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ROBERT A. BUTTERWORTH
Attorney General
State of Florida

September 4, 1998

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

Re: Docket No. 980696-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket please find an original and ten copies of Attorney General Robert A. Butterworth's Motion To Compel Discovery Responses From BellSouth, For Oral Argument, And Expedited Ruling.

Thank you for your courtesies.

Sincerely,

[Handwritten signature of Michael A. Gross]

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Enclosures

cc: All parties of record

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of the cost of basic
local telecommunications service, pursuant
to Section 364.025, Florida Statutes.

Docket No. 980696-TP

**ATTORNEY GENERAL ROBERT A. BUTTERWORTH'S
MOTION TO COMPEL DISCOVERY RESPONSES FROM BELL SOUTH,
FOR ORAL ARGUMENT, AND EXPEDITED RULING**

Robert A. Butterworth, Attorney General (Attorney General), pursuant to Rule 1.380
Fl.R. Civ. Pr. moves to compel discovery responses from BellSouth Telecommunications, Inc.
(BellSouth) to Second Request for Production of Documents dated August 28, 1998.

1. BellSouth served its objections to the Attorney General's Second Request for
Production on September 2, 1998. The procedural order in this docket mandates that objections
to discovery *shall* be made within five days of service of the discovery request. BellSouth's
attempt to reserve future objections is ineffective, and any such future objections are waived.

2. Response to Objection No. 1: BellSouth and other LECs have included in their claimed
costs, costs of services that were actually performed by their affiliates or subsidiaries, but then
billed to or otherwise transferred to the LECs. In most cases, these affiliates did not receive their
contracts with the affiliates as a result of competitive bidding. Therefore, if the affiliate costs are
included, but those costs are shielded from review, then the parties involved in this proceeding
will be unable to validate the reasonableness of those costs. For example, all major LECs actually
incur much of their headquarters expense on a multi-state basis, but then some portion of that
total headquarters expense is allocated to Florida, and then that Florida portion is further split
between deregulated, interstate and intrastate services. Therefore, the so-called "intrastate"

DOCUMENT NUMBER-DATE

09733 SEP-8 88

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regulated expense for Florida is in fact simply an allocated portion of a much larger expense that was incurred at the total company level, and allocated to among various categories. There is no way the "intrastate" portion of the expense can be validated without knowing the total expense and the allocations which were used to arrive at the so-called "intrastate" expense.

The LECs use a number of affiliates to provide a number of other services. For example, GTE-Florida has an affiliate (GTEDS), which does much of GTE-Florida's computer programming and data processing. In addition, at the divestiture of the Bell system, the yellow pages was initially assigned to AT&T. However, Judge Greene transferred yellow pages to the LECs, including BellSouth, specifically to provide support for residential basic exchange rates.

And if he was proud of Bellcore, he was chagrined over the fate of "yellow pages" directories, which he awarded to the BOCs at divestiture in the interest of holding down basic telephone rates. He referred to a NYNEX Corp. stand in New York that the directory is not part of the regulated telephone business.¹

BellSouth, and many other LECs, have transferred that yellow page benefit to an affiliate (without letting a non-affiliate directory publisher bid for that valuable service). One of the items the legislature has asked the Commission to investigate is the claim that "intrastate switched access" and other services "may be providing an implicit subsidy of residential basic local telecommunications service rates."² The legislation also requires that a reasonable residential rate be established. The benefit that Judge Greene specifically transferred to BellSouth and other LECs, specifically to allow the residential basic exchange rate to be lower than it otherwise

¹
Page 8, Telecommunications Reports, July 6, 1987.

²
Paragraph 1, Legislation.

would be, is a benefit which cannot properly be ignored when setting the proper residential basic exchange rate. The fact that BellSouth has transferred that benefit to an affiliate through a sole source non-competitive bid transfer does not mean that BellSouth overall has lost that value

This Commission quite properly in the past has recognized directory imputation should be considered when setting rates, and in fact had the companies fill out Schedule Z-7 which specifies how directory imputation is to be calculated.

The yellow page advertising of the directory that is associated with the local LEC is always much more profitable than any other directory in that area, as a direct result of its affiliation with the local LEC. As a result of being the LEC, the LEC becomes the only source that has the complete listing of telephone numbers and associated names. The customers know that the telephone company is the entity that is maintaining that list. Therefore, the customers know that the directory that is affiliated with the LEC has the accurate information, whereas any directory not affiliated with the LEC is more suspect. The much higher profitability of the LEC affiliated directory is a direct result of the provision of basic exchange service.

