

ORIGINAL

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RECORDS AND
REPORTING

March 6, 2000

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

Re: Docket No. 990874-TP (US LEC Complaint)

Dear Ms. Bayó:

On Friday, March 3, 2000, BellSouth Telecommunications, Inc. filed its Motion to File Surrebuttal Testimony or, in the alternative, to Strike. However, the Surrebuttal Testimony, which is attached, was inadvertently left out of the package.

Copies were served to the parties shown on the attached Certificate of Service on Friday.

Sincerely,



Bennett L. Ross *(initials)*

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

- AFA _____
- APP _____
- CAF _____
- CMU _____
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02945 MAR-68

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 990874-TP (US LEC Complaint)

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
U.S. Mail this *6th* day of March, 2000 to the following:

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Bennett L. Ross *(BR)*

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 SURREBUTTAL TESTIMONY OF ROBERT C. SCHEYE
3 BEFORE THE FLORIDA SERVICE COMMISSION

ORIGINAL

4 DOCKET NO. 990874-TP

5 March 6, 2000

6
7 Q. PLEASE STATE YOUR NAME AND ADDRESS.

8
9 A. My name is Robert C. Scheye and my business address is BellSouth BSE, Inc., 32
10 Perimeter Center East, Atlanta, Georgia 30346.

11
12 PLEASE DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

13
14 A. On February 18, 2000, US LEC filed the testimony of Wanda Montano. Her testimony
15 addresses discussions that allegedly occurred between BellSouth and Teleport
16 Communications Group (TCG) during 1996 while she was employed by TCG. More
17 specifically, Ms. Montano provides her recollections of discussions that she claims
18 occurred between BellSouth and TCG concerning reciprocal compensation and ISP
19 traffic. My testimony provides BellSouth's perspective of these discussions so that the
20 Commission will have a complete set of facts in the event that it finds the TCG
21 discussions relevant to its decision in this US LEC proceeding.

22
23 Q. WHAT QUALIFIES YOU TO COMMENT ON THESE MATTERS IN THIS
24 PROCEEDING?

1

2 A. Ms. Montano's testimony references my participation in these discussions as a BellSouth
3 representative. I was, at the time, BellSouth's primary or lead negotiator with CLECs on
4 these matters. Indeed, I did negotiate with TCG and on June 12, 1996 signed an
5 agreement with TCG on behalf of Bellsouth.

6

7 Q. DID YOU AND MS. MONTANO HAVE COMPARABLE ROLES FOR YOUR
8 RESPECTIVE COMPANIES IN THESE NEGOTIATIONS?

9

10 A. No. I don't believe so. I was BellSouth's primary negotiator and, of course was
11 supported by other BellSouth personnel in dealing with the many technical matters such
12 as collocation provisions, interconnection trunking, etc. In my role I would have
13 participated in any discussion with TCG that dealt with any policy matters or how the
14 terms of the agreement were to be applied. Ms. Montano was not TCG's lead
15 negotiator nor did she participate in all the meetings that I had with TCG on the terms of
16 the agreement. As I recall, Ms. Montano was primarily involved in the actual
17 implementation of the interconnection provisions of the agreement.

18

19 Q. AS YOU RECALL WHAT WAS TCG'S VIEW, AT THE TIME, TOWARD
20 RECIPROCAL COMPENSATION?

21

22 A. TCG's views were much the same as other Alternative Local Exchange Carriers
23 (ALECs). Because TCG is not a party to this proceeding and the negotiations were
24 considered to be confidential discussions, I do not believe it is appropriate to go into too

1 much detail concerning the actual negotiations. However, ALECs, like TCG, were
2 generally concerned that the potential for a traffic imbalance, that favored the ILEC in
3 terms of reciprocal compensation payments, existed. Further, the prospect of
4 implementing reciprocal compensation procedures was not particularly appealing to
5 ALECs. They also didn't believe that the volumes of traffic that would exist during the
6 tenure of these initial agreements warranted the implementation of reciprocal
7 compensation. TCG, like many other ALECs, generally advocated a bill and keep type
8 plan whereby neither party compensated the other for the delivery of traffic.

9
10 Q. GIVEN THAT SITUATION, HOW DO YOU EXPLAIN MS. MONTANO'S CLAIMS
11 THAT THE APPLICATION OF RECIPROCAL COMPENSATION TO ISP TRAFFIC
12 WAS DISCUSSED DURING THE NEGOTIATIONS WITH TCG?

13
14 A. In advocating a bill and keep approach, ALECs such as TCG would, at times, try to
15 persuade BellSouth to accept bill and keep by arguing that reciprocal compensation
16 would incent them to market to companies that had only incoming traffic and did not
17 originate any. In making these arguments an ALEC might describe a heavy incoming
18 call situation as a reservation center, a catalog ordering center and possibly some type of
19 information service provider. In this latter category for example, it seems like, at the
20 time, there was demand for three digit calling, e.g. N11, for customers to dial and obtain
21 information. TCG may have made these types of references, but these were not
22 discussions about the type of traffic that is at issue in this proceeding. Overall, I don't
23 recall that ISPs were discussed during negotiations with TCG. However, if the term was
24 used, it would have been in the context that I have described.

