incumbent local exchange carriers such as BellSouth

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<sup>1</sup> See AT&T's Response to BellSouth's Motion to Compel Answers to Its First set of Interrogatories and Motion for Protective Order, filed September 10, 1996 and incorporated herein by reference.

provide services, network elements, and interconnection under terms, prices and conditions that will enable new entrants to get up-and running at the time of entry. These obligations are in no way contingent upon a requesting telecommunications carrier justifying or explaining its intent or plan for entry. The ultimate issue in this proceeding is not why or if BellSouth must meet its statutory duties, but simply the particulars of how those duties will be met. Discovery beyond this scope is improper.

Beyond the fundamental differences between the local and long-distance markets that renders inquiries into AT&T's operations of no value to this Commission, these types of questions are completely irrelevant to the issues before the Commission regarding BellSouth's duty, under 47 U.S.C. § 251(c)(4) and its implementing regulations, to sell AT&T any of its services at parity with those provided to BellSouth customers. Accordingly, any discovery of AT&T's reselling experiences in the long distance market is improper.

BellSouth's position that it is entitled to discovery concerning "how AT&T has handled operational and service parity issues when it has resold services" is misplaced for the same reasons articulated above. Since information regarding the parity of services resold by AT&T in the long distance market sheds no light on the Congressional mandate that BellSouth must resell its services in the local market, such information falls outside the scope of proper discovery.

AT&T has, in accordance with the FCC's order implementing Section 252 of the Act, receded from its initial position regarding its proposed discounts for failure to implement operational parity and to jump start competition. The only remaining issue that relates to discounts for resold services is the avoided cost discount mandated by the Act , the Order and the Rules.

Notwithstanding its objections to the interrogatories propounded by BellSouth, AT&T responded to the interrogatories that are subject to the second motion to compel. With the exception of Interrogatories Nos. 27, 28, 37 and 38, AT&T will again attempt to determine whether there is any information further responsive to BellSouth's requests. To the extent such information exists it will be provided to BellSouth.

Interrogatories Nos. 27, 28, 37, and 38 seek information regarding mediation proposed by BellSouth in Alabama. It should be noted that these Interrogatories are subject to AT&T's pending motion for protective order. See footnote 1. As AT&T stated in its prior motion, mediation in another state, particularly mediation that did not take place, is not relevant to any issue in this proceeding. Moreover, Interrogatories Nos. 28, 37 and 38 solicit information protected by the attorney/client privilege.

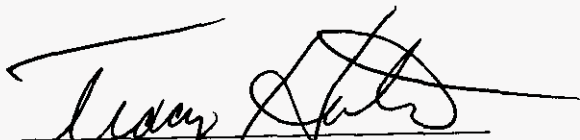
BellSouth correctly notes that the mediation attempted in Alabama never came to fruition. What BellSouth fails to mention is that its initially proposed "commonly-used" confidentiality provisions would have required that all matters discussed or mentioned during the mediation would be required to be confidential and could not have been used in any subsequent arbitration proceeding. These provisions would have ensured that the entire negotiations process under the Act would be funneled through the mediation process with the net result that all the negotiations would be confidential. Such confidentiality would have precluded compilation of all the relevant documentation for presentation to the Commission as required by the Act. To attempt to continue to obtain mediation, BellSouth offered to require only offers of settlement to be held confidential. AT&T declined to accept this provision as well. AT&T could find no justifiable reason to attempt to confine matters involved in the negotiations to the mediation context and

exclude such matters from scrutiny during the arbitration process pursuant to the Act. It should be noted that BellSouth's theory that settlement offers should be excluded from consideration of the Commission in the context of negotiations seeking to create entry into the local exchange market has been previously rejected by the Commission. It should be further noted that BellSouth's attempt to secure confidentiality that would preclude matters involved in negotiations from being presented to the Commission calls into question whether such action would be consistent with the requirements set forth in Paragraph 149 of the FCC's Order..

Finally, to the extent that BellSouth seeks information regarding AT&T's good faith during negotiations, under the law "information sought in discovery must relate to the issues involved in the litigation, as framed in all pleadings." Krypton Broadcasting Inc. v. MOM PATH Communications Co., 629 So.2d 852, 854 (Fla. Dist. Ct. App. 1993). Not only was the issue of AT&T's good faith not raised in either AT&T's petition or BellSouth's response thereto, but the list of issues to be decided by this Commission does not include any issue of AT&T's good faith. BellSouth did not raise this issue in the proposed list of issues that it submitted to this Commission nor at any of the issue identification conferences. Thus, because good faith is not before the Commission, such discovery is improper. To the extent that BellSouth seeks such information, AT&T moves this Commission to issue a protective order pursuant to Rule 1.280(c)(7), Florida Rules of Civil Procedure directing that discovery not be had.

Wherefore, for the reasons stated above, AT&T respectfully requests the Commission deny BellSouth's motion to compel and to grant AT&T's Motion for Protective Order denying discovery of information subject to the trade secrets privilege.

Respectfully submitted this 23th day of September, 1996.

A handwritten signature in black ink, appearing to read "Tracy Hatch", written over a horizontal line.

Tracy Hatch, Esq.  
Michael W. Tye, Esq.  
101 N. Monroe St.  
Suite 700  
Tallahassee, Florida 32301  
(904) 425-6364

Robin D. Dunson, Esq.  
1200 Peachtree St., NE  
Promenade I, Room 4038  
Atlanta, Georgia 30309  
(404) 810-8689

Mark A. Logan, Esq.  
Brian D. Ballard, Esq.  
Bryant, Miller & Olive, P.A.  
201 S. Monroe St.  
Tallahassee, Florida 32301  
(904) 222-8611

**ATTORNEYS FOR AT&T  
COMMUNICATIONS OF THE  
SOUTHERN STATES, INC.**

**CERTIFICATE OF SERVICE**

**DOCKET NOS. 960833-TP, 960846-TP and 960916-TP**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 23<sup>d</sup> day of September, 1996:

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

Donna Canzano, Esq.  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

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

Floyd R. Self, Esq.  
Messer, Caparello et al  
215 S. Monroe Street  
Tallahassee, FL 32301

Nancy B. White, Esq.  
BellSouth Telecommunications  
675 West Peachtree St., Room 4300  
Atlanta, GA 30375

  
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Tracy Hatch