3 Response to Objection No. 2: First, the special project for which discovery Docket No. 980733-TL was opened has resulted from the Florida Legislature's requirements of the Florida Commission. One of the requirements that the Legislature has imposed on the Florida Commission is to determine the fair and reasonable Florida residential basic local telecommunications service rate. The Legislature specifically requires that the Commission must consider the comparable rates in other states when making this determination. HB 4785, Section 2 (2) (a) specifically states:

The Commission shall, by February 15, 1999, report to the

President of the Senate and the Speaker of the House of Representatives its conclusions as to the fair and reasonable Florida residential basic local telecommunications service rate considering affordability, the value of service, comparable residential basic local telecommunications rates in other states, and the cost of providing residential basic local telecommunications services in this state, including the proportionate share of joint and common costs.
(Emphasis added)

The description of the issues included in the special project in the 1998 Legislature clearly state that one of the key criteria for determining the fair and reasonable residential basis local telecommunications service rate is the "comparable residential basic local telecommunications rates in other states." BellSouth provides residential basic local telecommunications service in other states, and BellSouth is the best source for the rates it charges for service in other states.

Secondly, much of the costs that are identified as "Florida intrastate" costs are actually allocations of costs that occur at a higher level (e.g. regional or national level). Therefore, in order to determine the intrastate costs, one must know the total costs and the reasonableness of the allocations of those costs to Florida and to Florida intrastate.

For example, the headquarters costs of many companies are incurred at a multi-state level. Then some portion of those costs is allocated to Florida, some portion of these costs is assigned to non-regulated services, and some portion of that remaining cost is separated to intrastate regulated Florida. One cannot determine the reasonableness or the accuracy of the intrastate Florida regulated figure, without knowing the total cost and the allocations involved in determining the Florida intrastate amount.

4. Response to Objection No. 3: BellSouth has failed to identify the information alleged to be privileged, has failed to specify the privilege asserted with respect to particular information,

and has failed to set forth the grounds which might support any such privilege. Accordingly, this objection is without merit and is waived.

5. Response to Objection No. 4: This objection is utterly without merit due to BellSouth's complete failure to specify the application of any particular objection, and is nothing more than an enumeration of potential objections. Therefore, the mere recitation of the objections without more effects a waiver.

6. Response to Objection No. 5: As in the case of the previous response, no specific application of any of the enumerated potential objections has been made, and any such objections are therefore waived.

7. Response to Objection No. 6: This objection is utterly without merit providing no specific application and is therefore waived.

8. Response to Objection No. 7: Without specific application of the stated objection, it is without merit and waived. The Attorney General also disputes BellSouth's contention that availability of information from another source provides an meritorious objection to excuse BellSouth from providing information in its possession.

9. Response to Objection No. 8: Without specific application, this objection is without merit and is therefore waived.

As in the case of the previous response, no specific application of any of the enumerated potential objections has been made, and the objections are therefore waived.

10. Response to Objection No. 9: The Attorney General has entered into a Protective Agreement with BellSouth, and this objection is moot.

11. Response to Objection No. 10: This objection is without merit for failure to indicate

specific application to information requested, and is therefore waived.

12. This docket is on a fast track with prehearing statements due on September 10th, prehearing conference on September 28th, discovery deadline on October 5th, and final hearing beginning on October 12, 1998.

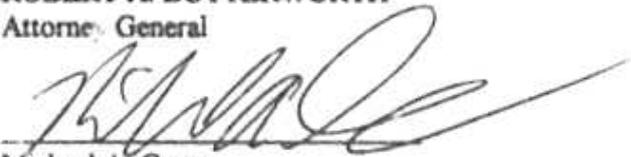
13. The Attorney General requests expedited ruling on this motion, on or before September 11, 1998, if feasible.

14. Further, the Attorney General requests oral argument on this motion.

WHEREFORE, the Attorney General respectfully requests the Prehearing Officer to enter an order compelling BellSouth to provide a complete response to the subject Request for Production on the grounds set forth above, for expedited ruling, and oral argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by facsimile to those noted (*) and by U.S. Mail this 4th day of September, 1998, to the following.

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