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Q. DO YOU AGREE WITH MS. MONTANO'S CHARACTERIZATION THAT ISP TRAFFIC WAS DISCUSSED IN THE CONTEXT OF RECIPROCAL COMPENSATION IN THE TCG DISCUSSIONS? '

No, I do not. It was generally recognized that if an ALEC served only a few customers and an ILEC, such as BST, served millions, a traffic imbalance could conceivably exist based upon the type of customers that the ALEC could attract. In theory, the imbalance could occur in either direction. Discussions with TCG and other ALECS revolved around ways to avoid these imbalances from occurring. No ALEC would raise such concerns if they had any legitimate belief that they could obtain customers that had the type of traffic that is at issue in this proceeding and receive compensation for this usage.

Q. WHILE YOU DON'T RECALL DISCUSSING ISPs WITH MS. MONTANO, IF THE TERM HAD BEEN USED WOULD IT HAVE NECESSARILY EQUATED TO THE TYPE OF TRAFFIC AT ISSUE IN THIS PROCEEDING?

A. No. As I mentioned previously, it could have been used to provide an example of a customer that receives more usage than it originates. It could have had a very broad meaning. For example, a company that provides weather or time information might be included in this context. To equate this situation to imply that incoming usage to an internet service provider that is considered jurisdictionally interstate because the

1 terminating point is in a different state or a different country was in any way discussed
2 would be a monumental leap of logic.

3 Further substantiation of this point can be found in the actual BellSouth-TCG agreement.
4 Section IV, N states "When either party delivers calls with unique dialing codes...the
5 calls shall be delivered in accordance with the serving arrangements defined in the
6 LERG. To the extent unique billing arrangements with information service providers
7 (emphasis added) are required, BellSouth agrees to provide assistance to TCG in making
8 such arrangements."

9
10 Q. WERE THE OVERALL ACTIONS OF TCG IN THESE NEGOTIATIONS
11 SUPPORTIVE OF THE NOTION THAT ISP TRAFFIC OF THE TYPE INVOLVED
12 IN THIS PROCEEDING WAS AN ISSUE FOR THEM?

13
14 A. No. As Ms. Montano's testimony confirms, TCG advocated bill and keep. Ultimately,
15 the signed agreement included a cap plan whereby the difference in the originating and
16 terminating traffic, for the purpose of reciprocal compensation, was limited to only 5%.
17 These are not the actions of a company that had any belief that the balance of traffic
18 would favor TCG and it would benefit from reciprocal compensation payments.
19 Additionally, TCG had been operating as an access service provider prior to being able to
20 become an ALEC. It appeared that it would be using its existing customer base from
21 which to grow. Because ISPs, at that time, could purchase access at local exchange
22 service rates, ISPs wouldn't have been an integral part of the existing base.

23
24 Q. IN SUPPORT OF HER POSITION, MS. MONTANO ALSO INDICATES THAT YOU

1 HAD A BELIEF THAT TCG COULDN'T ATTRACT ISP CUSTOMERS. DO YOU
2 AGREE WITH HER TESTIMONY?

3
4 A. No. Her portrayal of any comments I may have made is incorrect. My beliefs and
5 observations at the time came from my own understanding of the industry plus what other
6 ALECs had told me. ALECs were attempting to grow a customer base and to utilize the
7 facilities that they had. A market plan that focused primarily on businesses that received
8 more calls than they initiated, did not seem to be consistent with that type of plan.
9 Additionally, ALECs were not in a position to turn away a prospective customer based
10 upon the directionality of its traffic. Because many ALECs didn't believe they could
11 control the types of customers, nor could they hone their marketing plans finely enough, a
12 concern that reciprocal compensation might be disadvantageous to them was fairly
13 common.

14
15 Q. FINALLY, DO YOU AGREE THAT BELLSOUTH KNEW AT LEAST ONE ALEC
16 CONSIDERED ISP TRAFFIC TO BE LOCAL AND SUBJECT TO RECIPROCAL
17 COMPENSATION, AS MS. MONTANO CONCLUDES?

18
19 A. No. As I mentioned, I don't recall any discussions of ISPs with TCG. If the term was
20 used it was only in the context of a business that receives more calls than it originates. It
21 would have also been used in the broadest sense, not in the limited sense that it equates to
22 the jurisdictionally interstate traffic of the type at issue here. I believe Ms. Montano has
23 taken discussions that may have occurred during the TCG – BellSouth negotiations
24 totally out of context to reach the conclusion that she has stated.

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Q. MS. MONTANO SAYS THAT TCG SHOULD HAVE CONCLUDED, BASED ON YOUR COMMENTS, THAT ISP TRAFFIC WAS INCLUDED IN THE RECIPROCAL COMPENSATION PLAN. DO YOU AGREE?

A. No. There was nothing that I said or suggested that should have led to that conclusion. Despite Ms. Montano's characterizations, negotiations with ALECs that wanted bill and keep and/or a cap plan had little reason to discuss what traffic was considered "local" for the purpose of reciprocal compensation. TCG, as I recall, was no different in that regard. Conversely, there were several other issues that were important to TCG that were discussed in a great deal of detail. I can't imagine TCG drawing the conclusion as suggested by Ms. Montano based upon my comments or the negotiations in general because it was simply not a topic that required any amount of discussion.

Q. CAN YOU EXPLAIN YOUR PREVIOUS ANSWER IN A LITTLE MORE DETAIL?

A. Sure. Under either bill and keep or a cap plan, very little if any revenues are involved with reciprocal compensation. Once an ALEC establishes that it will operate under these type of plans, the precise nature of the traffic that is included or excluded is of little significance. For example, TCG operated under a 5% cap plan and assuming ISP traffic was included in reciprocal compensation and TCG only had ISP customers, there would be no impact on TCG's revenues, so why would they have even considered the issue? The answer is that there would have been no reason for TCG to have done so.

1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2

3 A. Yes.

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